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Dated: November 30, 2005.

Craig Manson,*Assistant Secretary for Fish and Wildlife and Parks.*

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 051129315-5315-01; I.D. 112505A]

RIN 0648-AU07

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS announces that it is considering, and seeking public comment on the implementation of further minimum carapace length (gauge) increases and escape vent size increases in the Federal lobster fishery, consistent with recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). NMFS would issue these regulations according to its authority under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). While a September 2, 2005, proposed rule considered gauge increases and escape vent size increases as scheduled through 2004 in Addenda II and III to Amendment 3 of the ISFMP, the proposed rule did not address; additional gauge increases scheduled annually from 2005 through 2008 in Lobster Conservation Management Areas (LCMA) 3 and the Outer Cape Lobster Conservation Management Area (OCLCMA), an increase to the escape vent size in LCMA 3 and the OCLCMA scheduled for 2008, and an escape vent size increase for LCMA 1 scheduled for 2007. Accordingly, NMFS is seeking written public comments on these additional gauge and escape vent size requirements as set forth in the ISFMP and recommended for Federal implementation by the Commission.

DATES: Comments must be received by January 12, 2006.

ADDRESSES: Written comments should be sent to Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via e-mail to Lob1205@noaa.gov, via fax (978) 281-9117 or via the Federal e-Rulemaking portal at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, (978) 281-9144, fax (978) 281-9117, e-mail peter.burns@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

Addenda II through VII are part of an overall lobster fishery management regime set forth in Amendment 3 to the ISFMP. The intent of Amendment 3, approved by the Commission in December 1997, is to achieve a healthy American lobster resource and to develop a management regime that provides for sustained harvest, maintains opportunities for participation, and provides for the cooperative development of conservation measures by all stakeholders. In short, Amendment 3 was envisioned to provide much of the framework upon which future lobster management - to be set forth in later addenda - would be based. In particular, Amendment 3 employed a participatory management approach by creating the seven lobster management areas, each with its own lobster conservation management team (LCMT) comprised of industry members. Amendment 3 tasked the LCMTs with providing recommendations for area-specific management measures to the Commission's Lobster Management Board (Board) to meet the lobster egg production and effort reduction goals of the ISFMP. NMFS has the authority under the ACFCMA to implement regulations in Federal waters that are compatible with the effective implementation of the ISFMP and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act. These Federal regulations are promulgated pursuant to the ACFCMA and are codified at 50 CFR part 697.

Commission Addendum 1 to Amendment 3 focused largely on effort control measures. The Commission approved Addendum 1 in August 1999, with NMFS promulgating compatible regulations on March 27, 2003 (68 FR 14902). The Board approved the egg production measures as Addenda II and III in February 2001, and February 2002, respectively, and recommended that NMFS implement complementary

Federal regulations. NMFS began a rulemaking in response to these addenda, and most recently published a proposed rule on September 2, 2005 (70 FR 52346). In December 2003, the Board approved Addendum IV which, in part, included additional egg production measures. Addenda V and VI did not include any further measures pertinent to egg production and, therefore, are not included within the scope of this advance notice of proposed rulemaking (ANPR). Addendum VII, approved by the Board in November 2005, facilitates effort control measures and constitutes a limited access program for the lobster trap fishery in the state waters of LCMA 2 based on historical participation. In approving Addendum VII, the Board opted not to continue with the previously adopted schedule of minimum carapace length increases in LCMA 2 (Addendum III) and voted to maintain the minimum legal carapace length (gauge) at 3 3/8 inches (8.57 centimeters (cm)). This option allows the Board to adjust the minimum gauge size in the future pending new stock assessment results and changes to the plan addenda or amendments.

ISFMP Measures Already Analyzed and Proposed by NMFS

The American lobster egg production and broodstock protection measures in the collective addenda include annual minimum gauge size increases, lobster trap escape vent size increases, maximum carapace size restrictions and v-notch protection. Many of these measures in the collective addenda were already analyzed and proposed for implementation by NMFS in the September 2, 2005, proposed rule. These include: maximum carapace length restrictions for LCMA 4 and 5; mandatory v-notching of egg-bearing female lobsters in LCMA 1 and the portion of LCMA 3 that lies north of the 42°30' N. latitude line; a zero tolerance definition of v-notched female lobster in LCMA 1; minimum gauge size increases to 3 3/8 inches (8.57 cm) in LCMA 2, 3, 4, 5 and the OCLCMA; and lobster trap escape vent size increases to 2 inches X 5 3/4 inches rectangular (5.08 cm X 14.61 cm) and 2 5/8 inches (6.67 cm) diameter circular in LCMA 2, 3, 4, 5 and the OCLCMA.

Additional minimum gauge increases and escape vent size increases are included in the addenda but were not addressed in the September 2, 2005, proposed rule because the entire gauge increase schedule, although included in the approved Commission addenda, had not actually occurred at the time of analysis for corresponding changes to the Federal rules. In other words, the

proposed rule moves to implement the minimum gauge size and escape vent size for the specified LCMA as required through 2004 in the addenda, when the

Federal analysis of these measures was conducted.

Table 1 illustrates the gauge and vent size schedule set forth in the Commission addenda and provides the

corresponding Federal actions that address them.

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Table 1. American Lobster ISFMP Gauge and Escape Vent Schedule and Corresponding Federal Action

[Measurements are in inches]

LCMA	Addenda II-VII		Current Federal Regulations		Proposed Rule Sept. 2005		This ANPR Considers	
	gauge	vent*	gauge	vent*	gauge	vent*	gauge	vent*
Area 1	3 1/4 (no change) 5 max size all lobster	2 X 5 3/4 rectangular or 2 5/8 circular by July 2007	3 1/4 5 max size all lobster	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	No change 5 max size all lobster	No change	No change	2 X 5 3/4 rect. or 2 5/8 circ. by July 2007
Area 2**	3 3/8 July 2004	2 X 5 3/4 rectangular or 2 5/8 circular by 2004	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8	2 X 5 3/4 rect. or 2 5/8 circ.	Not applicable	Not applicable
Area 3, OCLCMA	3 3/8 July 2004 3 13/32 July 2005 3 7/16 July 2006 3 15/32 July 2007 3 1/2 July 2008	2 X 5 3/4 rectangular or 2 5/8 circular by 2004 2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2008	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8	2 X 5 3/4 rect. or 2 5/8 circ.	3 7/16 July 2006 3 15/32 July 2007 3 1/2 July 2008	2 1/16 X 5 3/4 rect. or 2 11/16 circ. by 2008
Area 4	3 3/8 July 2004 5 1/4 max size females only by 2002	2 X 5 3/4 rectangular or 2 5/8 circular by 2004	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8 5 1/4 max size female only	2 X 5 3/4 rect. or 2 5/8 circ.	Not applicable	Not applicable
Area 5	3 3/8 July 2004 5 1/2 max size all lobsters by 2004	2 X 5 3/4 rectangular or 2 5/8 circular by 2004	3 1/4	1 15/16 X 5 3/4 rect. or 2 7/16 circ.	3 3/8 5 1/2 max size all lobster	2 X 5 3/4 rect. or 2 5/8 circ.	Not applicable	Not applicable

* All vent sizes include a rectangular and corresponding circular vent size. In all cases, each trap is required to have one rectangular vent or two circular vents at the sizes provided.

** Four additional 1/32 gauge increases (up to 3 1/2) were initially approved for LCMA 2 in Addendum III, but Addendum VII incorporated a limited access program and capped the gauge at 3 3/8, consistent with NMFS proposed measures.

Scope of This ANPR

The Commission's plan calls for additional management measures that have yet to be proposed or implemented by NMFS. These include four additional 1/32 inch (0.08 cm) gauge increases that would result in a 3 1/2 inch (8.89 cm) minimum gauge size requirement for LCMA 3 and the OCLCMA by July 1, 2008; escape vent size increases in LCMA 3 and the OCLCMA to 2 1/16 inches X 5 3/4 inches rectangular (5.24 cm X 14.61 cm) or two circular vents at 2 11/16 inches diameter (6.83 cm) by July 1, 2008; and an increase to the escape vent size in LCMA 1 to 2 inches X 5 3/4 inches rectangular (5.08 cm X 14.61 cm) or two circular vents at 2 5/8 inches (6.67 cm) in diameter by July 1, 2007. Consequently, NMFS is requesting comments on the need for these additional measures by way of this ANPR.

Other ISFMP Measures Not Considered in This ANPR

The Commission's plan also includes escape vent and gauge increases in

LCMA 6 (Long Island Sound). Since this area is comprised entirely of New York and Connecticut state waters, NMFS has no authority to implement measures specific to LCMA 6. However, federally permitted lobster vessels that have New York or Connecticut state licenses are bound to the most restrictive of state and Federal regulations if the Federal permit is endorsed for trap gear in LCMA 6.

The Commission recently passed Addendum VII to the ISFMP that constitutes a limited access lobster trap qualification program based on historical participation. In Addendum VII, the Commission chose to maintain the minimum gauge size at 3 3/8 inches (8.57 cm) indefinitely. Therefore, the minimum gauge size for this area under the Commission's Plan is 3 3/8 inches (8.57 cm) and the escape vent size is 2 inches X 5 3/4 inches (5.08 cm X 14.61 cm) rectangular or two circular vents at 2 5/8 inches (6.67 cm) in diameter. This is consistent with the measures proposed for LCMA 2 in the September 2, 2005, proposed rule. Any future

changes to the Federal regulations in LCMA 2, subject to Addendum VII, will be conducted in a separate rulemaking to analyze and seek public comment on the limited access and trap transferability measures set forth for LCMA 2, 3 and the OCLCMA. NMFS published an ANPR along with a notice of intent in the **Federal Register** on May 10, 2005 (70 FR 24995) to address these lobster fishing effort control measures.

Classification

This ANPR has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: December 7, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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