

# **SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

## **SPINY LOBSTER COMMITTEE**

**Westin Jekyll Island  
Jekyll Island, Georgia**

**March 5, 2018**

### **Summary Minutes**

#### **Committee Minutes**

Jessica McCawley  
Chester Brewer

Ben Hartig  
Chris Conklin

#### **Council Members**

Charlie Phillips  
Anna Beckwith  
Zack Bowen  
Tim Griner  
Dr. Wilson Laney

Mark Brown  
Mel Bell  
Dr. Michelle Duval  
Doug Haymans

#### **Council Staff**

Gregg Waugh  
Dr. Brian Chevront  
Kimberly Cole  
Mike Collins  
John Hadley  
Roger Pugliese  
Amber Von Harten

John Carmichael  
Myra Brouwer  
Dr. Chip Collier  
Dr. Mike Errigo  
Kim Iverson  
Cameron Rhodes  
Christina Wiegand

#### **Observers & Participants**

Monica Smit-Brunello  
Dr. Erik Williams  
Rick DeVictor  
Karla Gore  
LCDR Trish Bennett

Dr. Jack McGovern  
Leann Bosarge  
Dr. Marcel Reichert  
Erika Burgess

Other observers & participants attached.

The Spiny Lobster Committee of the South Atlantic Fishery Management Council convened at the Westin Jekyll Island, Jekyll Island, Georgia, Monday afternoon, March 5, 2018, and was called to order by Chairman Jessica McCawley.

MS. MCCAWLEY: I am going to call the Spiny Lobster Committee to order. Let me read who is on the committee. It's myself, Ben Hartig is Vice Chair, Chester Brewer, Chris Conklin, Roy Crabtree, and our Coast Guard representative is also on this committee.

Our first order of business is Approval of the Agenda. Are there any changes to the agenda? Seeing none, that agenda stands approved. Our next order of business is Approval of the December 2017 Committee Minutes. Any modifications to those minutes? Seeing none, the minutes stand approved. I am going to turn it over to you to go over the landings and catches.

MS. WIEGAND: The first two items on the agenda are sort of interrelated. If you remember, back in December, we talked about how the 2016/2017 landings of spiny lobster exceeded the ACT, and the accountability measures do say that, when the ACT is exceeded, we are supposed to convene a review panel to address that. However, Regulatory Amendment 4 is currently in rulemaking. The proposed rule has been published, and I believe the comment period for that ends today.

We're in the process of getting that implemented, and we received a letter from the National Marine Fisheries Service indicating that, because we did convene a review panel in 2015 and in 2016 to address this issue, and sort of the results of that was this Regulatory Amendment 4 that's in rulemaking, there is no need to convene a review panel at this time. That sort of summarizes what's going on with the ACT and with Regulatory Amendment 4, if there are any questions.

MS. MCCAWLEY: Any questions? Okay. Seeing none, please continue, Christina.

MS. WIEGAND: All right, and then I will move into an overview of Spiny Lobster 13, which is the amendment that addresses inconsistencies between Florida state regulations and federal regulations as well as the cooperative management procedure with FWC. In December, you guys approved actions related to the bully net regulations that Florida recently implemented as well as the enhanced cooperative management procedure with FWC, and then, in addition to that, you passed a motion to address other inconsistencies between Florida and federal regulations, specifically the bag limits, degradable panels, and artificial habitats.

Here is the potential amendment timing. You guys are going to review the new draft options paper at this meeting and approve the actions and alternatives to be analyzed, and then, a little bit out of character, the Gulf Council is the administrative lead on this amendment. However, due to the way council meetings are scheduled and sort of the desire to not delay implementation of this amendment, you guys will actually see the public hearing draft first in June, and then they will see it the week after, at their meeting. Then we would be looking at going to public hearings in July, they would be taking final action in August, and we would be taking final action in September. This amendment is also scheduled to be discussed by the Law Enforcement AP at their April meeting, since a lot of the intent of this amendment is to address law enforcement issues.

At this meeting, you will need to review changes that have been made to the purpose and need, modify as necessary, and approve, as well as review the new draft actions and alternatives and approve all off them to be analyzed.

Here are the IPT's recommended changes to the purpose and need, and these changes are meant to reflect the addition of those new three actions, and so the IPT is recommending that it read that the purpose of this action is to align federal regulations for spiny lobster that apply to the Exclusive Economic Zone off of Florida with Florida state regulations, reestablish the procedure for the protocol for an enhanced cooperative management system, and update management measures to aid law enforcement. Then the need for the action is to effectively manage and enforce the harvest of spiny lobster to prevent overfishing while achieving optimum yield. You guys will review that and make any modifications you see necessary and approve.

Now we're going to get into Action 1, and so this is the bully net action that you guys approved at your last meeting. At the IPT meeting last week, there were a couple of issues that were brought up that I wanted to go ahead and bring in front of the council. The first is whether we're calling it an endorsement or a permit.

When you guys saw this previously, it was referred to as an endorsement. The FWC, in discussions with them, it was found that, in their final rule, it's called a permit, and so, in order to match their final rule, we are changing the language in this to refer to a bully net permit, as opposed to endorsement. Additionally, I do want to note that that permit is required in addition to the other permits that are needed to commercially harvest spiny lobster, and so it's the saltwater products license and the crawfish endorsement.

MS. MCCAWLEY: And a restricted species endorsement, yes.

MS. WIEGAND: And a restricted species endorsement, and staff will make that clear in the discussion of this action. Additionally, at the Gulf meeting, they brought up concerns that we had been using the language "establish an endorsement", which makes it seem like we're establishing a new federal endorsement, which was not the intent of this action, and so we have reworded it to say "require a Florida state bully net permit", to make it clear that we're not creating a new federal permit for this. That is where we are with the bully net action.

We have also reordered the actions. All of the actions that address inconsistencies with Florida regulations comes first, and then the enhanced cooperative procedure is now Action 5, and so this is one of the new actions to address trip limits for bully net and dive gear. The no action alternative would not establish any commercial daily vessel limit for either bully net or dive gear in federal waters off of Florida. Alternative 2 would establish a 250 per day vessel limit for spiny lobster for bully nets in the entire EEZ, and then Alternative 3 would establish that 250 per day limit for diving in the EEZ off of Broward, Miami-Dade, Monroe, Collier, and Lee Counties, and, again, this lines up with regulations that are currently in place in Florida state waters.

Then Action 3 addresses the specification of degradable panels. Currently, in federal waters, degradable panels are required to be constructed of wood, cotton, or any material that will degrade at the same rate as a wooden trap. That degradable panel can be located on the upper half of the sides or the top of the trap, and it must be no smaller than the diameter found at the throat or entrance of the trap.

Florida regulations are a little bit more specific than that. Alternative 2 would follow Florida regulations, and it would specify that degradable panels must be constructed of cypress or untreated pine slats that are no thicker than three-fourths of an inch. It would require that panel to be located on the top horizontal section of the trap, and it would require the panels be no smaller than six-inches-by-four-inches or no smaller than the dimensions of the throat of the trap, whichever is larger.

Then, for Action 4, this has to do with the definition of artificial habitat and restrictions related to harvest near an artificial habitat. Currently, the federal regulations have no formal definition developed for artificial habitat for spiny lobster, and there are not restrictions for harvest or possession of spiny lobster in the EEZ off of an artificial habitat.

In the State of Florida, under Alternative 2, no person can harvest spiny lobster from an artificial habitat, and, additionally, harvest and possession of spiny lobster in excess of the recreational bag limit within ten yards of an artificial habitat is prohibited.

This is the definition that Florida has for artificial habitat that would then be applied to the EEZ off of Florida, and so, for spiny lobster, artificial habitat would mean any material placed in the waters of the state 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, plastic, or any combination thereof, and may be fabricated for this specific purpose or for some other purpose, and the term does not include fishing gear allowed by rule of the Florida Fish and Wildlife Conservation Commission, legally permitted structures, or artificial reef sites that are constructed pursuant to permits issued by the U.S. Army Corps of Engineers or by the state regulatory agency.

Again, this is only intended to apply in the EEZ off of Florida, and that wasn't originally included, and the Gulf Council made a note that Alternative 2 would need to be specific to the EEZ off of Florida.

LCDR BENNETT: I guess, in terms of the previous alternative, if the alternative regarding specific counties gets approved, how does that, your last one, apply? Is it in the EEZ off of Florida, or is it the EEZ off of those specific counties?

MS. WIEGAND: The way it's written now, I believe the intent is just the EEZ off of those counties. Are there other questions? All right. That brings us to Action 5, which is the cooperative management procedure between FWC and the council and NMFS, and so the changes that have been made to the language here are intended to reflect merging the procedure and the protocol into one cohesive document, and you will note in the draft that you have in front of you that they are still separated, and council staff is working on merging them together into one document and deleting duplicate language.

We are looking for Action 5 to now read to establish an enhanced cooperative management procedure for federal and Florida state agencies for the management of spiny lobster, and, again, under the Alternative 1, no action, to establish regulations that are consistent with Florida, the council is going to need to go through the full amendment process in order to do that, whereas, under Alternative 2, FWC would be able to request changes to spiny lobster federal regulations through NMFS rulemaking, and the proposed language that we're looking at originally came from

Amendment 2 and then Amendment 10, and we're, again, looking at taking those and putting them together into one cohesive document. We're also working with NOAA General Counsel and FWC to make sure that the process in that meets NEPA guidelines as well as EPA guidelines.

We do want to get some guidance from the council on the timing of this process. Currently, in Section 2 of the procedure, it mentions that the councils will submit the rules and analyses that FWC has put together to the SSCs and to the advisory panels, and it was noted that this would sort of delay the timing in which these regulations could be implemented, and so we were looking for guidance from the council on whether or not you felt it was necessary to run these regulations by the Scientific and Statistical Committees and the APs for both councils.

You guys will review and modify these actions and alternatives as you see fit and then approve them for analysis, and, again, just a reminder of the timing. You're looking at getting a public hearing document in June of 2018 and then taking final action in September, and so I will go ahead and pull it up. Here is the purpose and need. Were there any comments or concerns or modifications?

MS. MCCAWLEY: If people are okay with the modified purpose and need, I am going to need a motion to that.

MR. CONKLIN: **I will make a motion to approve the purpose and need.**

MS. MCCAWLEY: It's seconded by Ben. Ben, did you have a question?

MR. HARTIG: As long as it's fine with you, and we'll go ahead and move on.

MS. MCCAWLEY: **The motion is on the board to approve the IPT's recommendations for the purpose and need. Any discussion? Any objection? Seeing none, that motion stands approved.**

MS. WIEGAND: Were there any concerns about the changes to Action 1 to reflect that we were requiring a Florida state bully net permit and that it's referred to as a permit in Florida's final rule, as opposed to an endorsement?

MS. MCCAWLEY: I think this is fine, and, once again, you're going to add discussion about all the different types of endorsements that are required to this document?

MS. WIEGAND: Yes, ma'am. That will be added to the discussion.

MS. MCCAWLEY: Any questions or concerns? I think we need a motion to approve the changes to this action.

MR. BREWER: **So moved.**

MS. MCCAWLEY: It's moved by Chester and seconded by Chris. **The motion is on the board to approve the IPT-recommended changes to Action 1.** Is there any discussion?

MS. SMIT-BRUNELLO: The document, the larger document that we're looking at, I know it mentions in there that there are no measures. They're not sure whether any bully netting comes from federal waters, and so I think it would be good to give additional rationale as to why this is needed, and I understand that it would be useful for enforcement purposes, so that someone could not say, well, I was bully netting in federal waters and that's allowed and all that sort of thing, and so I think the additional rationale and discussion of all that needs to be added by the IPT. I am not sure that we need any more discussion here, and I know the Law Enforcement Advisory Panel is going to look at this too, and so, in June, I'm assuming we'll see a document that's got a lot more discussion in it as to the need for law enforcement.

MS. MCCAWLEY: Thanks, Monica. All right. **Any objection to this motion? Seeing none, that motion stands approved.**

MS. WIEGAND: Alternative 2, which is the bag limit alternative, were there any questions or concerns about this action?

MS. MCCAWLEY: Okay. **We need a motion to approve Action 2 and its Alternatives 1 through 3.**

MR. CONKLIN: **So moved.**

MS. MCCAWLEY: Motion by Chris and seconded by Chester. Is there discussion on this motion? **Is there any objection to the motion? Seeing none, that motion stands approved.**

MS. WIEGAND: Next is the degradable panel action. Is there any concerns or discussion or questions about that?

MS. MCCAWLEY: I just wanted to add a little bit of discussion about the degradable panels that are listed in this item. These particular degradable panels are in there because this was what the industry was actually using at the time. Parts of this do match up with some of our other trap fisheries, but this is what is primarily used in the lobster trap fishery. **I need a motion to approve the action and alternatives.**

MR. CONKLIN: **So moved.**

MS. MCCAWLEY: Motion by Chris and seconded by Chester. Any discussion on the degradable panel action? **Any objection? Seeing none, that motion stands approved.**

MS. WIEGAND: Next is the Action 4 for harvest restrictions and the definition of artificial habitat in the EEZ off of Florida.

MS. MCCAWLEY: Christina, in my decision document, there was some strange wording on page 13 and 14, and I can work with you. It looks like there was some words left out, and we can help edit some of this, about why we have that particular definition. Is there a motion to approve this action and its alternatives?

DR. DUVAL: I am not on your committee, and this might be -- You mentioned some words that were missing, I think, from this action, with regard to artificial habitat, and I think -- I was looking

at actually the full document, the options paper document, which was Attachment 2b, I think, but it might be the same page that you're looking at, Jessica, like actual document page 13, down there at the bottom. I just wanted to make sure that was covered.

MS. MCCAWLEY: Yes, the bottom of page 13 and the top of page 14. Yes, I feel like that's the part that needs to be edited, and I will work with Christina.

MS. WIEGAND: I will make sure that's on my list to address.

MS. MCCAWLEY: Okay.

MR. BREWER: Is this going to include car hoods?

MS. MCCAWLEY: I am going to ignore that. I am looking for a motion to approve this action and alternatives.

MR. CONKLIN: **So moved.**

MS. MCCAWLEY: There is a motion by Chris and a second by Chester. Any discussion on this motion?

MS. SMIT-BRUNELLO: No discussion on the motion, but I have some questions about the action, and so, if you will tell me when that's appropriate.

MS. MCCAWLEY: Go head.

MS. SMIT-BRUNELLO: I have some real questions about this action, and a lot of it, I think, gets to legal notice. What kind of notice -- In many areas, when we have restricted the public or fishermen from doing certain things, we have told them where it is that they are restricted from doing these things. Let me rephrase that. If we are talking about you can only harvest so much, for example, in a marine protected area or something else, we are very clear on -- We tell the public the location of these places, so that it's not a got-you thing. They're out there fishing, and they are supposed to know. They are supposed to be aware of the regulations and where they can do things and where they can't do things.

My concern about this is we're not telling them where it is that they can't do something, and so we're saying there is artificial habitat, and we're going to tell you what artificial habitat is, but we're not going to tell you where it is, and I understand why Florida has made their regulations that way, but it seems to me that this just is not enforceable, and I know the document talks about this is supposed to ease, I think, enforcement concerns, but I just don't see how it eases any enforcement concerns. I know our Law Enforcement AP is going to look at this, but I just have a lot of issues, really, regarding legal notice to the public and that sort of thing.

MS. MCCAWLEY: I don't know if I can answer all of those questions right now, and what if our law enforcement person was able to come back the next time, or through the Law Enforcement Advisory Panel, help answer some of these questions about how we enforce this right now in state waters, because we do enforce it in state waters, and I'm not sure exactly how we do that.

MS. SMIT-BRUNELLO: Okay. I think that would be beneficial. The other is no person -- It's kind of two parts, right? No person shall harvest any spiny lobster from artificial habitat in the EEZ off of Florida, and then there is the second part is the harvest and possession in the water of spiny lobster in excess of the bag limit is hereby prohibited within ten yards of artificial habitat, and so, depending on the depth that this artificial habitat is -- The document discusses that artificial habitat is put on the seabed floor, and so, depending on the depth, even to the distance from the seabed floor to the surface of the water, that could be more than ten yards, and so the person wouldn't be in violation.

It just gets back to notice and all that sort of thing, and I am not sure whether I would feel better if the ten yards was taken out, certainly, but we still have the whole idea of -- We haven't defined "artificial habitat", but I guess we are doing it in this alternative, but then I still have those notice questions, and so, Jessica, if you want to do it that way, where we get a law enforcement person from the state to discuss how it's enforced and that sort of thing, that probably would help, and then I can reserve judgment then, but, anyway, I have big concerns about this action.

MS. MCCAWLEY: Thanks, Monica.

MR. BREWER: I agree with Monica. The language, as it exists right now, there may be a very good reason that the state has it written that way, but I don't know what that is right now, and I really would appreciate some more information from somebody at the FWC, because, when you start talking about within ten yards of artificial habitat, and then you start excepting out, in the next sentence, certain types of artificial habitat, it seems like, to me, that's going to be something that's going to be pretty hard to enforce, and I wouldn't have a problem with just saying you can't take lobsters off of artificial habitat, period, and so I would appreciate some more information, too.

LCDR BENNETT: Do you guys intend to actually define -- At least put in the discussion part of this document what the definition of artificial habitat -- That it will remain that throughout regulations or recommend that you guys actually have it defined in regulations and not just kind of an aside within this alternative?

MS. MCCAWLEY: It's already defined in the FWC, and so, in state rules, it's already defined. Are you asking if it would be added to the CFR as a definition?

LCDR BENNETT: Yes.

MS. WIEGAND: Yes, it would be intended to add this definition to the spiny lobster CFR.

MS. SMIT-BRUNELLO: We should think about, and we can do this -- We don't have to decide today whether you need another alternative or maybe an action that actually defines artificial habitat for federal waters, and so we can discuss this in the IPT or whatever and see what works best and then bring it back to you, because I agree that it seems like, if we're going to tell somebody that they can't have something from artificial habitat, we ought to tell them what the artificial habitat is.

MS. MCCAWLEY: Thanks, Monica. All right. **We have a motion on the table to accept the IPT's recommended wording for Action 4, Alternatives 1 through 2.** Any more discussion on that? **Any objection to the motion? Seeing none, that motion stands approved.**



MS. WIEGAND: That brings us to the enhanced cooperative management procedure, and there are two things that we will need to do here. We will discuss the changes to the language for the alternatives, and then we will also need guidance on how much you want the SSC and advisory panels to be involved in this process, and so I guess, first, we'll start with the language for the action and alternatives, if there are any questions.

MS. MCCAWLEY: This is about the protocol procedure. Are there questions about the IPT changes to this particular action? **If not, I need a motion to approve the IPT changes.**

MR. BREWER: **So moved.**

MS. MCCAWLEY: It's moved by Chester, and it's seconded by Ben. Any discussion on this particular motion?

MR. HARTIG: This is something that was done in the past, correct? All we are doing is reapproving the process that was inadvertently deleted somewhere down the line.

MS. MCCAWLEY: There was a protocol and a procedure, and so there were these two separate documents, which was very confusing, and now this will squish them together into one document, but you're right that this was something that was inadvertently removed during one of the previous amendments, that there was a way to do this without having to go through this process.

MS. WIEGAND: We're also updating the language. Some of this was established way back in Amendment 2, and so some of the language is a little out of date, and so we're updating it to reflect current NMFS procedures as well as current FWC procedures.

MS. MCCAWLEY: Any more discussion? **Any objection to this motion? Seeing none, that motion stands approved.**

MS. WIEGAND: Then we're just looking for guidance about how involved you would like the SSC and advisory panels to be in this process. Currently, it says that all of the intended regulations and analyses will go through the SSC and advisory panels for comments, but this creates sort of an additional amount of time that would need to be in place to get these regulations updated, and so we're looking for guidance on how involved you would like them to be, and, just as a reminder, the procedure does include what regulations can be changed through this procedure, and it includes gear restrictions and harvest restrictions, and so things like changes to the ACL and all of that would still go through the full council process.

MR. BREWER: I mean, we've got two councils looking at this, and so I really don't know that the additional steps are going to be necessary. I mean, you've got some pretty good protections with the Gulf is looking at it, and we're looking at it and suggesting changes and whatnot, and we ought to be able to move it along. **I move that we not go through the process of going through the APs or going through the SSC.**

MS. MCCAWLEY: Okay. We have a motion by Chester and a second by Chris. **The motion is do not require review of regulations and analyses by the SSC and advisory panels through the enhanced cooperative management procedure.**

That motion was seconded. Is there more discussion on this motion? This would create a procedure so that, for a specific list of items, we would not have to come back to both the councils in the future. Some of those items, as Christina mentioned, we would. Otherwise, this is a process where it would take the FWC changes and consider them for adoption in the CFR outside of this process. Any more discussion on this motion? **Any objection to this motion? Seeing none, that motion stands approved.**

MS. WIEGAND: All right, and so that is it for spiny lobster. There was one last note that I wanted to make. We did take this amendment out to scoping, and we held webinars on January 8 and 9. We only received two comments, one from Mr. Bill Kelly in support of both the bully net action Alternative 2, aligning regulations, as well as the Alternative 2 for the cooperative management procedure. Then one other comment, not related specifically to this amendment, but from a gentleman in North Carolina who would like to see commercial trip limits raised, and those were all the comments we received for scoping for this amendment.

MS. MCCAWLEY: Can you remind me of the timeline? This comes back in June, right?

MS. WIEGAND: Yes, and so, now that you guys have approved the actions and alternatives to analyze, the IPT will work on putting together a public hearing document, which you guys will review in June.

MS. MCCAWLEY: The Gulf Council reviews it in June as well?

MS. WIEGAND: They will also review it in June as well. They do have a meeting in April, but the IPT felt that that was too short of a timeline between this meeting and that meeting to get a full document put together, and you guys will see it in June, and they will then see it the following week at their meeting in June.

MS. MCCAWLEY: Okay. Great. Thank you.

MS. SMIT-BRUNELLO: Just a question. Do you know whether the Gulf Council's Law Enforcement Advisory Panel is going to look at it as well?

MS. WIEGAND: I believe they already did, and they talked about it briefly at the January meeting, and just that the Law Enforcement AP was in support.

MS. SMIT-BRUNELLO: Okay. Thank you.

MS. MCCAWLEY: Any other discussion on this amendment? Any other business to come before the Spiny Lobster Committee? Seeing none, the Spiny Lobster Committee stands adjourned.

(Whereupon, the meeting adjourned on March 5, 2018.)

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

Transcribed By:  
Amanda Thomas  
March 28, 2018