

**SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

**SPINY LOBSTER COMMITTEE**

**Charleston Marriott Hotel  
Charleston, SC**

**September 14, 2009**

**SUMMARY MINUTES**

**Spiny Lobster Committee Members:**

Mark Robson, Chair  
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Rita Merritt

Dr. Roy Crabtree  
Ben Hartig  
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**Council Members:**

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David Cupka  
Dr. Wilson Laney  
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**Council Staff:**

Bob Mahood  
Mike Collins  
Myra Brouwer  
John Carmichael  
Anna Martin

Gregg Waugh  
Kim Iverson  
Rick DeVictor  
Julie O'Dell

**Observers/Participants:**

Monica Smit-Brunello  
Bob Gill  
Dr. Nick Farmer  
Dr. Marcel Reichert  
Hal Robbins

Dr. Jack McGovern  
Otha Easley  
Nik Mehta  
Phil Steele  
Karen Raines

Other observers attached to the end of the document.

The Spiny Lobster Committee of the South Atlantic Fishery Management Council convened in the ballroom of the Charleston Marriott Hotel, Charleston, South Carolina, Monday, September 14, 2009, and was called to order at 4:00 p.m. by Chairman Mark Robson.

*Mark Robson:* Thank you, Mr. Chairman. We'll get right into it. First item on the agenda is to approve the agenda. Are there any additions or changes to the agenda as you have it? Seeing none, we'll go ahead and proceed.

The next thing on the agenda is to approve the minutes. There was an audio file from the June meeting. Are there any additions, corrections, or modifications to the agenda? I mean to the minutes. I'm sorry. Seeing none, if everybody approves, we'll go ahead and approve those minutes from the June meeting as in the filed.

The next substantive issue on the agenda is an update on the scoping and work that the Gulf Council is doing related to the Spiny Lobster Amendment. And I'm gonna turn that over to Gregg Waugh, to give you that rundown.

*Gregg Waugh:* Thank you, Mr. Chairman. This is right out of the overview that you have on your briefing material. Again, we're working on Joint Spiny Amendment 9, with the Gulf Council. Our council is taking administrative lead on this. The Gulf Council is taking the administrative lead on mackerel. We completed our scoping as a part of our comprehensive Annual Catch Limit Amendment. We did in the end of January early February. The Gulf Council has scoping meetings beginning next week. I will be attending the scoping meeting in Key West and Marathon. And these scoping meetings will cover both king mackerel, spiny lobster, and they have one additional item on there as well.

We have an interdisciplinary team formed. We're still waiting for the Southeast Fishery Science Center to make an appointment to that team. And we have a rough timeline that continues as we have discussed in the past. There is an update to the stock assistant led by the researchers of the state of Florida. That update will be conducted in mid to late 2010, reviewed by the council's SSC after that by December 2010, and that will provide the OFL and ABC recommendations. There's a lot of work that we can do before then looking at issues that need to be done before we get that final recommendation. But you can see the rest of the time period is laid out there to basically finish it up early 2011.

*Mark Robson:* Any questions about that? Okay. Gregg's gonna – yeah, that concludes your – were you gonna go through it a little bit on the –?

*Gregg Waugh:* Yeah. The overview and timing that's done. I'd just like to touch quickly on what's in the Gulf scoping document, and these are, indeed, the issues that we have talked about as well. This is Attachment 1. Towards the end of that lists the actual items that we're dealing with. Potential – this is on Page 12, PDF Page 16 of the document.

One, “Should separate state and federal annual catch limits accountability measure and optional annual catch targets be set for spiny lobster in the Joint Spiny Lobster FMP?” Two, “Should separate sector annual catch limits accountability measure and optional ACTS, annual catch targets, be set for lobster species?” And that could be just recreational/commercial. You can also look within the commercial of dividing that between the diving the sector, the bully netting sector, and commercial trapping.

The third item is, “Should the Joint Spiny Lobster FMP be repealed?” And Monica's gonna give a presentation on that in a moment. Four, “Should certain operational aspects of the Joint Spiny Lobster FMP be delegated to the Florida Fish and Wildlife Commission with the agreement of both councils and the Florida Fish and Wildlife Commission?” Now we'll have some discussion about that after Monica finishes her presentation.

But, again, the Gulf Council is just taking these issues out to scoping starting next week.

Item 5 is, “Should any of the species be withdrawn from the Joint Spiny Lobster FMP?” We've got some relatively minor species in there. Six, “Should any of the lesser-targeted species qualify as ecosystem component species?” And we've got a category of other issue. One is, “Should the current tailing requirements for recreational and commercial vessels with a tailing permit be modified so that all Caribbean Spiny Lobster are landed either all as whole or all as tailed?” so that you don't have mixed forms being landed on the same trip.

Two, “Should the regulations regarding possession and handling of short lobsters, undersized attractants be modified and/or prohibit the possession and use of shorts as attractants?” Three, “Should the Joint Spiny Lobster FMP management protocol be updated to track changes?” That's something that needs to be done. And then

the final item that Myra will comment on and give you our Coral AP comments is, “Should the use of lobster traps be limited to certain areas to address concerns for staghorn and elkhorn corals?”

Myra’s gonna come up. And these are included in your briefing book. It’s Attachment 3 under the Ecosystem Committee, but I’ve got ’em projected here to save you having to look for it.

*Myra Brouwer:*

Yes, good morning. Briefly, the Coral AP did not have a whole lot of time to discuss this issue. They provided – they offered two alternatives in addition to the no action. One would be to prohibit trapping in all known hard-bottom areas outside of three miles and shallower than 30 meters, knowing, of course, that perhaps the data are not there to determine the entire cover of hard-bottom in this depth range.

And the third alternative that they suggested would be to look at a map of critical habitat for acroporids, which is available, and overlay that on spiny lobster effort information to determine areas of known densities and areas of probable recruitment of coral. They didn’t go into the discussion as to what those areas would be, but they felt it was important to include potential areas of coral recruitment in the trapping prohibition.

So I guess they will have to come up with a more specific criteria to define those areas of known densities. But the data are available. It’s just a question of piecing it all together.

*Mark Robson:*

George, you have a question?

*George Geiger:*

Yeah, thank you Mr. Chairman. My question is was the Coral AP – did they have an opportunity to hear any information from the fishermen in the Keys in regard to the actions that they’re taking voluntarily to try and control where they’re putting traps and developing a plan to maybe mitigate their trap issues that they’re having in the keys?

I know that we received a presentation on that topic probably three or four council meetings ago, if I recollect correctly. And I know I’ve talked to Tony and they’ve been making – they’ve had some activity and they’ve been making progress on that plan. Did the AP get an opportunity to hear that?

*Myra Brouwer:*

The AP did not receive that presentation, but several of them were aware of those efforts, and so there wasn’t any update on those activities that was presented to the AP.

*Mark Robson:* Myra, I have a question regarding the mapping – the alternative that would be based on mapping. Did the Coral AP discuss what's available or what needs to be made available in terms of mapping information to identify critical habitat?

*Myra Brouwer:* Well, the critical habitat information is already available for the acroporids. And so what would be needed now is data on fishing effort spiny lobster, and that would probably have to come from FWC.

*Mark Robson:* Any other questions for Myra? Okay. Seeing none, did that cover your overview? Thank you, Myra.

*Myra Brouwer:* You're welcome.

*Mark Robson:* Okay. Again, as Gregg said, I guess the scoping workshops for the Gulf Council start next week. Carry on with that. The next item on the agenda is the discussion about – that has been – we've had bounce around a little bit about the potential of withdrawing the Spiny Lobster FMP and we have on the agenda a presentation from Monica to discuss some of the ramifications of that, or not doing that.

*Monica Smit-Brunello:* Good morning. I you all know what it takes to withdraw an FMP, because you've recently done that with the Red Drum FMP, but I will go over it again. Under the Magnuson Act, Section 304H, it states that the secretary may repeal or revoke an FMP for a fishery under the authority of a council, only if the council approves the repeal or revocation by a third-quarters majority of the voting members of the council.

So I have that hanging here. And I'd also like to talk to you about a recent amendment to the spiny lobster plan, Amendment 8 to the Gulf and South Atlantic Plan. That amendment also contained Amendment 4 to the Caribbean Spiny Lobster Fishery Management Plan. That plan was approved by the secretary on December 22, 2008, and it was implemented via final rule, which was effective on February 11 of this year.

And you know – as you recall, the final rule established two minimum size restrictions for the importation of spiny lobster into the United States. Amendment 8 of the South Atlantic and Gulf Plan had one size applicable to all spiny lobster imported into any place subject to the jurisdiction of the United States except for Puerto Rico and the Virgin Islands. And then Amendment 4

supported a more restrictive size limit that was applicable to spiny lobster imported in Puerto Rico and the US Virgin Island.

So our office has been looking at this, and we have a difficult time figuring out that if you withdrew the spiny lobster plan, the Gulf and South Atlantic plan, there's no support remaining for the minimum size importation restriction rule for the United States apart from Puerto Rico and the Virgin Islands.

I've been having conversations with our international law department because I'm certainly no international law expert. And while they haven't given me a definite no, at this point they haven't been able to determine a way to keep that import restriction in, either. So if the plan is withdrawn, the importation restriction that would remain would be the one for importation of spiny lobster into Puerto Rico and the Virgin Island.

There was a discussion of partially withdrawing the FMP, but I think that really means amending the FMP, and that amendment potentially would be to change the fishery management unit to exempt out Florida and I'm supposing retain it for Georgia, South Carolina, and North Carolina. Of course, the plan also covers all the Gulf states as well. So we would have to figure out should there be two separate FMPs, because I think it would be kind of odd to have the fishery management unit with a big gap in the middle, especially since National Standard 3 talks about managing the fishery as a whole and that.

But let's set that aside talk about what your record would be for having that kind of amendment, especially since all the amendments – really, the fishery management plan from Amendment 8, back, is full of support that the fishery primarily is off Florida, in state water and federal waters, so I'm not sure what the rationale would be to exempt out Florida, and yet retain a plan of some nature for fisheries that really don't exist – they exist, but they're very minor I think for – let's just talk about South Atlantic – for Georgia, South Carolina and North Carolina. So that's a starting point for a discussion if we want to have any.

*Mark Robson:*

Gregg.

*Gregg Waugh:*

I think we haven't developed the rationale fully yet. But as it understands, some of interest is that we manage the fishery in North Carolina, South Carolina, then Georgia. As I understand it the Gulf Council is inclined to not continue managing spiny lobster in the Gulf states. Our council, at least thus far, has indicated an

interested in keeping the management in those Northern states. So right now, we management it differently. There's a commercial and a recreational fishery in the state of Florida. The commercial fishery takes place in the state of Florida. But we have chosen to manage the fishery very differently, Georgia, north. There we heave a two-bag limit year-round, no buried lobsters. The same minimum size regulations apply.

So we have a very different management regime in place, and so I think that would form the basis our rationale for going forward with a request to modify the fishery management unit, and recognize that the commercial fishery occurs off of Florida, and let the state manage that and that we would have interest in continuing federal management under the different regime that currently exists in those state North of Florida, and then use that as a way to continue the import prohibition into US. I think that would form the basis of our rationale.

*Mark Robson:* George.

*George Geiger:* Yeah, Gregg, thank you. And I understand your rationale for doing that. The one hiccup I see in this is the fact that before we can give it to Florida, I think Florida has to be willing to accept it. And I'm not sure where we are in that process. I was just an FWC meeting, and that was discussed. Mark, you might want to walk us through your staff recommendation.

*Mark Robson:* Do you want me to – David, do you have a comment, or you want me to respond to George?

*David Cupka:* Well, to that point, Mr. Chairman, if I may, I was gonna raise that same issue, 'cause when I was at the last Gulf council meeting, the issue surfaced about, "Well, shouldn't we at least ask Florida if they're willing to accept this?" And my understanding was, and what I told them was that it was gonna be some sorta meeting involved FWC personnel along with some of the council staff people. And, again, I don't know if that's ever occurred, or where we are. So like George, I'd be very interested to see what's been done along those lines.

*Mark Robson:* To that point, Monica?

*Monica Smit-Brunello:* Yeah. Remember, we're kind of talking about two different things. If you withdraw the FMP, it's not up to Florida necessarily to accept it or not, although I'm certain we would want to – you would want to talk with them and get all that ironed out. If you

were to delegate part of the fishery management plan measures to the state, then that would become even more relevant for Florida to get into the discussion.

And one other point that I should have made before is that when I went back through and I looked at the protocol that was set up between the state of Florida, the councils, and the fisher service, there was discussion in there about who would work on what kinds of documents. I believe it was the fishery service staff with the help of the state of Florida would do, they mention in the protocol strictly EA or RIR's, regulatory impact review, those sorts of things.

I'm sure with NEPA, we can very well get into something more than an EA. But then they talked about how – and it would probably be good for everybody to look at that. It talked about how then those types of things would implemented via the state and via the federal implementation as well.

So anyway, getting back to your point, yeah, there's two points, delegation or withdrawal.

*Mark Robson:* David.

*David Cupka:* To that point, I realize withdrawal wouldn't involve the state of Florida. But the other thing we were talking about was kind of a partial withdrawal, which in essence was delegating someone of authority to Florida. And that, I think, would involve discussions with them, certainly.

*Mark Robson:* Duane.

*Duane Harris:* Thank you, Mr. Chairman. I've always leaned toward delegating spiny lobster management to the state of Florida. It just makes sense to me. But I do wanna ask a question, and it involves this law enforcement issue. A number of years ago, one of the NMFS agents brought to the office at DNR in Georgia, I think 40-some lobster tails that they had seized that had been scrubbed with brushes and Clorox to remove the egg masses. And if we were to delegate to the state of Florida, is there going to be a law enforcement problem with that in the other states?

If someone – if there's no longer a two-lobster limit and no longer a requirement that you cannot take buried lobsters, is that going to cause a problem for law enforcement in the other states if they do



happen to catch somebody with a number of previously buried lobster that they have tried to scrub clean?

*Monica Smit-Brunello:* I don't want to speak for law enforcement, but I think there are a number of those kinds of issues that we have to look at. And if you went ahead with a modified plan different than now, you would certainly have to address all those types of things.

*Dr. Roy Crabtree:* But if you're (*Skip in Audio*) – then your plan is still in place and you would delegate to Florida things that you want Florida to have flexibility in changing. If prohibition on buried lobster's not something anyone's interested in changing, that could remain in place in the regulations. So I think there are lots of ways to work on that.

I do think we need to check into the issue of if we delegated the Florida fishery to Florida and Florida came in and changed the bag limit or something, then is that just then a state violation? Probably most of the cases it would make on something like that are state cases anyway, but that is probably something we could look at. But I think there are a variety of solutions that you could use.

*Mark Robson:* And if I may just quickly to get back to I think George's question. We did have some discussion among the council and NMFS and Fish and Wildlife Commission Staff about this. And at the time, we were still working out what the issues were related to controlling the import sizes as to whether there could be a full basically turning over of the FMP, or to the – or turning over of lobster management to the state of Florida in the absence of an FMP. And we've heard the latest on that today.

So I think in terms of the state of Florida, it's obviously a lot cleaner and the view of the commission would probably be seen as cleaner to have basically the FMP withdrawn as far as federal management and Florida had full authority to manage. The actual delegation of certain aspects of federal management would be I think more problematic for the commission in terms of they would then become more or less – they would act in some regards as the council would act, and would responsible for following federal guidelines or constraints as far as managing the fishery. That would probably be more of an issue for the state of Florida.

Wilson.

*Dr. Wilson Laney:* Thank you, Mr. Chairman. I'm not on your committee, but could I ask Monica to just remind us what would happen to essential fish habitat under each of these options?

*Monica Smit Brunello:* If you withdrew the FMP, there would be no FMP, so there would be no EFH specially designed for spiny lobster. If you delegated to the state, then the EFH as it is now or as you change it, would remain in place. So that would – EFH would stay with the delegation.

If you would amend the plan to change the fishery management unit so that Florida's not included, then the EFH for spiny lobster, if there is any, that's designated for Georgia, South Carolina and North Carolina would remain, but the designation of EFH would not remain for Florida waters.

*Mark Robson:* Bob.

*Bob Mahood:* Yeah. To me, it goes back to the bottom line is if you withdraw the plan – and I've probably said this ten times – the original reason for the plan was that people from Georgia were going in federal waters off of Florida, catching undersized lobster, buried lobsters, bringing 'em back and landing 'em in Georgia. Same thing on the Gulf side. That's why there was a plan originally because the state of Florida couldn't stop that since they were harvested in federal waters.

Now I think the basic bottom line is, if we withdraw the plan, does that put us right back there as opposed to delegating authority to the state of Florida to manage in the federal waters. So I think that's a distinction that's very important here.

*Monica Smit-Brunello:* And, yeah, I would think the answer is yes, you could be back there with the same issue.

*Mark Robson:* So, again, right now we're at a point where the Gulf Council is just beginning to look at these issues. They'll have scoping workshops and presumably will get more input from the folks out there in the world. Roy?

*Dr. Roy Crabtree:* Well, I guess at this point, it seems to me that withdrawal of the plan's just not a real viable alternative for us. And I think if we did that, it just would be too confused and create too many vulnerabilities and loopholes and problems for us. But I do continue to believe that delegation is the best way to get us where we were a decade ago when we had this protocol in place with

Florida that allowed Florida to essentially manage the fishery down in the keys. And do think, Mark, we can find away to do delegation in way that's not unduly burdensome on the commission.

As you and I have discussed many times, whether we delegate or don't delegate, the commission's gonna have to deal with the realities of annual catch limits and these other things because we're gonna have to deal with those in federal waters, and that's gonna have ramifications for state waters. If we got to a point where we closed the federal fishery because the annual catch limit was hit, I would guess you'd have people move their traps all into state waters. And then they're all be coming to the commission about the problems that's gonna create.

So this is gonna have to be coordinated one way or another. It seems to me having a single entity essentially managing the fishery within the framework of what's laid out in the FMP is the cleanest way to go. And it seems to be the only one entity to really do that would be the Fish and Wildlife Commission under a delegation process. And I think there are ways we could deal with NIPA and all of those kinds of things that probably would be okay with the commission.

I might be that we would wanna do this incrementally, and we could start out with a very limited delegation of only a couple of things to the commission to let them see how it works out. Rather – and then we could come back in later and look at what else could we do. Maybe something like that is – people would be more comfortable with. But it looks to me like – and otherwise, if we don't do delegation, we're gonna be in a situation where we're gonna have to try to achieve compatible regulations with the commission and deal with it all that way, and that's gonna be pretty cumbersome I have a feeling.

*Mark Robson:*

Gregg.

*Gregg Waugh:*

So then I don't think we wanna consider a motion or anything here, because the Gulf council is just starting their scoping. But in terms of direction to staff as we prepare our work for this, what him hearing is, is that we shouldn't spend much time examining this issue of repealing or withdrawing the FMP, but continue to work up the alternatives around some sort of delegation, and this is in the scoping document. We've got examples of things that could be delegated. So we'll continue working up that alternative. And

that's what I'm getting as far as the direction of the staff at this stage.

*Mark Robson:*

And I think that's a fair summary. And we can continue to discuss with NOAA fisheries and council staff what kinds of things we're talking about as far as partial delegation, keeping in mind, of course, that as a commission, the state has not taken a position on any kinda partial delegation at this point.

So is there any other thoughts or comments on this issue? Seeing none, I guess – have you got sufficient direction? We'll just continue to work on the – some of the partial delegation options and the alternatives. Okay.

That gets us through the heart of the agenda. If there's – is there any other business to be brought before the committee? Seeing none, okay. Are you clear on any timing and tasks? Do we need a motion –?

*Gregg Waugh:*

I don't think we do, and particularly since the Gulf is just going to scoping. But at our December meeting, we will bring the results of the scoping and start working on alternatives. So we'll have some discussions starting at the December meeting.

We will coordinate with the Gulf Council to schedule a joint AP meeting at some point. I think, in particular for this one, since we're the administrative lead, there's no sense having the Gulf AP meet separate from our AP since there's all to of overlap in the Key. So at some point, we will schedule contingent with the funding considerations, whether it's this year or next year, a joint AP meeting with them. But it may be good to have some direction from each of the councils' committees before we bring those APs together. But we'll lay all that out for your consideration at the next meeting.

*Mark Robson:*

And, again, looking at the schedule, the timelines for this, it's pretty drawn out, and we're looking at late 2011, I believe, to finally get something in place.

*Gregg Waugh:*

Well, hopefully sooner, but mid-2011.

*Mark Robson:*

So any other – no other business to be brought before the committee? If not, we'll stand adjourned.

(Whereupon, the meeting adjourned at 5:00 p.m., September 14, 2009)

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

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# PLEASE SIGN IN

So that we will have a record of your attendance at each meeting and so that your name may be included in the minutes, we ask that you sign this sheet for the meeting shown below.

Spiny Lobster Committee Meeting  
Charleston, SC  
Monday, September 14<sup>th</sup>, 2009

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AREA CODE &  
PHONE NUMBER

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