GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

SPINY LOBSTER COMMITTEE

Beau Rivage Resort
Biloxi, Mississippi

October 2, 2017

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PAGE 12: Motion to modify Action 2 to combine both the protocol and the procedure. **The motion carried on page 12.**

PAGE 14: Motion to incorporate the following into Spiny Lobster Amendment 13: bag limits, degradable panels in traps, and definition of artificial habitats. **The motion carried on page 15.**

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The Spiny Lobster Committee of the Gulf of Mexico Fishery Management Council convened at the Beau Rivage Resort, Biloxi, Mississippi, Monday morning, October 2, 2017, and was called to order by Chairman Martha Guyas.

ADOPITION OF AGENDA
APPROVAL OF MINUTES
ACTION GUIDE AND NEXT STEPS

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

REVIEW OF DRAFT OPTIONS FOR SPINY LOBSTER AMENDMENT 13

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

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

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

Alternative 2 would establish an endorsement for bully nets and 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
endorsement from Florida; require that the vessel be marked with
the harvester’s bully net endorsement 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.

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

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

CHAIRMAN GUYAS: That’s right.

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

CHAIRMAN GUYAS: Leann.

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

CHAIRMAN GUYAS: I wish Bill Kelly were here, because this was
one of his big things. It was a commercial industry request,
largely. There are certainly other users that had some issues with bully nets, but Bill’s group had wanted to see an endorsement for bully nets. There was some concern that there was an uptick in the bully netting versus trapping versus diving, and so the endorsement was created and these regulations were created to kind of cap us where we are, I guess, with the bully net fishery. Doug, if you want to chime in, feel free.

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

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

MS. BOSARGE: Thank you.

CHAIRMAN GUYAS: Are there other questions or comments or thoughts on this action? It looks no, and so I guess let’s move forward.

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

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

Those rules will need to be reviewed by the Regional Administrator, to make sure that they’re consistent with the National Standards, the Lobster FMP, and other applicable law,
and then they also need to be vetted through the council, in
that the council will review the proposed rule and make sure
that it’s consistent with the Magnuson-Stevens Act and the
objectives of the FMP.

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

CHAIRMAN GUYAS: I’ve got a few, but, before I give mine, I will
give the committee an opportunity. Leann, go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Also, other things that will need to be modified is maybe some less specific language on the analyses that FWC must do, so
that, in Step 5, it’s based on the state analyses of impacts that the council staffs, with the assistance from FWC, will prepare the supporting documentation for the EA, the RIR, et cetera, and so perhaps that socioeconomic analyses portion might need to move there, although, if it has to go through public hearings, maybe we need to involved the council staff in the process a little earlier, or NMFS staff a little earlier, so that that analyses is conducted before it goes out to public hearings.

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

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

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

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

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

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

**CHAIRMAN GUYAS:** Okay. Is anybody willing to make a motion to I guess modify Action 1 to combine and edit both the protocol and the procedure? It’s Action 2, sorry.
MR. JOHN SANCHEZ: You word it, and I’ll make the motion.

MR. DOUG BOYD: I will second it.

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

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

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

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

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

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

Things that can be changed in the codified text to maintain consistency -- This is something that I just want to bring to your attention, that these will probably, when we move forward with Amendment 13 and we get to final stage and have codified
text for the councils to review, some of these changes won’t be necessarily in this document, but they will be updating, based on new dates from FWC and to change some of the typos that are in the CFRs, and so these are to rename “unmarked buoys and traps” to “derelict traps and buoys”, just to maintain consistency with FWC, change the reference in the CFRs regarding pulling traps belonging to another person to the particular specific rule dates that FWC has. Those have been updated, and so those dates and those references will change.

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

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

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

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

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

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

CHAIRMAN GUYAS: Yes, and you’re absolutely right, and so we have a mechanism for state waters where, if a fisherman can’t go
and get his traps, his boats are not able to run or whatever the situation is, another fisherman -- You fill out a form, and another fisherman can pull your traps for you.

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

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

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

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

EXECUTIVE DIRECTOR GREGORY: Could you please make a motion?

MR. SANCHEZ: I make a motion to incorporate this.

CHAIRMAN GUYAS: Morgan, go ahead.

DR. KILGOUR: I think I would need a specific motion to incorporate the bag limits, the degradable panels, and the definition of artificial habitat. The other things, I don’t need a motion on. I am just alerting you to, the next time we have codified text for spiny lobster, these things will be updated, and so, if I could get a motion to either all three of those things need to be in either Amendment 13 or have their own amendment, but a little bit more specific direction I would really appreciate, so that I’m not just interpreting things on my own.
MR. SANCHEZ: You did a good job. That works for me. In this amendment.

CHAIRMAN GUYAS: Doug.

EXECUTIVE DIRECTOR GREGORY: Can you add to that “and the other listed changes to codified text”?

MR. SANCHEZ: Certainly.

DR. KILGOUR: I don’t need that. We’re already going to do that.

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

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

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

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

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

CHAIRMAN GUYAS: Thanks, Andy. Whatever help you all need, just let us know, and we can do what we need to do to help you out. All right. Now we’re at Other Business, and, seeing none, I
think that means our committee is adjourned.

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

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