

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

SPINY LOBSTER COMMITTEE

**Bahia Mar Doubletree by Hilton
Fort Lauderdale, Florida**

June 11, 2018

SUMMARY MINUTES

Spiny Lobster Committee Members

Jessica McCawley, Chair
Chester Brewer
Dr. Roy Crabtree

Ben Hartig, Vice-Chair
Chris Conklin

Council Member

Charlie Phillips
Anna Beckwith
Zack Bowen
Tim Griner

Mark Brown
Mel Bell
Dr. Michelle Duval
Doug Haymans

Council Staff

Gregg Waugh
Dr. Brian Chevront
Kimberly Cole
Dr. Mike Errigo
Kim Iverson
Cameron Rhodes
Christina Wiegand

John Carmichael
Myra Brouwer
Dr. Chip Collier
John Hadley
Roger Pugliese
Amber Von Harten

Observers & Participants

Shep Grimes
Dr. Clay Porch
Dale Diaz
Erika Burgess
Rick DeVactor
Dr. George Sedberry
Dr. Jessica Stephen
Tracy Dunn
Captain Scott Pearce
Bruce Irwin
Karen Raine

Monica Smit-Brunello
Lt. Warren Fair
Dewey Hemilright
Dr. Jack McGovern
Dr. Erik Williams
Mary Vera
Steve Murphey
John Hunt
Nik Mehta
Karla Gore

Other observers and participants attached.

The Spiny Lobster Committee of the South Atlantic Fishery Management Council convened at the Bahia Mar Doubletree by Hilton, Fort Lauderdale, Florida, Monday afternoon, June 11, 2018, and was called to order by Chairman Jessica McCawley.

MS. MCCAWLEY: I am going to call the Spiny Lobster Committee to order. The committee members are myself, Ben Hartig, Chester Brewer, Chris Conklin, Roy Crabtree, and our Coast Guard representative. I have also asked Captain Scott Pearce to come to the front and sit up here with me. I'm hoping that he can answer some questions. Scott is FWC Law Enforcement, and he sits on the Law Enforcement Advisory Panel for the council, and I promised you guys last time that we would have somebody here from law enforcement to answer your many questions, especially the ones about artificial habitat, and so, in case something comes up during the Spiny Lobster Advisory Panel report, he's here to help answer those questions, but I think the majority of the questions are going to be during the Amendment 13. Also, in the audience, we have John Hunt with FWC/FWRI, who runs our South Florida Regional Lab, where we're doing the lobster research, and so, if you really get down in the weeds, then we will call John Hunt to the front to answer some of those questions as well.

Our first order of business is Approval of the Agenda. Are there any additions or changes to the agenda? Seeing none, the agenda stands approved. The next order of business is Approval of the March 2018 Committee Minutes. Are there any changes or additions to those minutes? Seeing none, those minutes stand approved. I will turn it over to Christina to give us the status of landings.

MS. WIEGAND: These are the spiny lobster landings that we have. They are a little low for the 2017/2018 season, likely due to Hurricane Irma. It looks like we've got 3.5 million pounds for the commercial landings, and then we have no estimates for recreational landings, because the surveys weren't conducted because of the hurricanes this season. If anyone has any questions about lobster landings -- I will also note that Regulatory Amendment 4, which will raise the ABC and ACL for spiny lobster, is in rulemaking currently, and hopefully we should have implementation before the start of the August spiny lobster season.

MS. MCCAWLEY: Thank you.

MR. HARTIG: When we have a year like this, when we have dramatic hurricane effects, wouldn't it be interesting to put an asterisk by that landing figure and then have that noted below? Then, as we go through time, when we see these lower landings with asterisks, maybe they're not appropriate for use in figuring out what your penalty is for going over the harvest or whatever in spiny lobster, and I know it's different, but, when a team gets together, that should be part of what they look at. If we could do that, I think that would be helpful.

MS. MCCAWLEY: That sounds good. Is that something we can do, Christina?

MS. WIEGAND: Yes, we can make sure that's noted. That's not a problem.

MS. MCCAWLEY: Any more questions? All right. The next order of business is the Spiny Lobster Advisory Panel report, and we have Bruce Irwin, who is going to come give us the AP report.

MR. IRWIN: I'm Bruce Irwin, and I'm Chairman of the Spiny Lobster Advisory Panel for the South Atlantic, and we had an advisory panel meeting, and it was by webinar. We didn't have very many members there. I think we had five, but we did get some things accomplished. Really, the main topic of the meeting was trying to make laws consistent through federal and state, along with the state, for law enforcement and just a basic, general consistency.

The first motion we passed was -- You can probably read it on your sheet, but it was Alternative 2, and it was to align federal regulations to be consistent with Florida regulations for spiny lobster commercial harvest using bully net gear, because apparently there was no law federal for bully nets, and so, even though bully netting isn't a big issue in federal waters, we thought it would be good for consistency and allow enforcement to put it the same as the state. It's the same as the state. They require bully net, and they have to have a Florida license, and so the vessel has to be marked, and no trap pullers onboard and no -- That was underwater breathing apparatus cannot be on there, and that's the same as the state.

We went on to Motion 2 and to talk about basically making it the same as the state, and that's 250 lobsters. That's what the divers are allowed and the bully netters in state waters, and so said the same thing. Alternative 2 is to establish it for the divers and bully netters in federal waters, and, by the way, everything on here was approved unanimously, every motion.

We also had an issue with -- We did no action on about what you would have a degradable panel, because the state's law apparently is non-pressure-treated wood, and it's basically a panel that has to degrade so that the lobsters can escape, and we felt that that -- In federal waters, the worm issue is a lot worse, and we didn't feel that they would even last ninety days if it wasn't pressure treated, and so that was one of the things that we recommended to not make the same as the state, and that's why.

Another motion was no person shall harvest any spiny lobster from artificial habitat, and it's the same as the state. You're not allowed to -- There are certain things, I guess, that you can harvest lobsters from, like wrecks and things like that, and state-permitted things, and then there's a lot of like junk car hoods and stuff like that that you're not allowed to, and we basically made the same motion to carry the same as the state.

We recommended to establish an enhanced cooperative management procedure that allows Florida to request changes to the spiny lobster federal regulations through NMFS rulemaking, and apparently that was in the law before, and then it was excluded in the next amendment, and now we were just getting that back on the books, and, like I said, everything was approved unanimously.

The regulatory reform, I guess President Trump's Executive Order dealing with this, and the one thing that came up in our discussion was the ACLs. The ACLs are kind of a sore subject with us, because we already have limitations on effort with the certificate program and the trap reduction, and so it was kind of a -- We have always felt that, when you exceed the ACL and the ACT, it's really a -- It shows signs of a good fishery and not -- We shouldn't be penalized for it, and we did make -- In Amendment 13, there is something that takes care of that, and we came up with the numbers, and we feel confident that that's good, but, if we could get completely exempted from it, it probably would be better, but we are very comfortable with the numbers, the new numbers, that are going to come out of Regulatory Amendment 4. One thing that -- We also have a -- If we

catch below 5.3 million pounds for two consecutive years, we have a review process too, to see why that happened, and so that offsets the higher ACL.

Fishery performance reports, and, as I read through this and we talked about this, I was thinking that maybe we need some more direction from maybe the council or staff to maybe come up with a paper survey or something that people could give to you. That way, you could review it and then make an overall report, something like that, and that was about it for the meeting. It wasn't very long. It was the first webinar that I ever did, and it went very well. Christina did a good job, and everybody else that worked on it, also.

MS. MCCAWLEY: Thanks, Bruce. Are there questions?

MS. WIEGAND: I was just going to make one quick note about the fishery performance reports. This is something new that we have been doing with a number of the APs. The Mackerel Cobia AP completed a couple, and I know Snapper Grouper did as well, and we are putting together formal summary documents for these fishery performance reports. They aren't included here, because staff is looking to have a bit more internal discussion about the best way to format these and the best way to put them to use, and so that is something that's in the works.

MS. MCCAWLEY: Are there questions for Bruce?

MS. BECKWITH: My question is I noticed that the LE AP had made comments about the bully nets, that they're not -- Their recommendation would be to ban it in federal waters, as opposed to imposing regulations that would not be called into effect, and I guess I had also read through this Spiny Lobster AP discussion, and it was noted that bully nets were not really used in federal waters, and so I guess my question is are there other fisheries that the guys are participating in that they would have this bully net on the boat while participating in another fishery in federal waters, or is this just a -- What is the reasoning for wanting to extend it versus just, as the LE AP mentioned, just ban the gear in federal waters?

MS. MCCAWLEY: I am going to let Scott answer from the law enforcement perspective.

CAPTAIN PEARCE: In discussion with the current officers that work in the Keys, in Monroe County, as well as some of our former officers that have worked there, there are some areas in the Keys that are shallow enough in federal waters where that gear could be used. There is not a lot of areas, but there are some, and, within the state law, it states that it's prohibited to possess that gear onboard on the waters in the state in conjunction with breathing apparatus and things like that, and so, if you have no regulation in federal waters, but you have that in state waters, somebody could basically go into federal waters and use that gear, but then they're in violation as soon as they return back into state waters, and so this makes it more consistent, so we don't have anybody being confused and going out and participating in something they think they can do, but then, one they enter state waters, now they're in violation, because they're possessing the gear, different types of gear, and things onboard.

MR. HARTIG: Since Scott was just talking, how about another question, Scott? I see that the AP suggested that regulations be revised to clarify when you can leave the dock to tend your spiny lobster traps or when you can actually put your gear over, and do you recall the laws as far as -- If

you leave at two o'clock in the morning, can you start putting your traps over before daylight or not?

CAPTAIN PEARCE: Currently, the way the law is, you can have your gear onboard, and you can have product while transiting, but you can't deploy gear or pull gear or work gear until daylight hours. Essentially, you can come out, and you can be ready to set gear, or start pulling gear at daylight, and you can work all the way up until sunset and then be able to transport your harvest as well as additional gear you have onboard back to the dock, but you can't work the traps other than daylight hours.

MS. MCCAWLEY: Let me just add to that, and then I will come back to your question. FWC is embarking on a long-term management project for all of our trap fisheries, and we just completed some workshops on that, and we'll be taking a draft rule to the commission meeting next week. One of the things we were trying to resolve is the working issue and when you can work traps and what the rule language specifically means. Does this mean you can deploy during the soak or how do you interpret it, because what industry is asking is something different than what we're doing in some areas of the state, and so this is on our list.

I think, at this point, it's not resolved yet for the draft rule, but we're just in phase-one, and so phase-one is looking at some lobster items, some stone crab items, and some recreational trap items. I think that the resolution on the working definition for blue crab, stone crab, and lobster will probably come in phase-two, but it was something that we workshopped, and we're trying to get to the bottom of it, and, yes, the AP talked about it as well.

MR. HARTIG: Thank you, Jessica. I appreciate that.

MR. IRWIN: That is a law that is probably not even enforced, because, during the soak time, when we throw our traps, when we deploy, we throw in the night, to beat the heat. It's ninety-four degrees out, slick calm, and it's the hardest work we do all year, and a lot of people throw in the dark just to beat the heat. Pretty much, that doesn't happen once the season starts. Everybody leaves the dock before light, but they don't start until the sun comes up.

MS. MCCAWLEY: Good point. Thanks, Bruce. Are there more questions on the AP report? All right. Thanks, Bruce. We're going to move into the amendment.

MS. WIEGAND: I will go ahead and just give you guys a very brief overview of Spiny Lobster Amendment 13, and this is the one that addresses gear requirements and cooperative management and making consistency between FWC regulations in state waters and the EEZ off of Florida. At the last meeting, you guys approved the suite of actions and alternatives to be analyzed, and staff has gone ahead and completed that analysis.

This is the timing that we're looking at for this amendment. We will review the public hearing draft at this meeting, and the Gulf is going to review it next week at their meeting. We would be looking at having public hearings sometime in the summer. The Gulf would then review public input and make any changes necessary in August, and we would do the same thing in September and consider what would be needed for final approval, and we would be looking for final approval for our council in December of 2018.

At this meeting, we will need you guys to review some recommended changes from the IPT and modify the actions and alternatives as necessary. We're looking to select preferred alternatives and then approve this amendment for public hearings.

Just as a refresher, there are five actions in this amendment. You've got Action 1, which addresses those new bully net regulations that Florida recently implemented and extending those out into federal waters. Action 2 will address bully net and dive commercial trip limits in the EEZ off of Florida. Specification of degradable panels is for Action 3. The definition of artificial habitat and related prohibitions is for Action 4, and then Action 5 is that enhanced cooperative management procedure between FWC and NMFS. Again, reviewing the actions and alternatives and selecting preferreds, and the IPT would like to get a little bit of guidance on the language that we've put together for the combined protocol and procedure and then approving for public hearings. I will jump into the decision document.

Here is the purpose and need, as you guys approved it last time. The purpose of this action is to align federal regulations for spiny lobster that apply to the exclusive economic zone off Florida with Florida state regulations, reestablish the procedure for an enhanced cooperative management system, and update management measures to aid law enforcement. The need for this action is to effectively manage and enforce the harvest of spiny lobster to prevent overfishing while achieving optimum yield. Does anyone have any changes or comments to the purpose and need as written?

Then we will move into Action 1. This is the Florida state bully net permit marking requirements and gear prohibitions for bully net gear in the exclusive economic zone off of Florida. No action would leave no bully net regulations or permit requirements for federal waters, and then Alternative 2 aligns federal waters with Florida waters. The IPT hasn't made any changes to this, and I won't go over the AP recommendations in too much detail, since you guys just received both of those, but the Spiny Lobster AP felt that consistency was important, as did the Law Enforcement Advisory Panel. The one AP did note whether it would be more sensible to ban bully nets in federal waters.

MS. MCCAWLEY: Do we want to select a preferred alternative here?

MR. CONKLIN: **I move that we select Alternative 2 under Action 1 as our preferred.**

MS. MCCAWLEY: It's seconded by Chester. Any discussion? I will wait until we get the motion on the board. The motion is to select Alternative 2 under Action 1 as the preferred alternative. Is there any more discussion or questions on that motion? **Any objection to that motion? Seeing none, that motion stands approved.**

MS. WIEGAND: Action 2 is the commercial spiny lobster bully net and dive gear trip limits in the EEZ off of Florida. Alternative 1, no action, would leave no commercial daily vessel harvest and possession limits for spiny lobster by bully net or dive gear in the EEZ. Alternative 2 would establish a 250 lobster per day for bully nets in the entire EEZ, and then Alternative 3 would establish a possession limit of 250 lobster per day for diving in the EEZ off of Broward, Dade, Monroe, Collier, and Lee Counties. For Action 2, Alternative 2 and Alternative 3 can be selected as a preferred.

MS. MCCAWLEY: Would we like to select a preferred here?

MR. HARTIG: Madam Chair, would you like 2 and 3 as a -- All right. **I will move, under Action 2, Alternative 2 and 3 as preferred.**

MS. MCCAWLEY: Do we have a second? It's seconded by Chris. All right. We have selected two preferreds. Any discussion or questions on this motion? **Any objection to this motion? Seeing none, that motion stands approved.**

MS. WIEGAND: Action 3 deals with the specification of degradable panels in spiny lobster traps for the EEZ off of Florida, and so, currently, in federal waters, traps have to be constructed of wood or cotton or other material that will degrade at the same rate as a wooden trap. The size of the trap, it must be no smaller than the diameter that is found at the throat or entrance of the trap, and then it must be located on the upper half of the sides or the top of the trap.

Regulations in Florida state waters are a bit more specific. They specify that the degradable panel must be constructed of cypress or untreated pine slats that are no thicker than three-fourths of an inch. They must be no smaller than six-inches-by-four-inches or no smaller than the dimensions at the throat of the trap, whichever of the two is larger, and it must be located in the top horizontal section of the trap.

As Bruce said, the Spiny Lobster AP had concerns about whether or not -- The untreated wood is not going to last in federal waters, particularly because of the worms that eat the wood out there, and the Law Enforcement AP also mentioned that specifying specific material for the traps and wood types can be challenging from an enforcement perspective, because a case won't be made solely on the material that is used for constructing that trap panel, and it's hard to identify onboard what kind of wood is used.

MS. MCCAWLEY: All right. Are there thoughts or concerns here? I can say, from an FWC perspective, I think that we agree that some of the traps being used in federal waters are different than the ones being used in the state waters, and I agree with the AP that the degradable panel -- The definition in state waters probably is not necessarily appropriate for the types of degradable panels they are using in federal waters, for a number of reasons. I am looking around to the committee.

MR. BREWER: **Under Action 3, I move that we select Alternative 1 as the preferred.**

MS. MCCAWLEY: Is there a second for that?

MR. HARTIG: Second.

MS. MCCAWLEY: It's seconded by Ben. Michelle, I probably already know what you're going to say, but go ahead.

DR. DUVAL: That's because great minds think alike. Thank you, Madam Chair. I am not a member of your committee, but, if Alternative 1 is the preferred, then perhaps you all would want to send this to the Considered but Rejected.

MS. MCCAWLEY: I agree, but since this is a joint amendment with the Gulf and they're going to see it next week, I was wondering if we -- Before taking it all the way to Considered but Rejected, maybe we just choose no action on this.

DR. DUVAL: Maybe just some indication so the Gulf is aware that it would then be the intent to just move it to Considered but Rejected if they agree with where we're going.

MS. MCCAWLEY: Can you add that in, Christina?

MR. HARTIG: Yes, and I would think it would be your intent, as you go through your trap review, to look at what is fished primarily in the Atlantic and see if you can come up with some kind of material that works there.

MS. MCCAWLEY: That's a good point, Ben.

MS. WIEGAND: Does the motion now get at what you guys are looking for?

MS. MCCAWLEY: I think it does. Chester, they added some additional language to your motion. Are you okay with the additional language?

MR. BREWER: Let me see what it is.

MS. MCCAWLEY: **It now adds the language "with the intent to move to the Considered but Rejected Appendix".**

MR. BREWER: **Yes, that's fine.**

MS. MCCAWLEY: All right. It's okay with the seconder as well. Any more discussion on this motion?

MR. DIAZ: I am thinking about your purpose and need, and, under the purpose and need, one of the things we said was trying to get consistent with Florida, and is that a problem with the way that we're proceeding here, or is it -- I am not straight in my mind if it's a problem or not, and I guess I'm asking a question. Maybe there might be some discussion on that.

MS. MCCAWLEY: That's a good question, and so I think, per what Ben has been bringing up about the process that FWC is going back through on multiple trap fisheries, I think that we can look at broadening our definition for what a degradable panel is and then possibly bring this back, but I think that the state definition -- We might want to be more inclusive and include the materials that are being used in federal waters, and so I think that we would need to come back with something for the council, but, yes, I think the intent is to ultimately align it, but the AP brought up some points about how what they're doing in federal waters doesn't match the current definition the state has for degradable panels.

DR. CRABTREE: Just so I'm clear about this motion, does this mean that, if it goes to the Gulf next week and the Gulf agrees to Considered but Rejected, then it goes to Considered but Rejected and we're done with it?

MS. MCCAWLEY: I think so.

DR. CRABTREE: Okay.

MS. MCCAWLEY: All right. Is there any more discussion on this? **Any objection? Seeing none, that motion stands approved.**

MS. WIEGAND: This next action deals with artificial habitat and harvesting restrictions, and, if you guys will recall, at the March council meeting, you had a bit of discussion about sort of separating out the definition from the prohibitions, to make it a little bit clearer in the language, and so, after some IPT discussion, this is the way we're recommending sort of reorganizing the Alternative 2.

We have pulled out the definition, and so it's just a note at the bottom, and then we put a little asterisk under the alternative to sort of direct you to that note, and so, currently, under Alternative 1, there are no formal definitions for artificial habitat, for spiny lobster specifically, and there are no prohibitions against harvest from artificial habitat.

Alternative 2 would align with Florida regulations, where no person can harvest any spiny lobster from artificial habitat, as identified in this note below, in the EEZ off of Florida, and the harvest and possession in the waters of spiny lobster in excess of the recreational bag limit is prohibited within ten yards of an artificial habitat, and this is how the definition reads: 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.

The Spiny Lobster Advisory Panel supported Alternative 2 and discouraging the placement of casitas in federal waters, but they did note that the definition was a little vague, and there was some concern about material that was sort of placed there by an act of God, like bridge rubble and stuff, that's not necessarily a casita, nor is it a permitted structure, and they indicated that guys are harvesting spiny lobster from habitat like that.

The Law Enforcement AP also expressed concerns about the ability to notice fishermen as to the location of this artificial habitat and general enforcement concerns, and I will let Scott get into that a little bit, and the IPT has recommended, sort of due to this notice concern about the location of artificial habitats, that we remove this action from Amendment 13.

MS. MCCAWLEY: The last time we talked about this, there were questions about how we're enforcing things relative to artificial habitat, and I think Monica brought up some questions that basically says that fishermen cannot harvest within a certain distance from the artificial habitat, within ten yards, and I think that there were some questions about that, and I'm going to let Scott answer those questions.

CAPTAIN PEARCE: In regard to the artificial habitat, essentially, the way we go about enforcing that is we don't make a case unless we visibly see somebody harvesting from that habitat. The ten yards is there mostly in regard to, obviously, commercial, the excess of the bag limit. It doesn't mean that we can't enforce that, but we have different levels of enforcement, and so, if we see somebody within that ten-yard scope, we're going to use an educational process to educate them on what the law says, but we're not going to make a case unless we see them take from the artificial habitat, and the same thing goes for a recreational harvester.

The other side of that ten-yard descriptor is that when you're a harvester and we're trying to explain to you the law, it gives you the ability to say, if I'm on a dive site, if I'm a good reef and I'm diving and looking for lobster and I see artificial habitat that wasn't supposed to be there, and it wasn't listed as a public number and it wasn't permitted, it gives me the ability to say, okay, I don't have to abort my dive, but I just need to stay away from that particular casita or artificial habitat, and that ten yards gives them a rule of thumb on how far to stay away.

One of the officers described to me how they explain it to people is, on average, a person is five to six feet tall, and so think two double body lengths away from it and you're okay, but that is to give them some kind of visible descriptor, but we're not going to make a case unless we see them harvesting from that habitat. Again, those cases can be difficult. It requires us to either be in waters where it's shallow enough where we can visibly see it from the vessel or it requires us to have officers in the water to identify the violation. Most of the time, it's going to be detail-based type of work, and it's not something that we're doing all the time, but it is there, and we're looking for it, but we use a heavy educational process on it, and we will write citations in egregious situations.

MS. SMIT-BRUNELLO: I guess my first question is why have that ten-yard requirement then? I have listened to what you said, and I guess it's kind of a warning to people, but why have the ten-yard requirement? Why not just say you can't harvest it from artificial habitat?

CAPTAIN PEARCE: I believe the ten-yard requirement really came into play for the commercial aspect because there were indicators that there was a lot of habitat that was placed out there to enhance commercial harvest ability, and so, by adding that ten yards to it, it kind of takes away the ability for harvesters to utilize that habitat they placed in the water, and so we're telling that, basically, it's there, but you can't be within ten yards of it if you're in possession in excess of the recreational bag limit. Then you can't harvest from it, period.

MS. SMIT-BRUNELLO: I guess one of my biggest issues with this is -- Maybe it's two. It's not just the ten yards, but it's also the artificial habitat, and so we've been kind of looking into this legally, and even from a constitutional perspective, and a rule is unconstitutionally vague if it fails to provide a person with sufficient notice of what conduct is prohibited. A person could be out there and not know where the artificial habitat is. We have kind of said what it could be, because it says that it's reasonably suited to providing cover and habitat for spiny lobster, and so it could be anything that's reasonably suitable to providing cover and habitat for spiny lobster, and so it seems to me that we have a notice issue. People won't know what conduct is prohibited.

MS. MCCAWLEY: Possibly, and Scott can address this more, and so every one of the permitted artificial reefs, all of those sites are -- You can find that on our website, and so all of the permitted

sites are listed someplace, so that the public could be notified of all the available sites that have gone through the permitted process.

MS. SMIT-BRUNELLO: But then that leaves all the rest of the water out there, the habitat, the bottom, and potentially someone could be in violation if they were harvesting spiny lobster from those other areas.

CAPTAIN PEARCE: To kind of put it into perspective, the biggest problem we were having was you were finding artificial habitat that consisted of air conditioner ducts and old car hoods, things of that nature, that obviously aren't going to be a published, permitted site, and so that's what we're trying to address, but, on our website alone, there are over 3,300 published sites that are public numbers that are permitted sites that you can harvest on, as well as on your electronics for your GPS equipment, if you have fairly new equipment, those sites are also going to be represented on those charts with icons.

On most new equipment, you can scroll over to the icon and it will tell you what that site is, but the ability for the public to educate themselves on where these public sites are is there. What they need to know is, if they're in an area where there is not a public site listed, but there is structure on the bottom that is artificial, then most likely it's not permitted and they should not harvest from it, but, right now, that's the way we can inform them of what's permitted and what is not.

MS. BECKWITH: Okay, and so they can't harvest off this like random air conditioning unit that's on the bottom, but they can't move it either, and so I sort of can see where, if a -- If somebody wants to protect their favorite coral reef from recreational diver damage, because you guys have seen the flailing tanks and fins and all the things that happen when recreational divers go lobstering, and somebody could conceivably put some lobster casitas, unpermitted, sort of around the reefs, and, since you have a ten-yard -- It's thirty feet in any direction from that sort of central point, and you could place some artificial unpermitted habitat around your favorite reef and basically block off the reef from any harvest.

CAPTAIN PEARCE: Anything is conceivable. That's a violation all on its own. Taking out structure and placing it on the bottom is a whole other violation that we could deal with. Again, people have the ability to recognize that that's artificial habitat that is not permitted, and they can still harvest in the area, but they just can't be within ten yards, and, by our standard, they can't harvest from it. Again, we're going to educate people and provide warnings, if necessary, but we're not going to make a case on anybody or write a citation unless we visibly see them harvest from that artificial habitat, and our officers also -- We investigate our cases, and so we're going to have those discussions, and we're going to develop our intent, and we're going to find out what the education factor was on that individual before we move forward.

DR. CRABTREE: This one concerns me as well. Maybe I am missing something, but if I fish traps and I go put a trap down and it's within ten yards of some piece of artificial habitat, how am I not violating this?

CAPTAIN PEARCE: This is specific to divers in the water harvesting. It's not related to trap gear.

DR. CRABTREE: Well, does it say that somewhere in the alternatives, because I am not seeing that.

MS. MCCAWLEY: We will look at the rule to be sure, and so this is -- All of this artificial habitat came up during our commercial dive endorsement discussions. This was an issue, and we also used to have a license, a master blaster license, which was a recreational/commercial license that allowed people to exceed the bag limit. Artificial habitat played into the bag limits and the way that we dealt with limiting the number of permits on the commercial dive side.

DR. CRABTREE: Right, and I suspected that, but it's just, when I read what's written in the document now, I don't see anywhere where it says that, unless I missed it.

CAPTAIN PEARCE: In the law, basically in the rule, it states that no person shall harvest any spiny lobster from artificial habitat. No harvest and possession in the water of any spiny lobster in excess of the recreational bag limit is hereby prohibited within ten yards of artificial habitat, and so it's basically focusing on a diver in the water in possession of a bag limit in excess of the recreational bag limit.

DR. CRABTREE: Okay. Well, if that's what's intended, I think we need to be more clear with it, because it wasn't clear to me, but it does kind of bother me still about the "reasonably suited habitat". I mean, it seems to require a diver to go down and inspect an area and determine if there is anything in that area that would be reasonably suited. I don't know, but that seems like a lot of a burden to put on someone to make sure that they're legal. I understand how you are enforcing it, which almost seems like you've got to be a diver in the water, as a law enforcement agent, and actually see them yank it out from under them, but it's one thing to enforce it that way, but, the way it's written, being in violation would be a much broader standard than what's being enforced, and that bothers me a little bit.

MS. MCCAWLEY: We're looking up something else in the rule.

MR. BREWER: I have some experience with this from the bad old days. What the State of Florida was trying to do, and has successful done, is stop people from putting car hoods and fifty-gallon drums and that kind of thing out there that the lobster will hide in. When you have done that and you know you've got -- Back in the days of LORAN, when you've got the LORAN numbers on where you put that car hood down, you dive in the water and you go and you flip that car hood, and you have two or three guys, and you scoop up the lobsters as fast as you can, and the same thing with the drum.

When you're violating that, it's pretty clear that you're violating it, and you know you're violating it, and so all of the what-ifs that we're coming up with here really are not reality, and I think that the idea of harmonizing our regulations with the State of Florida regulations, which have been in place and have been used for a lot of years, is a good idea, and I am in favor of it.

MR. HARTIG: The alternative starts out great, that no person shall harvest any spiny lobster from artificial habitat in the EEZ off of Florida, and then you go into the second sentence. The harvest and possession in the water of spiny lobsters in excess of the recreational bag limit is hereby prohibited within ten yards of artificial habitat, as is consistent with -- Is that FWC or FAC?

MS. MCCAWLEY: It's the Florida Administrative Code.

MR. HARTIG: Okay, the Florida Administrative Code. The first sentence says you can't do it, and the second sentence says you can as long as you are below -- You are not exceeding the recreational bag limit, and so, essentially, a commercial diver could go down and get this recreational bag limit each time as long as that recreational bag limit was his recreational bag limit, basically, and is that the way this thing reads, in my mind?

CAPTAIN PEARCE: No, sir. Basically, nobody can harvest from the habitat, period. The commercial harvester, or a person in possession of excess of the recreational bag limit, can't be within ten yards while in possession of that bag limit. Nobody will be allowed to harvest from that habitat, and, also, to go back to the trap question, if you go back to the definition, it exempts gear that is approved by the commission, and so trap gear would be exempt from that standard.

DR. CRABTREE: Well, back to Chester's point. I get the intent of this, and I have no problem with that. That's not the issue here. It's that I'm not sure this is a workable way to try and get to it, and I'm looking at what Ben brought up. If a diver, commercial diver, is just below the recreational bag limit and comes up and puts them in the boat and goes back down and gets just below the recreational limit and does it repeatedly, is he in violation, because he's got more than the recreational bag limit on the boat, but it says in the water? I don't know, and I understand where you're trying to get to, and it may be an admirable goal, but I'm just sure that this is going to be something we're able to do.

MR. CONKLIN: If I'm a commercial diver and I'm in more than ten yards depth over the top of the structure, I wouldn't be in violation by the way the rule reads, and, to what Chester was saying about taking stuff out of there and dumping it, law enforcement has already informed us that there is a rule in place that that's another violation, and so I don't see this as being enforceable at all, and I would side with the IPT in moving it to Considered but Rejected, or removing it from the document.

MS. MCCAWLEY: I'm looking around to the committee about what you want to do here with the artificial habitat in this action. One more comment from Scott about the enforceability of this.

CAPTAIN PEARCE: Something I want you all to consider as a stakeholder is, if we're being given information, which is -- A lot of times, if this case is made, it's based on information provided from our stakeholders, and so, if we're getting information that there is somebody who has placed this habitat in the water and they are harvesting from it on a regular basis, for commercial purposes or recreational purposes, this gives us the ability to deal with that issue and be able to work for our stakeholders when we get that kind of information, and so not only is it a regulation out there that we can enforce as we're on patrol, but it's a regulation and a tool that we can utilize when we're receiving that stakeholder input on a problem or an issue that's happening, and now we have the ability to go deal with it. That's just one more consideration that you have to have.

DR. CRABTREE: I understand where you're coming from, and, if you guys could rework how this rule is written and how it works in such a way that we don't have all of these concerns and problems with it, I would be happy to come back and reconsider it, but, at this point, I don't really

think that I could support this. **I'm going to go ahead and make a motion to move this action to the Considered but Rejected, Action 4.**

MS. MCCAWLEY: It's seconded by Chris.

LT. FAIR: With all the discussion, I can see where we're going, and I think we had this discussion on the LE AP about this being more of a behavioral modification and correcting the behavior. One thing I did want to consider, if we could just scroll back up, is there a reason why it's only off the EEZ off Florida and none of the other states that also have spiny lobster harvest? That's just a question, because am I allowed to do it -- If we were going to go this way, could I put artificial reefs off the coast of Georgia and harvest from there, or, if we are going to go this way, which it doesn't sound like we may, take the EEZ off Florida and just have it in the EEZ, period.

MS. WIEGAND: The way it's written right now, it's specific to the EEZ off of Florida. We could extend it to the rest of the EEZ, but that doesn't necessarily fit with the purpose and need of this specific amendment. This amendment is meant to deal with Florida state and Florida EEZ regulations, and so there would be a number of things we would have to reconfigure with this amendment if we went that route.

MR. HARTIG: We only allow the harvest of two lobsters per person outside of Florida, if I'm correct, and so the incentive isn't there to do this same kind of thing.

MS. BECKWITH: In theory, I'm okay with this action, because I agree it's behavior modification, and it gives the dive operators an information thing to provide to their divers and an education thing, and so I'm okay with it, but I just think that there has to be -- If there's a way of cleaning up the language, like Roy has suggested, and if that means that we have to pull it out now and bring it back to reconsider or see if you guys can work up a little bit of change to the language and reconsider this at Full Council rather than moving this all the way into the Considered but Rejected, and so that would just be an alternate suggestion, if you guys think you can --

MS. MCCAWLEY: First, I agree with both of those things. We're going through a process to address other issues with our trap fishery, and so there will likely be other items coming forward in the future, but another piece of this amendment is changing that policy and procedure so that it doesn't necessarily have to go through this full framework amendment process, and so it might come back, but in a different way.

I am not certain that between now and Full Council that we could fix the wording. We could possibly try, but I'm not certain that we could get all the way to something that everybody here, including the IPT, would have comfort with, but we could try, and part of this is because we don't necessarily have a definition of "casita". We have a definition of "artificial habitat". I mean, there is a bunch of nuances here in our rule that are making it more difficult for us to adopt this in federal waters.

MR. CONKLIN: Just keep in mind that this is just pertaining to federal waters. Your rule in state waters will still be in effect, and you could go off of your tips and stuff like that.

MS. MCCAWLEY: All right. Any more discussion or questions or comments?

MR. HARTIG: Scott, this is in no way that we don't think this is a good idea to do, and I hope you understand that. It's just, if we get the wording right that we can put through the federal system that works, no problem, and so thank you very much for all of what you were able to bring to the table today.

MS. MCCAWLEY: Okay. Any more discussion or comments or questions on this? **Is there any objection to this motion? We have one objection. Otherwise, that motion stands approved.**

MS. WIEGAND: I will move on to Action 5. This looks at establishing an enhanced cooperative management procedure for federal and Florida state agencies for the management of spiny lobster. Under Alternative 1, any time the council wants to make a change to a line, the EEZ off of Florida with state regulations, they will have to go through the full amendment or framework amendment process, depending on the action.

However, under Alternative 2, which would establish this enhanced cooperative management procedure, FWC would be able to propose rules directly to the National Marine Fisheries Service. Now, those rules would still have to meet Magnuson-Stevens Act objectives and the objectives of the Spiny Lobster FMP, and the councils would get an opportunity to comment on and say whether those proposed regulations meet those requirements.

What had originally happened is the protocol and procedure were two separate documents, and one got left out when we were working on updating things under Amendment 10, I believe, and so what the IPT has done is taken the protocol and procedure and combined them into one document, and that is what you see here under the proposed language, and we just had a couple of things that we would like some clarification from the council on.

The first is the specification of timing right now. It says that for regulations to be implemented by the start of the fishing season, which for spiny lobster is August 6, FWC must complete all of the actions that are in this protocol and procedure on or before February 1. We wanted to know if the council would like to leave that timing in there. I know sometimes that, given different work constraints, timing can fluctuate a little bit, and sort of how they felt about the way this specifically is written.

MS. MCCAWLEY: Just to comment on that a little bit, and so I'm a little bit concerned that even if FWC submits it on or before February 1, that the backlog of items in the Region might prevent its approval before the August 6 season starts, and so I think my recommendation, unless NOAA has something different to say here, I think that my recommendation would be to just remove this, so that, in theory, we could submit it at any time, and they could approve it at any time, and, thus, it may or may not be in place for the coming season, but I think we would know that, and we would let the participants in the fishery know that, but I will look around the room here.

MS. SMIT-BRUNELLO: Just a question for you, Jessica. Would you ever want something implemented mid-season, or do you always want it implemented before the start of the next season?

MS. MCCAWLEY: We usually do it before the start of the next season. If we were to implement something mid-season, it would usually be through what we call an Executive Order, some type

of emergency procedure outside of the regular rulemaking, and that would usually be a special circumstance.

For example, we implemented some things mid-season following Irma, and it had to do with when traps needed to be picked up and out of the water and waiving some fees and other things of that nature, and so, to me, it would be in an emergency situation, and I don't think we would necessarily be asking for consistency for federal waters in those emergency situations unless you tell us that we need to or unless you want us to.

MS. SMIT-BRUNELLO: So your preference would be to not really -- Unless it was an emergency, not to have measures implemented mid-season.

MS. MCCAWLEY: Yes, I think so. We wouldn't want them to take effect in the middle of the season, but the majority of what we're needing is happening in state waters, because the FWC is doing the bulk of that. Yes, the fishery is also promulgated in federal waters, or prosecuted in federal waters, but I think that we'll take the compatible regulations whenever we can get them. If it happens to be mid-season, couldn't you all also state something in there that it wouldn't be effective until the following season, even if by the time you got to it that it became effective in the middle of the season?

MS. SMIT-BRUNELLO: Yes, possibly, and we could work out the timing. I share the same concerns you have of the timing of getting it in place and the length of time it takes to get things in place.

MS. MCCAWLEY: I am looking around. Christina, do you need a motion, or is it just direction to remove this language? What do you need?

MS. WIEGAND: If everyone is in agreement, I think direction to staff is fine.

MS. MCCAWLEY: I am looking around, and I'm seeing some thumbs-up and heads nod, and I think we're okay with removing that language.

MS. WIEGAND: All right, and then the one other thing the IPT would like a little bit of clarification on is Bullet Point 8, and this was pulled from the original protocol that had been implemented, and it says that rules will apply to the EEZ from the management area from North Carolina through Texas, unless the RA 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, and so whether or not you guys would like this to remain in the protocol or be removed or modified.

MS. MCCAWLEY: We've already heard some concerns from the Coast Guard, and so I have concerns too that we would be submitting something that would go through a process in Florida and then we're asking NOAA Fisheries to approve it not just for federal waters off of Florida, but for the entire region, and that causes me some concern there, and I don't know what others think.

DR. DUVAL: I am not on your committee, but I guess -- I think the way -- I have concerns about that as well, but I think it would also depend on the codified text for the actions that we're taking, because, generally, we say this applies in the EEZ only off of Florida, and so I think you might

could keep that language in there, because we would actually be looking at the codified text, and, if it did not -- It would generally include language that would be specific to the EEZ off the State of Florida, unless otherwise needed, and I think the language of these alternatives also indicates, and I'm just scrolling back up, that these are specific to the EEZ off of Florida.

In terms of the bully net regulations, yes, it says the EEZ off of Florida, and so I think -- I mean, I would love to hear what Monica says, if that language should be removed, and I am fine with that, and I would just note that the construction of the codified text could preclude that it apply to all states.

MS. MCCAWLEY: Yes, and so this is also a question for Monica, when she answers that, and I guess I have some concerns, because this is in the policy and the procedure, and so it wouldn't necessarily come to the council to review the codified text. It would just be coming between FWC and NOAA Fisheries, and so that whole codified text and how it is reviewed, that's a little bit unclear to me.

MS. SMIT-BRUNELLO: I think you have all brought up some great points. My recommendation would be to remove it.

MS. MCCAWLEY: All right. I am looking around, and I'm seeing head nods for removal of this language.

MR. HARTIG: We're pretty safe in the South Atlantic EEZ, because we have a two-lobster possession limit, and I don't know what happens in the Gulf in federal waters. I remember, when we looked at these things before, we were concerned about vessels from other states coming in and doing things in Florida, but I don't think that's a concern like it was in the past, and so I don't have a problem getting rid of it.

MS. MCCAWLEY: Okay. I think we're good with removing it. What else is left in this amendment, Christina?

MS. WIEGAND: If you guys would like, you can pick a preferred alternative under Action 5, and then we'll looking at approval for public hearings.

MS. MCCAWLEY: Okay. I am looking to the committee members. Would we like to pick a preferred under Action 5?

DR. CRABTREE: **I move that in Action 5 that Alternative 2 be our preferred alternative.**

MS. MCCAWLEY: Motion by Roy and seconded by Ben. While we're getting that on the board, I just want to mention that FWC found some additional holdover language inside this policy and procedure. For example, it states that the rule has to go before the Governor and Cabinet, and that doesn't happen anymore, and so we've submitted some additional language to be added, and so they're going to fix it, and it will be fixed for the Gulf Council to look at next week, and so just know that, if you have scanned that particular Alternative 2 and you are scratching your head, it's because there is some holdover language in there that didn't get fixed yet.

The motion that we're working on here is to choose Alternative 2 under Action 5 as the preferred alternative, and is there any more discussion on that motion? **Is there any objection to that motion? Seeing none, that motion stands approved.**

The next item that we have, I believe, is to approve this for public hearings, and is that right, Christina?

MS. WIEGAND: Yes.

MS. MCCAWLEY: Okay. Ben, would you like to make that motion?

MR. HARTIG: Yes, Madam Chair. **I would move that we approve the Spiny Lobster Amendment 13 for public hearings.**

MS. MCCAWLEY: It's seconded by Chris. Any more discussion? **Any objection to this motion? Seeing none, that motion stands approved.**

Is there any other business to come before the Spiny Lobster Committee? Seeing none, we will adjourn the Spiny Lobster Committee.

(Whereupon, the meeting adjourned on June 11, 2018.)

Certified By: _____ Date: _____

Transcribed By:
Amanda Thomas
July 13, 2018

SNAPPER GROUPER

Jessica McCawley, Chair
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Charlie Phillips
Mid-Atlantic Liaison:
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Staff contact: Myra Brouwer

SOPPs

Chris Conklin, Chair
Doug Haymans, Vice-Chair
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Roy Crabtree
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Jessica McCawley
Staff contact: Gregg Waugh

SPINY LOBSTER

✓ Jessica McCawley, Chair
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✓ Chris Conklin
✓ Roy Crabtree
~~LCDR Jeremy Montes~~ Lt. Warren Fair
Staff contact: Christina Wiegand

2018 Council Members

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

COUNCIL CHAIR

✓ Charlie Phillips
Phillips Seafood/Sapelo Sea Farms
1418 Sapelo Ave
N.E. Townsend, GA 31331
(912)832-4423
Ga_capt@yahoo.com

VICE CHAIR

✓ Mark Brown
3642 Pandora Drive
Mt. Pleasant, SC 29466
(843)881-9735 (ph.); (843)881-4446 (f)
Capt.markbrown101@gmail.com

Robert Beal
Executive Director
Atlantic States Marine Fisheries Commission
1050 N. Highland St.
Suite 200 A-N
Arlington, VA 22201
(703)842-0740 (ph); (703)842-0741 (f)
rbeal@asmfc.org

✓ Anna Beckwith
1907 Paulette Road
Morehead City, NC 28557
(252)671-3474 (ph)
AnnaBarriosBeckwith@gmail.com

✓ Mel Bell
SCDNR-Marine Resources Division
P.O. Box 12559
217 Ft. Johnson Road
Charleston, SC 29422
843/953-9007 (ph); 843/953-9159 (fax)
bellm@dnr.sc.gov

✓ Zack Bowen
P.O. Box 30825
Savannah, GA 31410
(912)398-3733 (ph)
zackbowensafmc@gmail.com

Chester Brewer
250 Australian Ave. South
Suite 1400
West Palm Beach, FL 33408
(561)655-4777 (ph)
wcbsafmc@gmail.com

Chris Conklin
P.O. Box 972
Murrells Inlet, SC 29576
(843)543-3833
conklinsafmc@gmail.com

Dr. Roy Crabtree
Regional Administrator
NOAA Fisheries, Southeast Region
263 13th Avenue South
St. Petersburg, FL 33701
(727)824-5301 (ph); (727)824-5320 (f)
roy.crabtree@noaa.gov

✓ Dr. Michelle Duval
NC Division of Marine Fisheries
PO Box 769
3441 Arendell Street
Morehead City, NC 28557
(252)808-8011 (ph); (252)726-0254 (f)
michelle.duval@ncdenr.gov

✓ Tim Griner
4446 Woodlark Lane
Charlotte, NC 28211
(980)722-0918 (ph)
timgrinersafmc@gmail.com

Ben Hartig
9277 Sharon Street
Hobe Sound, FL 33455
(772)546-1541 (ph)
mackattackben@att.net

✓ Doug Haymans
Coastal Resources Division
GA Dept. of Natural Resources
One Conservation Way
Suite 300
Brunswick, GA 31520
(912)264-7218 (ph); (912)262-2318 (f)
haymanssafmc@gmail.com

Dr. Wilson Laney
U.S. Fish and Wildlife Service
South Atlantic Fisheries Coordinator
P.O. Box 33683
Raleigh, NC 27695
(919)515-5019 (ph); (919)515-4415 (f)
Wilson_Laney@fws.gov

Jessica McCawley
Florida Fish and Wildlife Conservation
Commission
2590 Executive Center Circle E.
Suite 201
Tallahassee, FL 32301
(850)487-0554 (ph); (850)487-4847 (f)
Jessica.mccawley@myfwc.com

~~Monica~~ Monica Smit-Brunello
John Hunt
Scott Pierce
Dr. Clay Porch
Date Diaz
Dewey Hemilnight
Erika Burgess
Nik Mehta
Bruce Erwin
Dr. Jessica Steven
Tracey Dunn
Mary Vera
Karla Gore

LCDR. Jeremy Montes
U.S. Coast Guard
909 SE 1st Ave.
Miami, FL 33131
(305)415-6788(ph); (305)710-4569(c)
Jeremy.J.Montes@uscg.mil

Deirdre Warner-Kramer
Office of Marine Conservation OES/OMC
2201 C Street, N.W.
Department of State, Room 5806
Washington, DC 20520
(202)647-3228 (ph); (202)736-7350 (f)
Warner-KramerDM@state.gov

Shap Grimes
Dr. Jack McGovern
Rick DeVictor
Dr. George Sedberry
Dr. Erik Williams
Karen Rain

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Council Staff

Executive Director

✓ Gregg T. Waugh
Gregg.waugh@safmc.net

Deputy Directory-Science & Statistics

✓ John Carmichael
John.carmichael@safmc.net

Deputy Director-Management

✓ Dr. Brian Chevront
Brian.chevront@safmc.net

Fishery Scientist

✓ Myra Brouwer
Myra.brouwer@safmc.net

Outreach Specialist

Kathleen Howington
Kathleen.howington@safmc.net

Admin. Secretary/ Travel Coordinator

• Cindy Chaya
Cindy.chaya@safmc.net

Public Information Officer

✓ Kim Iverson
Kim.iverson@safmc.net

Purchasing & Grants

✓ Kimberly Cole
Kimberly.cole@safmc.net

Senior Fishery Biologist

✓ Roger Pugliese
Roger.pugliese@safmc.net

Fishery Scientist

✓ Dr. Chip Collier
Chip.collier@safmc.net

Outreach Specialist

✓ Cameron Rhodes
Cameron.rhodes@safmc.net

Administrative Officer

Mike Collins
Mike.collins@safmc.net

Financial Secretary

Suzanna Thomas
Suzanna.thomas@safmc.net

Outreach Specialist

Kelsey Dick
Kelsey.dick@safmc.net

Citizen Science Program Manager

✓ Amber Von Harten
Amber.vonharten@safmc.net

Fishery Biologist

✓ Dr. Mike Errigo
Mike.errigo@safmc.net

Fishery Social Scientist

✓ Christina Wiegand
Christina.wiegand@safmc.net

Fishery Economist

✓ John Hadley
John.hadley@safmc.net

SEDAR Coordinators

Dr. Julie Neer- Julie.neer@safmc.net
Julia Byrd- Julia.byrd@safmc.net

June Council Mtg Day 1 6/11/18

Last Name	First Name	Email Address
Abeels	Holly	habeels@ufl.edu
Bianchi	Alan	Alan.Bianchi@ncdenr.gov
Brennan	Ken	kenneth.brennan@noaa.gov
Bubley	Wally	bubleyw@dnr.sc.gov
Byrd	Julia	julia.byrd@safmc.net
Clarke	Lora	lclarke@pewtrusts.org
Conklin	Chris	conklinsafmc@gmail.com
Defilippi Simpson	Julie	julie.simpson@accsp.org
Diaz	Dale	Saltwaterlife@live.com
Duval	Michelle	michelle.duval@ncdenr.gov
Erwin	Gwen	gwen.erwin@myfwc.com
Foss	Kristin	kristin.foss@myfwc.com
Gerhart	Susan	susan.gerhart@noaa.gov
Godwin	Joelle	joelle.godwin@noaa.gov
Guyas	Martha	martha.guyas@myfwc.com
Hadley	John	john.hadley@samfc.net
Hart	Hannah	hannah.hart@myfwc.com
Helies	Frank	frank.helies@noaa.gov
Hemilright	Dewey	fvtarbaby@embarqmail.com
Hildreth	Delaine	delaine.hildreth@dnr.ga.gov
Hudson	Rusty	DSF2009@aol.com
Iverson	Kim	kim.iverson@safmc.net
Jiorle	Ryan	ryan.jiorle@mrc.virginia.gov
Laks	Ira	captainira@att.net
Laney	Wilson	wilson_laney@fws.gov
Levy	Mara	mara.levy@noaa.gov
Lloyd	Victor	vic_lloyd@bellsouth.net
Lupton	Dee	dee.lupton@ncdenr.gov
Mehta	Nikhil	nikhil.mehta@noaa.gov
Miller	Kyle	kyle.miller@myfwc.com
Neer	Julie	julie.neer@safmc.net
O'Donnell	Kelli	kelli.odonnell@noaa.gov
Poland	Steve	steve.poland@ncdenr.gov
Pulver	Jeff	Jeff.Pulver@noaa.gov
Rock	Jason	jason.rock@ncdenr.gov
Sedberry	George	george.sedberry@gmail.com
Shipman	Susan	susanshipman@att.net
Stephen	Jessica	jessica.stephen@noaa.gov
Takade-Heumacher	Helen	htakade@edf.org

Travis	Michael	mike.travis@noaa.gov
bowen	zack	fishzack@comcast.net
brewer	chester	wcbsafmc@gmail.com
brouwer	myra	myra.brouwer@safmc.net
sandorf	scott	scott.sandorf@noaa.gov
t	suz	suzanna.thomas@safmc.net
Blow	Wes	wesamy2000@cox.net
Christophoe	Michael	mchristopher@elementalmethods.com
Exley	Gary	river92@bellsouth.net
Howington	kathleen	kathleen.howington@safmc.net
dilernia	tony	tony@rocketcharters.com

Mandatory Public Sign In 6/11/18

Name	Last	Email	Address	How do you participate in fisheries in the South Atlantic?				If Other, please provide more information:
Rusty	Hudson						Seafood Dealer/W wholesaler	Fisheries Consultant
Lora	Clarke						NGO	
Art	Sapp	artsapp@hotmail.com	2270 ne 25th street LHP FL 33064	Private Recreational Angler	Charter/ Headboat/ For-Hire	Commercial Fisherman		
Kellie	Ralston			Private Recreational Angler			NGO	