

Protocol and Procedure for Enhanced Cooperative Management of Spiny Lobster

The protocol and procedure was established in Spiny Lobster Amendment 2, and was most recently used in Regulatory Amendment 3. The protocol was revised in Amendment 10 to update the names of agencies and authorities. Below are the most recent version of the protocol and procedure for cooperative management of spiny lobster.

Protocol for Roles of Federal and State of Florida Agencies for the Management of Gulf and South Atlantic Spiny Lobster

- 1.** The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and NOAA Fisheries Service acknowledge that the fishery is largely a State of Florida (State) fishery, which extends into the exclusive economic zone (EEZ), in terms of current participants in the directed fishery, major nursery, fishing, landing areas, and historical regulation of the fishery. As such, this fishery requires cooperative state/federal efforts for effective management through the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Spiny Lobster FMP).
- 2.** The Councils and NOAA Fisheries Service acknowledge that the State 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 State Administrative Procedure Act and rule implementation procedures, including final approval of the rules by Governor and Cabinet, provide ample and fair opportunity for all persons to participate in the rulemaking procedure.
- 3.** The Florida Fish and Wildlife Conservation Commission (FWC) acknowledges that rules proposed for implementation under any fishery management plan amendment, regulatory or otherwise, must be consistent with the management objectives of the Spiny Lobster FMP, the National Standards, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. Federal rules will be implemented in accordance with the Administrative Procedure Act.
- 4.** The Councils and NOAA Fisheries Service agree that, for any rules defined within an amendment to the Spiny Lobster FMP, the State may propose the rule directly to NOAA Fisheries Service, concurrently informing the Councils of the nature of the rule, and that NOAA Fisheries Service will implement the rule within the EEZ provided it is consistent under paragraph three. If either of the Councils informs NOAA Fisheries Service of their concern over the rule's inconsistency with paragraph three, NOAA Fisheries Service will not implement the rule until the Councils, FWC, and NOAA Fisheries Service resolve the issue.
- 5.** The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance as needed by NOAA Fisheries Service, and cooperatively share the responsibility for enforcement with federal agencies.

6. Florida FWC will provide to NOAA Fisheries Service and the Councils written explanations of its decisions related to each of the rules; summaries of public comments; biological, economic and social analysis of the impacts of the proposed rule and alternatives; and such other relevant information.

7. The rules will apply to the EEZ for the management area of North Carolina through Texas, unless the Regional Administrator (RA) determines 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.

8. NOAA Fisheries Service and the Councils agree that their staffs will prepare the proposed and final rules and the associated National Environmental Policy Act documentation and other documents required to support the rule.

Protocol for Enhanced Cooperative Management System

1. This procedure will function under and be governed by the protocols for cooperative management agreed upon by the FFWCC, the Councils, and NMFS.

2. Based on the best available scientific information, the State of Florida's Fish and Wildlife Conservation Commission (FFWCC) will develop alternative proposed rules and socioeconomic analyses on the effects of these alternatives, hold public hearings (as required by Florida's Administrative Procedure Act), and at a final hearing select each preferred alternative rule for implementation. After approval of the rule or rules by the Governor and Cabinet, the FFWCC will advise the Councils and the Regional Administrator (RA) of NMFS, of the recommended rule(s) and proposed implementation date and will provide to the RA and to the Councils the analyses of the effects and impacts of the recommended and alternative rules and summaries of public comment.

For rules to be implemented by the start of the fishing season (currently August 6), FFWCC must complete these actions on or before February 1. The Councils will submit the rule and supporting analyses to the SSCs who will advise the RD, through the Councils, of the scientific validity of the analyses. The Councils will also submit the rule and supporting analyses to the advisory panels for comment.

3. The RA will review the recommended rule, analyses, and public record, and if he preliminarily determines that the rule is consistent with the objectives of the FMP, the National Standards, and other applicable law, he will notify the Councils and FFWCC of his intent to implement the rule in the EEZ. If, in the judgment of the RA, the rule or its supporting record are not consistent with these statutory criteria or the FMP objectives, he will immediately notify the Council and the FFWCC of the deficiencies in the rule or supporting record. The FFWCC may submit additional information or analyses to correct the deficiencies in the record.

4. When in the judgment of either of the Councils the rule is not consistent with the Magnuson Act or the objectives of the FMP, they will inform the RA and FFWCC. In this case the RA will not proceed with implementation of the rule until this issue has been resolved.

5. When the RA has preliminarily concluded the rule is acceptable, he will draft and publish the proposed rule for implementation by regulatory amendment. Based on State analyses of impacts, the Councils' staffs, with assistance from FFWCC, will prepare the supporting documentation [EA/RIR, etc.] that accompany the proposed rule. The effective date of rules promulgated under this procedure will be the starting date of the next fishing season following approval of the regulatory amendment unless otherwise agreed upon by FFWCC, the Councils, and the RD. A reasonable period for public comment on the proposed rule shall be provided.

After reviewing public comment if the RA has concluded the rule is not consistent with the FMP objectives, the National Standards, other applicable law, or the provisions of this procedure, he will notify the Councils and FFWCC of the fact and/or the need for proceeding with implementation by FMP amendment. If the supporting record is still deficient, he will delay taking action until the record has been supplemented by FFWCC and/or Councils' staffs. If the RA has concluded the rule is consistent, he will publish the final rule.

Spiny Lobster Amendment 2 (GMFMC/SAFMC 1989): <http://cdn1.safmc.net/wp-content/uploads/2016/11/28110545/SpinyLobAmend2.pdf>

Spiny Lobster Regulatory Amendment 3 (GMFMC/SAFMC 2002): <http://cdn1.safmc.net/wp-content/uploads/2016/11/28110539/SpinyLobRegAmend3.pdf>

Spiny Lobster Amendment 10 (GMFMC/SAFMC 2011): http://cdn1.safmc.net/wp-content/uploads/2016/11/28110537/Final_Spiny_Lobster_Amendment_10_July_11.pdf