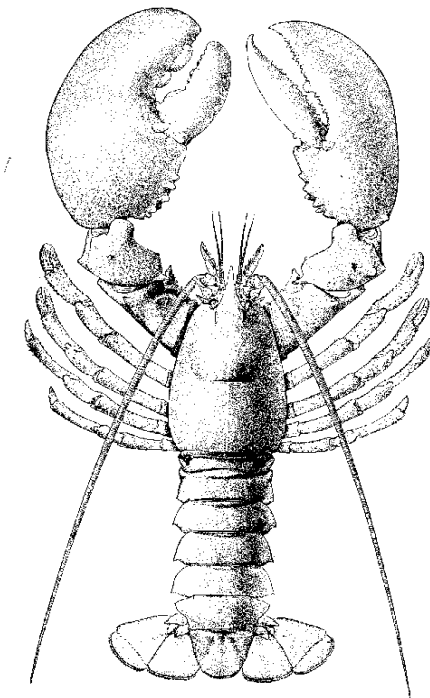


GUIDE TO



Proposed Rule to Update American Lobster Fishery Management Measures in Federal Waters

January 2002



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GOAL

To obtain public response on a proposed rule describing actions under consideration to make federal measures governing lobster fishing consistent with interstate measures specified in Addendum I to Amendment 3 of the ISFMP for American Lobsters.

DATES

Written comments on the proposed rule will be accepted until February 19, 2002.

TO GET A COPY OF THE PROPOSED RULE AND TO MAKE COMMENTS

Send your request for the document to the State, Federal and Constituent Programs Office, NOAA Fisheries, 1 Blackburn Dr., Gloucester, MA 01930; or fax your request to (978) 281-9117. Written comments should be sent to the same address and/or fax number. Comments will **not** be accepted via email or internet.

Both a summary of the document and the full document are also available online here:
<http://www.nero.nmfs.gov/ro/doc/com.htm>

This guide is an overview of measures in the proposed rule, and should not be considered a substitute for the actual document. To the extent that there are any inconsistencies between this guide and the proposed rule, information in the proposed rule supercedes information in this guide. You are strongly encouraged to obtain a complete copy of the proposed rule.

PROPOSED MEASURES RELATING TO HISTORICAL PARTICIPATION

Summary of Proposed Measures for Federal Lobster Trap Gear Permit Holders to Complement Interstate Management Measures; and Areas of Concern

HISTORICAL PARTICIPATION IN LCMAs 3, 4, and 5 (See Figure 1 for Areas)

- * Would be required for trap fishing operations in Lobster Conservation Management Areas 3, 4, and 5
- * Establishes qualification criteria that determine which operations may fish with traps in each area
- * Requires documentation and an affidavit to prove prior participation and prior effort levels to be used in setting trap limits for each operation that has qualified

“CONSERVATION EQUIVALENT” TRAP LIMITS FOR AREA 1 FISHERY

- * For Area 1 federal lobster trap permit holders who also have a NH full commercial fishing license-- a waiver would be allowed to fish an additional 400 traps in state waters, but no more than 800 in federal waters (same as at present).

PROCEDURES FOR CONSIDERATION OF CONSERVATION EQUIVALENCY

- * Provides guidance to the Commission and state agencies for submitting recommended modifications to Federal regulations involving conservation equivalency.

BOUNDARY CLARIFICATION

- * Creates an overlap area between Area 1 and Area 2 encompassing the Cape Cod Canal
- * Changes the boundary line between the Outer Cape Cod Area and Area 1
- * Creates an overlap area between Area 1 and the Outer Cape Cod Area on the western tip of Cape Cod
- * Changes boundary between Area 2 and the Outer Cape Cod Area
- * Resulting boundaries more clearly reflect traditional fishing practices and ensure that state and federal boundaries are consistent with each other.

AREAS OF CONCERN-- request for public comment

- * Documentation of historical participation
- * Proliferation of state-by-state waivers to the federal rules are sure to cause administrative burden and complexity and may be hard to evaluate for conservation equivalency unless states bordering a lobster management area can agree to the same waivers
- * Enforcement of the most restrictive trap limit under historical participation

MEASURES RELATING TO HISTORICAL PARTICIPATION

Measures for effort control, showing where proposed measure differs from that requested by the ASMFC for Lobster Conservation Areas 3, 4 & 5 [See Note]

EFFORT CONTROL AREA 3	Trap allocation for each operation based on number of traps it typically fished in a qualifying year	
Control Measure	ASMFC Recommendation	NMFS Alternative
Qualification Period	03/25/91 to 11/1/97	03/25/91 to 09/01/99
		Reason: NMFS policy is to provide advanced notice of qualification dates. That date was published as September 1, 1999, just after ASMFC formally approved historical participation as an effort reduction strategy
Qualification Criteria	As requested	Same as those requested
Must have:		
<ul style="list-style-type: none"> * A current federal limited access lobster permit * Demonstrated history of active fishing (at least 200 traps) in Area 3 for two consecutive months during the year used as the qualifying year * Documented landings of at least 25,000 pounds of lobster from any portion of its range during the qualifying year. 		
Documentation	Ranking system	No ranking system
Variety of official documentation accepted to substantiate historical trap use, as well as a signed affidavit	Where some kinds of documentation are considered more acceptable than others	Reason: Whether and what documentation may be available or relevant for certifying historical trapping effort will vary on a case-by-case basis, so discretion should be left to the individual permit holder to decide which documents to use.
Initial Trap Allocations	Reviewed by outside panel of contractors	NMFS review
<ul style="list-style-type: none"> * No more than 2,656 traps, regardless of the number fished in a qualifying year * If fewer than 1200; no reductions 		Reason: NMFS believes that an in-house review would be the most efficient and equitable means of approving trap allocations.

NOTE: Federal permit holders applying for trap allocations in Area 3,4 or 5, or all three areas, must use the same qualifying year for all of them; the present requirement that federal permit holders who fish in more than one area abide by the most restrictive rules in all areas is unchanged.

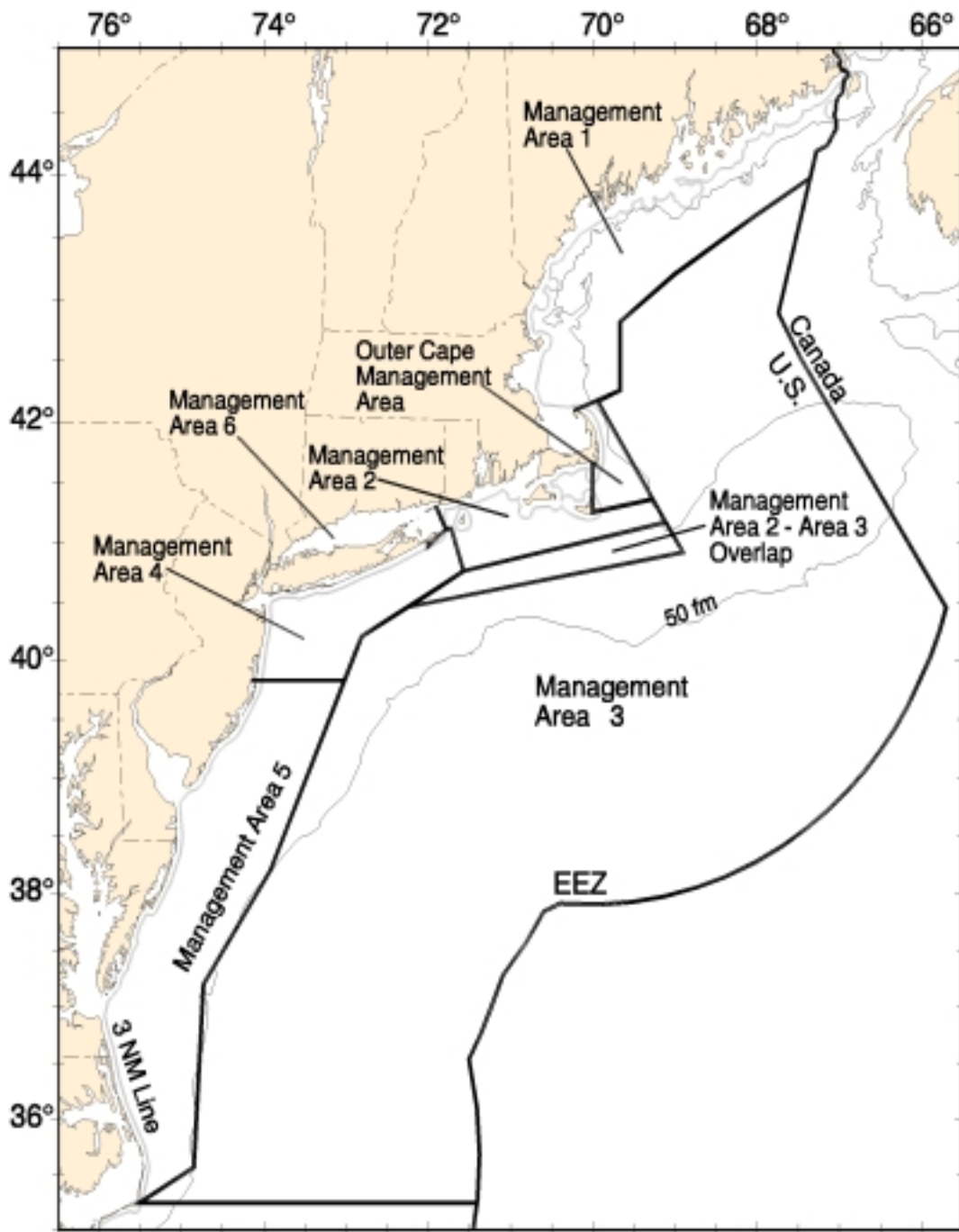
Control Measure	ASMFC Recommendation	NMFS Alternative
Initial Trap Allocations con't.	Publish final allocations in Federal Register by name	No publication; release of aggregated information Reason: Release by individual name raises privacy issues.
Trap Reductions (See Table 1)	Gradual over four years	Gradual over four years
Vessel Upgrades	50+ ft vessels or vessel upgrade, replacements limited to no more than 10% increase in length overall or 20% increase in horsepower for 2 yrs	No change in present rules Reason: Requested change requires substantiating present lengths; delays in permit transfers and replacements for regulatory reasons; hard to quantify relationship to conservation benefits (since pots do the fishing, unlike in scallop or groundfish, where vessel power is more important to harvest capacity).
EFFORT CONTROL AREAS 4&5	Trap allocation for each operation based on number of traps it typically fished in a qualifying year	
Qualification period	03/25/91-09/15/98	03/25/91-09/1/99 Reason: NMFS needs to give advanced notice of qualification dates. That date was published as September 1, 1999, just after ASMFC formally approved historical participation as an effort reduction strategy.
Qualification Criteria	None, other than documented activity during qualifying period	Same as Area 3 without the landings requirement Reason: NMFS believes measures are necessary to effectively establish historical participation consistent with qualification criteria of the Area 3 plan.
Documentation	None	Same as Area 3
Initial Trap Allocations	Number fished in qualifying year	Same as requested
Maximum Trap Allocation	None	No more than 1,440 traps Reason: NMFS believes trap cap is necessary to preclude excessive lobster fishing mortality.

Table 1. Area 3 Lobster Trap Reduction Schedule

Number of Traps Approved by Regional Administrator	Trap Allocations by fishing Year			
	2002	2003	2004	2005 and beyond until changed
1200-1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300-2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267

* Trap allocations less than 1,200 will not be subject to further reductions.

Figure 1. Area 3 Lobster Conservation Management Areas



Frequently Asked Questions About the Proposed Rule

Q: Would I have to meet the qualification criteria for each of the three Lobster Conservation Management Areas (LCMA 3, 4, and 5) in order to fish in them?

A: Yes, you must qualify for each LCMA.

Q: Would I be allowed to fish in all three LCMAs if I qualified for any one of the LCMAs?

A: No, you must meet the qualification criteria for each.

Q: Could I continue to fish for lobster in LCMAs 3, 4, and/or 5 if I did not qualify under the criteria?

A: Yes, but only with non-trap gear (trawl, gillnet, dredge), not with traps.

Q: If I have only state permits, and fish for lobster exclusively in state waters, will the Federal lobster regulations described in this proposed rule apply to me?

A: No, not in state waters.

Q: If I have both a Federal and a state lobster permit, would the proposed Federal management rules described here apply to me?

A: Yes, as will all applicable state regulations, as long as you have both permits.

Q: If I qualified to fish for lobsters with traps in LCMA 3, 4, and/or 5, and fish with traps in state and Federal waters of other LCMAs, how many traps would I be allowed to fish in all?

A: Each operation would be restricted to fishing the lowest trap limit that applies, regardless of where traps are set.

Q: What if I have a Confirmation of Permit History for a vessel that qualified for a limited access lobster permit. How would this rule apply to me?

A: If you wanted to fish for lobsters with traps in LCMA 3, 4, and/or 5 in the future, then during the approved qualification period, you would follow the same procedures as the holder of an active permit in order to qualify for historic participation in these areas.

Q: What if I am denied a limited access permit to fish with traps in LCMA 3, 4, and/or 5?

A: You could appeal in writing to the Regional Administrator within 30 days of the date indicated on the notice of denial. Upon receipt, the regional office will issue a Letter Of Authorization that will allow you to fish with traps in any LCMA where an appeal is pending (up to the fixed trap limits in place for that LCMA).

Q: What if the appeal is denied?

A: You may no longer fish with traps in any of the affected LCMAs (3, 4, and/or 5). You may fish in the other LCMAs where you qualify, or in those that do not have historic participation requirements.

Q: If I am applying for a trap allocation in LCMA 3, 4, and/or 5, how do I choose my qualifying year?

A: You may select any calendar year within the qualification period (from 3/25/91 to 9/1/99) that you have documentation to meet the proposed historic participation criteria. If you are applying for a trap allocation in two or more of these affected LCMAs, you must use the same qualifying year for all of them.

Q: If I own a vessel with a lobster permit and now use that vessel to fish with traps in LCMA 3, 4, and/or 5, but my vessel did not fish with traps in LCMA 3, 4, and/or 5 during the qualification period, can I use my vessel to fish with traps in any of the affected LCMAs?

A: No, if these measures are enacted and you cannot provide documentation to meet the qualification criteria during the qualification period, from 3/25/91 to 9/1/99, you may no longer fish with traps in any of the affected LCMAs.

Q: If I am a Federal lobster permit holder and have a New Hampshire full commercial fishing license, can I fish up to 1200 lobster traps in both state and Federal waters?

A: No, under the proposed measure, you would be allowed to fish up to 1200 lobster traps in the state waters of NH, but you would be restricted to a maximum of 800 traps in Federal waters (beyond 3 miles from shore), and no more than 1200 traps combined in state and federal waters.

Q: This proposed rule identifies an LCMA boundary overlap between LCMA 1 and the Outer Cape LCMA. What regulations apply to my vessel in these Overlap areas?

A: Federal permit holders must abide by the regulations for the LCMA that you select to fish with traps in, and, if you select both affected LCMAs where the overlap applies, you must abide by the most restrictive Federal regulations in effect for either LCMA, as well as all applicable state regulations.