

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

58. None.

### III. Ordering Clauses

59. Accordingly, it is ordered, pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, that the *Notice of Proposed Rulemaking* is adopted.

60. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-11404 Filed 6-19-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 03-65; FCC 07-79]

#### Interference Immunity Performance Specifications for Radio Receivers

**AGENCY:** Federal Communications Commission.

**ACTION:** Termination of proceeding.

**SUMMARY:** This document terminates the "Interference Immunity Performance Specifications" proceeding. The Commission finds that with the passage of time, the NOI and record in this proceeding have become outdated. Further, to the extent receiver interference immunity performance specifications are desirable, they may be addressed in proceedings that are frequency band or service specific. As there does not appear to be a need for further Commission action at this time, we are terminating this proceeding without prejudice to its substantive merits.

**DATES:** This proceeding is terminated as of May 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Policy and Rules Division, Office of Engineering and Technology, (202) 418-2452, e-mail [Rodney.Small@fcc.gov](mailto:Rodney.Small@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order*, ET Docket No. 03-65, FCC 07-79, adopted

May 2, 2007 and released May 4, 2007. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

#### Summary of the Order

1. On March 13, 2003, the Commission adopted a *Notice of Inquiry* ("NOI"), 68 FR 23677, May 5, 2003, in this proceeding. The NOI sought information on whether the Commission should incorporate receiver interference immunity performance specifications into spectrum policy decisions on a broad basis.

2. The Commission finds that with the passage of time, the NOI and record in this proceeding have become outdated. Further, to the extent receiver interference immunity performance specifications are desirable, they may be addressed in proceedings that are frequency band or service specific. As there does not appear to be a need for further Commission action at this time, we are terminating this proceeding without prejudice to its substantive merits. If any party wishes to pursue these issues in the future, nothing precludes us from evaluating them in the context of other proceedings.

3. The Commission will not send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the *Order* does not adopt any rules it only terminates the proceeding.

#### Ordering Clauses

4. Pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and 154(j), ET Docket No. 03-65 is terminated, as of May 4, 2007.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-11811 Filed 6-19-07; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 0612243160-7167-01]

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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes new Federal American lobster (*Homarus americanus*) regulations that would implement further minimum carapace length (gauge) increases, escape vent size increases, and trap reductions in the offshore American 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) and pending management actions of the Commission's American Lobster Management Board (Board).

**DATES:** Comments must be received no later than 5 p.m. eastern standard time on or before August 6, 2007.

**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 [Lob0607@noaa.gov](mailto:Lob0607@noaa.gov), via fax (978) 281-9117 or via the Federal e-Rulemaking portal at [www.regulations.gov](http://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](mailto:peter.burns@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

The proposed regulations would modify Federal lobster conservation management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C 5101 *et seq.*, which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after

consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

#### **Purpose and Need for Management**

American lobsters are managed within the framework of the Commission. The Commission serves to develop fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission, under the provisions of the Atlantic Coastal Act, decides upon a management strategy as a collective and then forwards that strategy to the states and Federal government, along with a recommendation that the states and Federal Government take action (e.g., enact regulations) in furtherance of this strategy. The Federal Government is obligated by statute to support of the Commission's overall efforts. Relevant to this action, the Commission's Lobster Board recommended that the Federal Government create regulations consistent with the measures set forth in the Commission's Lobster ISFMP as identified in Addenda II, III, and IV and XI to Amendment 3 of the ISFMP. As initially adopted, these addenda included management measures for several lobster conservation management areas (LCMAs/Areas) including Area 3, the Outer Cape Cod (Outer Cape) Area and Area 1. Specifically, these measures included an escape vent size increase for both Area 1 and the Outer Cape Area and a series of gauge increases for the Outer Cape Area in addition to the measures considered for Area 3. However, the Board, in May 2006, determined that only the Area 3 measures were required and repealed those specific to the Outer Cape and Area 1. Consequently, NMFS proposes to implement regulatory measures in three general categories for LCMA 3: 1) gauge size increases (recommended in Addenda II); 2) escape vent increases (recommended in Addendum IV); and 3) trap reductions (recommended in Addendum IV and Addendum XI). The proposed regulatory changes serve as the Federal government's response to the Commission's requested action and are consistent with NMFS' resource

objectives, legal mandates, and overall practical/managerial requirements.

The best available science suggests and supports the need for broodstock protection and effort reductions for the Southern New England (SNE) stock. The SNE stock encompasses all of Areas 4, 5, and 6, and part of Areas 2 and 3. The Commission has adopted measures for the areas other than Area 3 that NMFS will address in future and ongoing rulemakings. The Area 3 broodstock and effort control measures relevant to this action directly address the concerns of the most recent stock assessment.

The peer-reviewed lobster stock assessment in 2005 showed that the American lobster resource presents a mixed picture (see the Commission Stock Assessment Report No. 06-03, published January 2006 at [www.asmf.org](http://www.asmf.org)). One theme throughout the assessment was the high fishing effort and high mortality rates in all three stock areas. The assessment indicated that there is stable abundance for the Georges Bank (GBK) stock and much of the Gulf of Maine (GOM) stock and decreased abundance and recruitment, yet continued high fishing mortality rates, for the SNE stock and in Statistical Area 514 (Massachusetts Bay and Stellwagen Bank) in the GOM stock. Of particular concern in the 2005 peer-reviewed stock assessment report is the SNE stock, where depleted stock abundance and recruitment coupled with high fishing mortality rates over the past few years led the stock assessment and peer review panel to recommend additional harvest restrictions. The SNE stock encompasses all of Areas 4, 5, and 6, and part of Areas 2 and 3. Overall, stock abundance in the GOM is relatively high with recent fishing mortality comparable to the past. The GOM stock encompasses all of Area 1, and part of both Area 3 and the Outer Cape Management Area. Currently, high effort levels in GOM continue in concert with high stock abundance, although high effort levels are not likely to be supportable if abundance returns to long-term median levels. The GBK stock seems stable, with current abundance and fishing mortality similar to the 20-year average. The GBK stock encompasses part of Areas 2, 3, and the Outer Cape Management Area. While the report noted the female proportion of the stock is increasing slightly, it also cautioned that further increases in effort are not advisable, hence, the need for additional effort reduction and broodstock protection.

#### **Background**

The Commission's American lobster management strategy is neither predicated upon a single measure nor is it contained within a single document. Rather, the structure is based on facilitating ongoing adaptive management with necessary elements implemented over time. The Commission set forth the foundation of its American Lobster ISFMP in Amendment 3 in December 1997. The Federal Government issued compatible regulations that complemented Amendment 3 in December 1999. Amendment 3 regulations established assorted measures that directly, even if preliminarily, address overfishing (e.g., trap caps and minimum gauge sizes). Amendment 3 created seven lobster management areas and established industry-led lobster management teams that make recommendations for future measures to end overfishing, based on the current status of the stocks. Additional management measures were set forth in subsequent Amendment 3 addenda including measures to limit future access to LCMAs 3, 4, and 5 in Addendum I (approved by the Commission in August 1999 and compatible Federal regulations enacted March 2003); and measures to increase protection of American lobster broodstock in Addenda II and III (approved by the Commission in February 2001 and February 2002, respectively, and compatible Federal regulations enacted March 2005). Addenda II and III measures include gauge increases and mandatory v-notch requirements for Area 3. Additional lobster management measures, notably measures that would control effort, were set forth in later addenda, including Addendum III, and relative to this action, Addendum IV (approved by the Commission in December 2003) that included additional trap reductions in Area 3; Addendum V (approved by the Commission in March 2004) that included a reduced trap cap in Area 3; Addendum VI (approved by the Commission in February 2005); Addendum VII (approved by the Commission in November 2005); Addendum VIII (approved by the Commission in May 2006); Addendum IX (approved by the Commission in October 2006), Addendum X (approved by the Commission in October 2006), and Addendum XI that includes recommendations for additional trap reductions and a delay in the escape vent size increase in Area 3 (approved by the Commission in May 2007).

This current Federal rulemaking is one of three (3) Federal rulemakings that

have their genesis, at least in part, in Commission Addenda II and III.

The first Addenda II—III rulemaking began with the publishing, in the **Federal Register**, of an advance notice of proposed rulemaking (“ANPR”) on May 24, 2001 (66 FR 28726), and ended with the publishing of a final rule on March 14, 2006 (71 FR 13027). This first rulemaking focused primarily on the broodstock protection measures set forth in the two addenda, and it was this similarity in purpose that resulted in NMFS combining the addenda recommendations into a single rulemaking. Addenda II and III, however, also contained additional management recommendations; most notably effort control measures and “if necessary” measures, so called because they would be considered only if determined necessary in later years. These separate measures became more prominent as the Commission issued later addenda, causing NMFS to start a second rulemaking involving Addenda II—III in 2005.

The second Addenda II—III rulemaking actually focuses more on Commission Addenda IV—VII. This second rulemaking formally began with NMFS’ publication of an ANPR in a **Federal Register** notice dated May 10, 2005 (70 FR 24495), and remains ongoing. Specifically, NMFS determined that the Addenda II—III effort control measures were modified substantively and revised by the Commission’s Addenda IV, V, VI, and VII. Overall, measures proposed in those Addenda involve additional limited access programs for Area 2 and the Outer Cape LCMA and proposals to transfer traps in LCMA 2, 3 and the Outer Cape. As a result, NMFS will analyze the Addenda II—III effort control programs as a component of the larger more detailed second rulemaking associated with the effort control recommendations in Addenda IV—VII. NMFS is still engaged in this second proposed rulemaking, and the Commission’s effort control measures are still under analysis.

The third proposed Addenda II—III rulemaking, which is represented in this proposed rule, also involves later Commission action, most notably draft Addendum XI. This third proposed rulemaking formally began on December 13, 2005, with NMFS’ publication of an ANPR in the **Federal Register** (70 FR 73717). The rulemaking initially focused on Addenda III’s so called “if necessary” measures because, although the measures were in Addenda II—III at the time of the first Federal rulemaking, the Commission had not actually deemed them necessary until too late in

the process for their inclusion in the March 26, 2006, final rule. Ultimately, the Commission modified the requirements of the ISFMP, voting on May 8, 2006 that the “if necessary” measures were, in fact, required only in LCMA 3, but not in the other LCMA’s. The repealed measures include the additional escape vent size increase for LCMA 1 (2 inches × 5¾ inches (5.08 cm × 14.61 cm) rectangular or 2⅝ inches (6.67 cm) circular by 2008); in the Outer Cape Cod LCMA, four additional 1/32 inch (0.08 cm) gauge increases up to 3½ inches (8.89 cm) by July 2008 and an escape vent increase to 2¼ inches × 5¾ inches (5.24 cm × 14.61 cm) rectangular or 2¼⅙ inch (6.83 cm) circular by 2008.

The Commission voted to approve draft Addendum XI for public comment on January 31, 2007, and the document was approved as part of the ISFMP on May 8, 2007. The Addendum includes two additional 2.5 percent trap reductions for LCMA 3 and a delay in the implementation of the LCMA 3 escape vent size increase until 2010. NMFS incorporated the Addendum XI proposed measures in this third rulemaking in an ANPR filed in the **Federal Register** on December 18, 2006 (71 FR 75705), with the expectation that the Board would ultimately adopt the measures as part of the lobster management framework.

At present, most states have issued their complementary regulations; the Federal Government has not. Most Federal lobster permit holders also hold a state lobster license, and they must abide by the ISFMP measures by virtue of their state license, even if the same restrictions have not yet been placed on their Federal permit. Generally, the exception to state coverage of all ISFMP measures, under the Commission’s ISFMP, is for states that are classified as de minimis states. The focus of the analysis of measures in this action is for Federal lobster permit holders from states that have not implemented all measures in the Commission’s ISFMP, and, in the case of this proposed rule, exceptions to coverage exist for Federal permit holders from Connecticut, New Jersey, and the de minimis states. Both the states of New Jersey and Connecticut voted to approve Addenda II and III and it is expected that those states will issue compatible regulations in the immediate future. Certain states at the southern end of the range qualify for de minimis status because a given state’s declared annual landings, averaged over a two-year period, amount to less than 40,000 lb (18,144 kg) of American lobster. While de minimis states are required to promulgate all coastwide measures

contained in Section 3.1 of Amendment 3, many of the area-specific measures for Area 3 identified in this action are not required to be implemented by the de minimis states. However, Federal lobster regulations apply to all entities fishing for lobster in Federal waters, including Federal permit holders in de minimis states.

Based on the preliminary impact analysis relative to this proposed rule, a negligible number of Federal trap and non-trap vessels would be impacted by adoption of the proposed measures. The impacts are concentrated on those few vessels hailing from Connecticut, New Jersey and the de minimis states. However, should Connecticut and New Jersey ultimately implement these measures as mandated by the Commission’s ISFMP, as expected, the impacts will be reduced even further. Impacts in the de minimis states are also expected to be minimal; by definition, the lobster catch has to be small to even qualify for de minimis status and lobster catch is not a principle component of the overall fishery in those states. In addition to the minimal impacts associated with Federal action, adoption of the proposed measures into the Federal regulations will facilitate the cooperative state and Federal enforcement of lobster regulations by reducing the regulatory gap between the states and NMFS.

#### Comments and Responses

Addenda II through VII to Amendment 3 of the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan (ISFMP) for American lobster are part of an overall lobster fishery management regime which is intended to achieve a healthy resource, develop a management regime that provides for sustainable harvest, maintains opportunities for participation, and provides for the cooperative development of conservation measures by stakeholders. In an ANPR published in the **Federal Register** on December 13, 2005 (70 FR 73717), NMFS sought public comment on the implementation of further minimum gauge and escape vent size increases in the Federal lobster fishery consistent with the Commission’s recommendations for Federal action across multiple Lobster Conservation Management Areas. Subsequent to that publication, many LCMA-specific Commission recommendations were modified in response to information in an updated peer-reviewed stock assessment published in January 2006 (see detailed information in Background section). Consequently, NMFS published an

ANPR on December 18, 2006 in the **Federal Register** (71 FR 75706), which revises the previous ANPR and, again, invited comments on the implementation of updated gauge increase, escape vent size increase, and trap reductions in the offshore American lobster fishery, consistent with the ISFMP for American lobster. At the time of publication, the latest ANPR included measures that had yet to be adopted by the Board, in the interest of time required to promulgate Federal regulations and to facilitate evaluation of the associated impacts by bundling like measures into a single analysis. This section is specific to the comments received on the measures relevant to this proposed rule. Therefore, comments from the first ANPR regarding measures that are no longer related to this rulemaking are not addressed here. NMFS notes that the public is encouraged to submit comments on this proposed rule during the comment period, as specified in the **DATES** section of this document.

#### *Overall Summary of Comments Received in Response to the First ANPR*

To summarize, a total of 17 comments were received in response to the two ANPR's that were published relevant to this action. The comments ranged from full support of the proposed measures to recommendations of alternate measures and requests for stricter enforcement. Half of the comments support all or a portion of the measures to increase gauge size, increase escape vent size, and incrementally reduce trap allocations. A total of 6 comments proposed alternative conservation measures, including alternate gauge increases, a maximum size, and establishing a buyback program. Some comments voiced concerns that stricter regulations and additional enforcement will be necessary.

#### *Breakdown of Comments Received for Each Request for Comments*

ANPR published on December 13, 2005 (70 FR 73717)

Five comments were received, of which two fully supported the suite of measures that are required by Amendment 3 of the ASMFC American Lobster FMP. The additional three commenters were generally opposed to the rulemaking for a myriad of reasons. Of these, one proposed to halt the minimum gauge increases at 3<sup>7</sup>/<sub>16</sub> inches (8.7 cm) (the July 2006 level) and simultaneously enact a maximum gauge size at 6.0 inches (15.24 cm), for the protection of large female lobsters. Another stated that the conservation

measures included in the ANPR were not strong enough. The last noted that as a recent stock assessment has been completed, it would be imprudent to implement management measures based on an outdated stock assessment.

ANPR published on December 18, 2006 (71 FR 75706)

A total of 11 comments were received in response to the ANPR published on December 18, 2006. Four of the commenters supported the entire suite of measures addressed in the ANPR. Two additional comments supported a specific portion of the proposed regulations. One voiced support for the proposed vent increase, and recommended that the increases come all at once instead of incrementally. The second supported the gauge increase but could not support a future maximum size limit. Several other commenters proposed additional initiatives such as a maximum size, a permit buyback, a trap fishing moratorium on Stellwagen Bank, and an 1,800 trap limit in Area 3 with a subsequent 10 percent trap reduction. Two commenters called for further enforcement of lobster regulations.

#### **Response to Comments**

*Comment 1:* Six of the 11 commenters responding to the second ANPR are in favor of the gauge increases and escape vent size increases and the associated delay of the vent increase until 2010. Five of those six commenters are in favor of the full suite of trap reductions proposed in this action.

*Response:* NMFS believes that adoption of these measures will benefit the industry and the lobster resource and will create a more consistent set of state and Federal lobster regulations which will facilitate enforcement.

*Comment 2:* Within responses to the first ANPR, several voice their disapproval. Particularly, one opposed the proposed gauge increases. Additionally, another noted that the recent stock assessment should be considered before management decisions are made.

*Response:* Since the first ANPR was published, a new stock assessment was released. Its findings prompted the Board to eliminate many of the management measures that were previously included in the ISFMP (see Background and Management Measures Considered but Rejected at this Time). As a result, this rulemaking is consistent with the revised recommendations for Federal action in the ISFMP. It also considers the findings of the most recent stock assessment published in January

2006 (see Purpose and Need for Management).

*Comment 3:* One commenter expressed support for a single vent increase as proposed, since frequent escape vent changes can wear out traps and are difficult to perform at sea.

*Response:* Escape vents facilitate lobster survivability and can, depending upon the minimum size and corresponding vent size, allow legal sized lobsters a chance to escape from the traps, with unquantifiable benefits to egg production. However, given the proposed gauge increases in this action, consistent with the ISFMP and Area 3 LCMT recommendations, NMFS proposes to postpone the next escape vent size increase until 2010. This may provide some relief to the offshore industry regarding the costs and time associated with replacing the vent. Any foregone biological benefits associated with not requiring the larger vent prior to 2010, will likely be offset by the increase in the minimum size over the next two years, to 3<sup>1</sup>/<sub>2</sub> inches (8.89 cm). NMFS Trawl Survey data has indicated that the median lobster size for the Georges Bank stock far exceeds 3<sup>1</sup>/<sub>2</sub> inches (8.89 cm), so most lobster that are caught in the traps are likely at or above the intended 3<sup>1</sup>/<sub>2</sub> inch (8.89 cm) minimum size. Further, to the extent that a sub-legal lobster is unable to use a smaller escape vent, the best available science indicates that lobster bycatch experience low mortality when returned to the sea.

*Comment 4:* Three commenters recommended additional measures to what was included in either ANPR including a permit buyback program, a trap limit of 1,800 traps, with a subsequent 10 percent trap reduction, and a trap moratorium on Stellwagen Bank.

*Response:* The Area 3 LCMT has proposed a plan for a lobster trap buyback in Area 3 and the plan is under development and has not yet been analyzed by the Commission or recommended to NMFS and would be premature to implement at this time. NMFS initially implemented an 1,800 fixed trap limit in Area 3 in 2000. However, in response to a previous stock assessment indicating that all three stocks of lobster were overfished, NMFS implemented a limited entry program for the lobster trap industry in Area 3 in a rulemaking filed in March 2003 to cap and control fishing effort in the offshore EEZ. This program was based on the recommendations of the Area 3 lobster trap industry and consistent with the recommendations for Federal action in the ISFMP in Addendum I to Amendment 3. Area 3

is now limited to only 139 lobster trap vessels, each with a specific trap limit based on documented fishing history. Future opportunities for trap reductions from a conservation tax from an inter-transferable trap program, currently under analysis by NMFS in a separate rulemaking, consistent with the ISFMP and industry recommendations, could, if adopted into the Federal regulations, assist in the further reduction of traps in Area 3. NMFS will seek public comment on this issue in a separate rulemaking currently under development.

One respondent recommended a moratorium on traps on Stellwagen Bank to assist in the survival of endemic and seasonally migrating fauna. A closed area on Stellwagen Bank, however, is not a formal part of the interjurisdictional lobster management program and if implemented by the Federal Government only, would likely increase regulatory incongruence between jurisdictions. Seasonal closed areas are in effect south of Georges Bank to address gear conflicts between the trap and non-trap fishing sectors. There is no available information regarding a particular biological need to stop trap fishing on Stellwagen Bank in particular and such an action is outside the purpose and need of the present action.

*Comment 5:* Two commenters differed in opinions about maximum gauge size: one fully supported it, while the other was opposed, but was generally supportive of gauge increases.

*Response:* A maximum gauge size for Area 3 has long been discussed between industry and management as a potential tool for broodstock protection. On May 8, 2007, the Board adopted Addendum XI to Amendment 3 of the ISFMP which included, in part, a maximum size for lobster harvested from Area 3. The addendum requires a maximum carapace length limit of 7 inches (17.78 cm) in the first year of implementation, with incremental reductions in the maximum size by  $\frac{1}{8}$  inch (0.32 cm) annually for the following two years resulting in an eventual maximum size of 6 inches (17.15 cm). Addendum XI has recommended that the Federal government take action on this measure.

Consequently, NMFS will analyze the impacts of the maximum size in Area 3 as adopted into the ISFMP and entertain public comments in a future rulemaking action.

With respect to gauge increases, NMFS proposes to implement the suite of gauge increases as adopted into the ISFMP.

*Comment 6:* One respondent recommended a five year moratorium on lobster fishing or an increase of 12 inches (30.48 cm) to the current minimum size. Additionally, the commenter recommended a 200 percent increase in the vent size and a 50 percent trap reduction.

*Response:* The commenter's measures are likely more extreme than necessary to address the sustainability of the resource, fail to address the social and economic impacts and would greatly increase regulatory incongruence between jurisdictions. The proposed measures do not meet the purpose and need of this action and consequently were not analyzed in this rulemaking.

#### **Proposed Changes to the Current Regulations**

NMFS proposes the following changes to the Federal American lobster regulations for LCMA 3.

##### *Increase Minimum Carapace Length in Area 3*

To protect lobster broodstock NMFS proposes to implement two additional gauge increases that would result in a  $3\frac{1}{2}$  inch (8.89 cm) minimum gauge size requirement for LCMA 3 by July 1, 2008. Most states have already begun the four-year gauge increase schedule, beginning in 2005, as mandated by the ISFMP. To remain consistent with the ISFMP, NMFS proposes to implement a gauge increase subsequent to publication of a final rule later in 2007. These measures are consistent with the ISFMP.

##### *Increase Lobster Trap Escape Vent Size for Area 3 in 2010*

NMFS proposes escape vent size increases in LCMA 3 to  $2\frac{1}{16}$  inches x  $5\frac{3}{4}$  inches rectangular (5.24 cm x 14.61 cm) or two circular vents at  $2\frac{1}{16}$  inches diameter (6.83 cm) by July 1, 2010.

Although the ISFMP requires the escape vent increase implementation by July 1, 2008, the delay until 2010 is currently included in the Commission's Addendum XI.

##### *Area 3 Lobster Trap Reductions Through 2010*

NMFS also is considering a suite of trap reductions in LCMA 3. First, Addendum IV to Amendment 3 of the ISFMP calls for a 10 percent trap reduction implemented over two consecutive years with a scheduled 5 percent reduction for 2007 and a 5 percent reduction in 2008. To address the need for further fishing mortality and fishing effort reductions in the offshore fishery as identified in the updated stock assessment released in 2005, the Board developed Addendum XI, that included consideration of an additional 5 percent reduction in traps in LCMA 3, to be implemented as a 2.5 percent reduction each year for two consecutive years following the initial 10 percent trap reduction specified in Addendum IV. The Commission voted to approve draft Addendum XI for public comment on January 31, 2007, and subsequently Addendum XI was approved by the Commission on May 9, 2007, including the requirement for an additional 5 percent reduction in traps in LCMA 3. Table 1 illustrates the LCMA 3 gauge increases, escape vent size increases and the 10 percent trap reductions currently recommended in the ISFMP for Federal implementation. Also included in the table are the two additional 2.5 percent trap reductions for LCMA 3 just approved by the Board in May 2007. These pending trap reductions are included within the scope of this rulemaking because they have been adopted into the ISFMP and recommended for Federal implementation.

Table 1. American Lobster ISFMP Gauge, Escape Vent and Trap Reduction Schedule for LCMA 3 and Corresponding Federal Action (Includes only the measures currently recommended in the ISFMP for Federal implementation and relevant trap reductions).

[MEASUREMENTS ARE IN INCHES]

LCMA	Addenda II-VIII, XI			Current Federal Lobster Regulations		Proposed Changes to Federal Lobster Regulations		
	gauge	vent*	trap reductions	gauge	vent*	gauge	vent*	trap reductions**
LCMA3	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 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2010	5% in 2007 5% in 2008 2.5% in 2009 2.5% in 2010	3 3/8	2 X 5 3/4 rectangular or 2 5/8 circular	3 15/32 in 2007 3 1/2 by 2008	2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2010	5% in 2007 5% in 2008 2.5% in 2009 2.5% in 2010

\* 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 indicated.

\*\* The two 5% trap reductions scheduled for 2007 and 2008 were established in Addendum IV; the two 2.5% reductions and delay of the escape vent increase until 2010 were incorporated into the ISFMP in Addendum XI.

**Management Actions Considered but Rejected at this Time**

Referring specifically to the proposals discussed in this section, the Commission Lobster Board (Board) took several actions in 2001 and 2002 that were contingent in part on the future status of the lobster stocks, as determined by updated stock assessment information. In essence, several Area-specific management measures were inserted in Addenda II—IV that would be implemented if the measures were deemed “necessary” to meet the ISFMP goals and objectives. These proposed measures are commonly referred to as the “if necessary” measures. The Board approved several “if necessary” provisions, including: provisions for additional lobster minimum gauge increases for Area 3 and the Outer Cape Area, and provisions to increase the lobster trap escape vent size for traps fished in Area 1 and Area 3. In addition, if ISFMP trap reduction targets for the Outer Cape Management Area were not met from the implementation of a limited entry transferable trap program outlined in Addendum I, the ISFMP included “if necessary” provisions to continue additional trap reductions totaling 10 percent over two years. When an updated lobster stock assessment was completed in January 2006 (ASMFC 2006), the Board revisited the “if necessary” proposals specified in Addenda II—IV. Based on the updated assessment, on May 8, 2006, the Lobster Board repealed the “if necessary” provisions described above for LCMAs where the lobster stocks are not considered overfished. For copies of the 2006 Assessment, or Addenda II—IV, visit the Commission website at: <http://www.asmfc.org/>.

In addition to the “if necessary” proposals outlined in the paragraph above, the Board took several actions in 2002–2003 to address the reported sharp decline in lobster landings in Area 2, (the nearshore Area adjacent to Massachusetts, Rhode Island, Connecticut, and New York). Based on several meetings between the Area 2 industry, the Commission, and impacted state and Federal agencies, in February 2003, the Board took Emergency Action to implement an increase in the minimum gauge size in Area 2, from 3 3/8 inches to 3 1/2 inches (8.57 cm to 8.89 cm), pending further evaluation of the scope and extent of the resource decline, and implementation of appropriate management action to address the Area 2 situation. At that time, the Area 2 LCMT began development of a comprehensive limited access program for Area 2 that ultimately was incorporated in Addendum VII, approved in November, 2005 by the Commission. A component of Addendum VII included the revocation of the Emergency Action that mandated the increase in the minimum gauge size in Area 2, and established a minimum gauge size in Area 2 of 3 3/8 inches (8.57 cm). NMFS is analyzing the Addendum VII recommendations in a separate rulemaking.

*Implement an Area 1 Lobster Trap Escape Vent Increase by 2007*

The Commission approved an “if necessary” provision to increase the lobster trap escape vent size for traps fished in Area 1 as specified in Addendum III, approved by the Commission in February 2002. If this provision had not been rescinded by the Commission on May 8, 2006, the ISFMP would require a lobster trap escape vent size increase in Area 1 from one

rectangular escape vent measuring per trap at least 1 15/16 inches by 5 3/4 inches (4.92 cm x 14.61 cm), or two circular escape vents measuring 2 7/16 inches (6.19 cm), to a requirement for each trap to contain at least one rectangular escape vent measuring at least 2 inches by 5 3/4 inches (5.08 cm x 14.61 cm), or two circular escape vents measuring 2 1/2 inches (6.35 cm), later revised in Addendum IV to 2 5/8 inches (6.67 cm) circular. The Area 1 trap escape vent increase was rescinded by the Commission after a determination, based on the updated stock assessment completed in 2006, that the measure was unnecessary to meet the ISFMP goals and objectives for the Gulf of Maine lobster stock, as previously specified in Addendum III. Therefore, based on that determination, the Area 1 trap escape vent increase is no longer considered as a recommendation for complementary action by the Federal government. To implement such a measure at the Federal level would create a regulatory incongruence between the Federal regulations and the Commission Lobster Plan. Accordingly, the measure is considered but NMFS is proposing that it be rejected for this action.

*Increase the Minimum Gauge Size in Outer Cape Management Area by 2008*

The Commission approved an “if necessary” provision to increase the Outer Cape Management Area minimum gauge size to 3 1/2 inches (8.89 cm) by 2008 as specified in Addendum III, approved by the Commission in February 2002. If this provision had not been rescinded by the Commission on May 8, 2006, the minimum gauge size for all lobsters taken in the Outer Cape Management Area would increase from the current minimum gauge size of 3 3/8

inches (8.57 cm) to 3½ inches (8.89 cm). The Outer Cape Management Area minimum gauge size provision was rescinded by the Commission after a determination, based on the updated stock assessment completed in 2006, that the measure was unnecessary to meet the ISFMP goals and objectives for the Gulf of Maine lobster stock, as previously specified in Addendum III. Therefore, based on that determination, the Outer Cape Management Area minimum gauge size provision is no longer considered as a recommendation for complementary action by the Federal government. To implement such a measure at the Federal level would create a regulatory incongruence between the Federal regulations and the Commission Lobster Plan. Accordingly, the measure is considered but NMFS is proposing that it be rejected for this action.

#### *Active Trap Reductions for the Outer Cape Management Area*

The Commission approved an “if necessary” provision to require lobster vessels with trap allocations in the Outer Cape Management Area be reduced by 5 percent per year for a two year period if a limited entry transferable trap program, approved for the Outer Cape Management Area in Addendum III, did not achieve a 20 percent reduction in the total number of traps allowed to be fished in the Outer Cape Management Area. The Outer Cape Management Area If Necessary trap reduction schedule provision was rescinded by the Commission after a determination, based on information provided by the impacted state management agency, that the limited entry transferable trap program had meet the ISFMP goals and objectives, as previously specified in Addendum III. Therefore, based on that determination, the Outer Cape Management Area “if necessary” trap reduction provision is no longer considered as a recommendation for complementary action by the Federal government. To implement such a measure at the Federal level would create a regulatory incongruence between the Federal regulations and the Commission Lobster Plan. Accordingly, the measure is considered but NMFS is proposing that it be rejected for this action.

#### *Increase in the Area 2 Minimum Gauge Size up to 3½ Inches (8.89 cm) by 2008*

The Commission approved in February 2003, via Emergency Action, a provision to increase the minimum gauge size in Area 2, from 3⅜ inches to 3½ inches (8.57 cm to 8.89 cm). During this time period, the Area 2 LCMT and

impacted participants in the Area 2 lobster fishery, held multiple public meetings that culminated in approval of a limited entry transferable trap program for Area 2 as specified in Addendum VII, approved November 2005. Based on the implementation of an integrated plan to address the status of the stock in Area 2, in Addendum VII, the Commission approved the revocation of the Emergency Action that mandated the minimum gauge size increase in Area 2, and, by the same action, established a minimum gauge size in Area 2 of 3⅜ inches (8.57 cm). Therefore, based on that determination, the provision to increase the minimum gauge size in Area 2 is no longer considered as a recommendation for complementary action by the Federal government. To implement such a measure at the Federal level would create a regulatory incongruence between the Federal regulations and the Commission Lobster Plan. Accordingly, the measure is considered but NMFS is proposing that it be rejected for this action.

#### **Classification**

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism implications as defined in E.O. 13132.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reason for consideration, and its legal basis are contained in the **SUMMARY** section of the preamble in this proposed rule.

As previously described, the proposed action would implement two additional gauge increases that would result in a 3½ inch (8.89 cm) minimum gauge size requirement for LCMA 3 by July 1, 2008. Most states have already begun the four-year gauge increase schedule in 2005 as mandated by the ISFMP which brings the ISFMP’s minimum size in Area 3 to 3<sup>15</sup>/<sub>32</sub> inches (8.81 cm) beginning July 1, 2007, with the final 1/32 inch (0.08 cm) increase scheduled for July 1, 2008. Therefore, NMFS proposes to implement a gauge increase subsequent to publication of a final rule later in 2007 that will raise the minimum carapace length in Area 3 to 3<sup>15</sup>/<sub>32</sub> inches (8.81 cm), with the regulatory text specifying an additional increase to 3½ inches (8.89 cm) effective July 1, 2008. In addition, NMFS proposes to

adopt the escape vent size increase for lobster traps in Area 3 to 2<sup>1</sup>/<sub>16</sub> inches x 5<sup>3</sup>/<sub>4</sub> inches rectangular (5.24 cm x 14.61 cm) or two circular vents at 2<sup>1</sup>/<sub>16</sub> inches diameter (6.83 cm). However, consistent with an industry proposal recently approved by the Commission’s Lobster Management Board in Addendum XI, NMFS proposes to delay the implementation of the Area 3 escape vent size increase until July 1, 2010. Finally, NMFS proposes a suite of trap reductions in LCMA 3. First, Addendum IV to Amendment 3 of the ISFMP calls for a 10 percent trap reduction implemented over two consecutive years with a scheduled 5 percent reduction for 2007 and a 5 percent reduction in 2008. To address the need for further fishing mortality and fishing effort reductions in the offshore fishery as identified in the updated stock assessment released in 2005, the Board developed Addendum XI, that included consideration of an additional 5 percent reduction in traps in LCMA 3, to be implemented as a 2.5 percent reduction each year for two consecutive years following the initial 10 percent trap reduction specified in Addendum IV. The Commission voted to approve draft Addendum XI for public comment on January 31, 2007, and subsequently Addendum XI was approved by the Commission on May 8, 2007, including the requirement for the two additional 2.5 percent reductions in traps in LCMA 3. Table 1 illustrates the LCMA 3 gauge increases, escape vent size increases, the 10 percent trap reductions recommended in Addendum IV to the ISFMP and the two additional 2.5 percent trap reductions for LCMA 3 recommended in Addendum XI, approved by the Board in May 2007.

The proposed action was compared to the no action alternative and one other alternative as noted in Table 1 of this proposed rule. In summary, the no action alternative would retain the current LCMA 3 vessel-specific trap allocations, and retain the current Federal minimum gauge and escape vent sizes in LCMA 3. The non-preferred alternative would implement a 10% trap reduction over two years as specified in Addendum IV, increase the minimum gauge size from 3⅜ inches (8.57 cm) to 3½ inches (8.89 cm) over four years, and increase the escape vent size in 2008. The preferred alternative selected for this proposed action would implement a 15% trap reduction over four years as specified in Addendum IV and Addendum XI, increase the minimum gauge size to 3½ inches (8.89 cm) over two years to coincide with the gauge size requirements



specified for the last two years (2007 and 2008) of the Commission's four year minimum gauge schedule, and implement the escape vent size increase in 2010 as specified in Addendum XI.

After fully evaluating all three alternatives, the proposed alternative is preferred for several reasons. This preferred option would best address the concerns of the stock assessment and call for action to reduce effort and provide for broodstock protection because, simply, it would bring all Federal lobster permit holders under the same set of regulations. As explained in the draft environmental assessment completed for this action, the impacts associated with no action, or limited action will have a negligible effect on the biology of the lobster resource since nearly the entire fishery is or will be bound under state regulations to the suite of Area 3 management measures adopted into the ISFMP. However, the preferred alternative will facilitate the effective management of the resource by providing a standard gauge size for all Federal lobster vessels that fish in or elect to fish in Area 3, including those not covered under state lobster regulations. The states and the Commission's Lobster Board, with input from public sector scientists and the Area 3 lobster industry, have indicated the need for these additional gauge increases to further conserve the offshore lobster fishery and ensure its sustainability. The Commission has recommended that the Federal government adopt these gauge increases into the Federal regulations to assist in this goal. By adopting these gauge increases in Area 3, NMFS will support the Commission's ISFMP in the conservation of the resource with compatible measures for fishery management.

The delay in the implementation of the escape vent increase will offer a more palatable option for a sector of the industry that has been relatively proactive in developing and promoting its own regulatory program: the epitome of area management. In the meantime, the gauge increases will afford protection to legal lobster that are not able to escape from the current vents. Finally, the preferred alternative would implement the Commission's adopted trap reductions and seizes the opportunity, on the prompting of industry, to address scientific concerns associated with fishing effort, to further ensure that latent and real-time effort are controlled to the maximum degree available under the current management scenario.

### **Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply**

The proposed action would have a potential effect on the 139 federally permitted vessels with an Area 3 trap allocation. The proposed action would also have a potential effect on federally permitted vessels that elected to fish lobster using non-trap gear of which there were 1,105 in fishing year 2006. Gross sales for any one of these vessels would not exceed the small business size standard for commercial fishing of \$4 million. Therefore, all 1,244 fishing businesses are considered small entities for purposes of the Regulatory Flexibility Act (RFA).

Since the proposed action would only change regulations for trap and non-trap vessels fishing in Area 3, only vessels that actually fished or intend to fish in Area 3 would be effected. Available data indicate that 87 of the 139 vessels with an Area 3 trap allocation and 265 non-trap vessels actually landed lobster while fishing Area 3 for a total of 352 small entities (about 30 percent of the total number of potentially effected permit holders) that have demonstrated recent participation in the Area 3 lobster fishery.

The ASMFC has lead responsibility for managing lobster and developing a regulatory framework for implementation by the individual member states and making recommendations for complementary action by the Federal government. Since nearly all permit holders must be licensed in a state and are bound by the most restrictive management measures no matter where they fish, Federal action will have added economic impact only in cases where the federal regulation would be more restrictive than any given state regulation. The proposed Federal action would either align Federal regulations with that of already existing state regulations or anticipates highly probable state actions to be taken in the future.

### **Economic Impacts of the Proposed Action**

#### *Minimum Size Increases*

The ISFMP calls for a scheduled increase of  $\frac{1}{32}$  inch (0.08 cm) from  $3\frac{3}{8}$  inches (8.57 cm) in Area 3 in 2004 to  $3\frac{1}{2}$  inches (8.89 cm) by July 2008. These scheduled gauge increases have already been implemented by all states except for New Jersey, Connecticut and the de minimis states. Currently, the minimum Federal gauge size in Area 3 is  $3\frac{3}{8}$  inches (8.57 cm). However, since the majority of lobster trap and non-trap vessels are licensed in states that have

already implemented the ASMFC recommended size increases for Area 3, only 21 of the participating federally permitted trap and non-trap vessels are currently able to retain lobster at the lower federal minimum gauge. The proposed action would raise the gauge to  $3\frac{15}{32}$ -inches (8.81 cm) in July 2007 and to  $3\frac{1}{2}$  inches (8.89 cm) in July 2008. This schedule would replicate what has already been implemented by most states and would effect the 21 participating Area 3 vessels that are currently licensed in states that have not implemented the recommended gauge size.

The economic impact on these vessels is uncertain but is expected to be low for the 6 effected trap vessels and even lower for the 15 effected non-trap vessels. That is, lobsters landed from Area 3 tend to be larger than lobsters landed elsewhere. For example, sea sampling data indicate that the minimum carapace length for 98 percent of non-trap lobster landings on observed trips was at least  $3\frac{1}{2}$  inches (8.89 cm) in both 2004 and 2005. Assuming the size distribution of the trap-gear catch is similar to that of non-trap gear the majority of lobster income by either trap or non-trap vessels would be unaffected by the increase in the Area 3 Federal gauge. However, non-trap vessel impacts are likely to be proportionally lower than that of the trap vessels because lobster comprises only a small percentage of total fishing income for non-trap vessels.

#### *Escape Vent Size Increase*

When the environmental assessment was conducted to evaluate the impacts of this proposed action, the Commission had not yet adopted Addendum XI and therefore, the preferred alternatives associated with the delay of the escape vent size increase and two additional 2.5 percent trap reductions were not yet incorporated into the ISFMP. However, the Commission just recently adopted these measures into the ISFMP in May 2007. Therefore, the proposed action would be consistent with the current ISFMP and would delay implementation of increase in vent size to  $2\frac{1}{16} \times 5\frac{3}{4}$  inches (5.24 cm x 14.61 cm) rectangular or  $2\frac{1}{16}$  inches (6.83 cm) circular until 2010 instead of 2008, as originally adopted by the Commission.

Delaying the escape vent size would have no effect on non-trap vessels but would provide some economic relief to any vessel that fished traps in Area 3. The larger escape vent size would allow any sub-legal and some legal sized lobsters to escape. Delaying the increase in escape vent size would retain all legal



sized lobsters which would provide some compensation for the change in the minimum gauge size since more legal size lobsters would be retained. Note that all vessels would still be required to bear the cost of replacing non-conforming escape vents but the two-year delay in implementation provide sufficient additional income to offset the cost of replacing escape vents. Adoption of this measure would also maintain consistency between the state escape vent size requirements for Area 3 as dictated by the ISFMP, and Federal regulations.

#### *Trap Reductions*

The preferred alternative would implement the Commission recommended reductions in individual trap allocations of 5 percent in July 2007 and in July 2008. In addition, the preferred alternative would also implement two additional reductions in individual allocations or 2.5 percent in 2009 and another 2.5 percent in 2010 recently approved by the Commission in May 2007. Since the majority of states have already implemented the scheduled Area 3 trap reductions for 2007 and 2008 Federal action would not impose any added economic costs on the majority of participating Area 3 trap vessels. Federal action would effect an estimated 13 trap vessels from New Jersey and the de minimis states that have not yet implemented the Area 3 trap reductions for 2007 and 2008.

Regardless of whether states or the Federal government implement trap reductions the economic impact on small entities is difficult to quantify. Given the number of potential adaptations to fishing strategies available to lobster trap businesses, the realized impact on landings and revenue is uncertain but is likely to be proportionally less than the reduction in traps. There may be differences in impact, however, among Area 3 participants that fish in other LCMAs if the total trap allocation falls below the number of traps they may be eligible to fish in those other areas. Specifically, due to the Federal definition of the most restrictive provision, any vessel whose Area 3 trap allocation falls below the number of traps that may be fished elsewhere would still be limited to the smaller of the number of eligible traps in any area. For example, a vessel that qualifies for 800 Area 3 traps and that designates both Area 1 and Area 3 would be able to fish a total of 800 traps in any combination in Area 1 and Area 3. In 2007, however, after the same vessel's Area 3 allocation would decline to 760 Area 3 traps, which would also mean that the number of traps that

could be fished in Area 1 would also be limited to 760 traps even though other Area 1 participants would be able to fish 800 traps. Historically, however, Area 3 had a trap cap of 1,800, which was 1,000 traps greater than the 800 trap caps set in the other LCMAs. Accordingly, for the majority of participants, would likely to continue to be so even with reductions. NMFS is presently analyzing its application of the most restrictive trap standard as part of a separate rulemaking.

#### **Economic Impacts of the Non-Preferred Alternatives to the Proposed (Preferred) Action**

##### *Non-Preferred Alternatives to the Proposed Minimum Gauge Size Increases*

No Action—Taking no action would not change the economic status of the overwhelming majority of participating Area 3 trap and non-trap vessels. No action would provide some economic relief to the 21 vessels identified above. This alternative was not selected because it would perpetuate an inconsistency between state and Federal regulations in Area 3 as well as creating inequities between the majority of Area 3 participants and the small number of vessels that might benefit from continuing present regulations. Furthermore, continued inconsistency would undermine the effectiveness of the ISFMP in promoting cooperative State-Federal management of the lobster fishery.

Implement Scheduled Size Increases Beginning in 2007—This alternative would maintain the original schedule of four consecutive gauge size increases beginning with a  $\frac{1}{32}$  inch (0.08 cm) increase from  $3\frac{3}{8}$  inches (8.57 cm) in July 2007 and ending at  $3\frac{1}{2}$  inches (8.89 cm) in 2010. As noted previously this alternative would provide some negligible relief to the 21 vessels that are not currently bound by state regulation. This alternative schedule of gauge increases would eventually resolve any inconsistencies between State-Federal regulations, but would not do so until two years later than the preferred alternative and what has already been implemented by most states effecting the majority of participating small entities. This alternative was not selected since the negligible economic benefit to a small minority of small entities would not outweigh the potential to undermine the intended objectives of the ISFMP to achieve consistency between State-Federal lobster fishery management.

##### *Non-Preferred Alternatives to the Escape Vent Size Increase in 2010*

No Action—Taking no action would leave the escape vent in Area 3 at its current size of  $2 \times 5\frac{3}{4}$  inches (5.08 cm x 14.61 cm) rectangular or  $2\frac{5}{8}$  inches (6.67 cm) circular. However, since the ISFMP required, prior to the recent approval of Addendum XI in May 2007, that all states implement the larger escape vents size by 2008, the majority of participating Area 3 trap vessels would be required to replace all escape vents with or without Federal action since the majority of states have already promulgated regulations in accordance with the ISFMP. In the absence of Federal action, a total of 16 vessels would be exempted from the 2008 vent size increases as they are currently licensed by states (Connecticut and New Jersey) that have not yet implemented the recommended change in escape vent size. This action would provide less economic relief across the entire Area 3 trap fishery as compared to the preferred alternative and would perpetuate inconsistency between State-Federal lobster fishery management. For these reasons, the no action alternative is not preferred.

Implement the Escape Vent Size Increase in 2008—The ISFMP had initially adopted 2008 as the implementation year of the escape vent size increase associated with this action. However, with the Commission's adoption of Addendum XI in May 2007, this measure is now part of the ISFMP. Therefore, Federal implementation of this measure would allow for consistency between the ISFMP and Federal regulations. Compared to the preferred alternative, this alternative would require all vessels to replace all escape vents two years earlier without the potential mitigating effects of the higher retention rates associated with a delay in the escape vent size.

##### *Non-Preferred Alternatives to the Area 3 Trap Reductions*

No Action—Taking no action would leave the present federally allowable Area 3 trap allocations unchanged. However, the Federal regulations at 50 CFR 697.3(c) require that Federal lobster vessels that designate more than one lobster management area, be limited to the lowest trap allocation of all the lobster management areas associated with the vessel's Federal permit and the lower of any differing state or federal allocations. Since the majority of states have already implemented the ISFMP required 5 percent trap reductions for 2007 and 2008 most participating Area 3 lobster trap vessels would be held to

the state mandated trap allocations even in the absence of Federal action. A small number of vessels (13) from states that have not yet implemented the Commission adopted trap reductions would not be effected under the no action alternative. Since the Commission adopted the LCMT 3 recommended trap reductions for implementation in 2009 and 2010, there would be no appreciable difference in economic impact between the preferred and the no action alternative, with the exception of the 13 vessels that would remain unaffected.

Implement Trap Reductions in Only 2007 and 2008—This alternative would limit the Area 3 trap reductions to 5 percent in 2007 and another 5 percent in 2008 as initially recommended by the Commission. However, the Commission has since adopted the additional 2.5 percent trap reduction in 2009 and again in 2010, consistent with the NMFS preferred alternative. The economic impacts of this alternative on small fishing entities would be equivalent to that of the preferred alternative in 2007 and 2008 and would be similar to that of taking no action. If the Commission had not adopted the Area 3 management team proposed trap reduction in 2009 and 2010, then this alternative would allow participating vessels to fish more traps as compared to the preferred alternative. Since the Commission did implement, in May 2007, the additional trap reductions for 2009 and 2010, a Federal delay would require a separate subsequent action to implement complementary Federal regulations; a process that has frequently resulted in delayed implementation of Commission proposed measures. In this case, there would be added administrative costs associated with taking Federal action but economic impact on small entities fishing traps in Area 3 would be similar to that of the preferred alternative.

#### List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: June 14, 2007.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is proposed to be amended as follows:

#### **PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

1. The authority citation for part 697 continues to read as follows:

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

2. In § 697.19, paragraph (b) is revised to read as follows:

#### **§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.**

\* \* \* \* \*

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Beginning September 1, 2003, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4 (a)(7)(vi) and the maximum trap limits identified in Table 1, Column 2 to this part, except as noted in paragraphs (c) and (e) of this section.

(2) Beginning November 1, 2007, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4 (a)(7)(vi) and the maximum trap limits identified in Table 1, Column 3, to this part, except as noted in paragraphs (c) and (e) of this section.

(3) Beginning July 1, 2008, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4 (a)(7)(vi) and the maximum trap limits identified in Table 1, Column 4, to this part, except as noted in paragraphs (c) and (e) of this section.

(4) Beginning July 1, 2009, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with,

deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4 (a)(7)(vi) and the maximum trap limits identified in Table 1, Column 5, to this part, except as noted in paragraphs (c) and (e) of this section.

(5) Beginning July 1, 2010, and beyond, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4 (a)(7)(vi) and the maximum trap limits identified in Table 1, Column 6, to this part, except as noted in paragraphs (c) and (e) of this section.

\* \* \* \* \*

3. In § 697.20, paragraphs (a)(3) through (a)(5) are revised and paragraph (a)(6) through (a)(9) are added to read as follows:

#### **§ 697.20 Size, harvesting and landing requirements.**

(a) \* \* \*

(3) The minimum carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3<sup>3</sup>/<sub>8</sub> inches (8.57 cm).

(4) The minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3<sup>3</sup>/<sub>8</sub> inches (8.57 cm).

(5) The minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3<sup>15</sup>/<sub>32</sub> inches (8.81 cm).

(6) The minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3<sup>15</sup>/<sub>32</sub> inches (8.81 cm).

(7) Effective July 1, 2008, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3<sup>1</sup>/<sub>2</sub> inches (8.89 cm).

(8) Effective July 1, 2008, the minimum carapace length for all American lobsters landed, harvested or

possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3½ inches (8.89 cm).

(9) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster this is smaller than the minimum size specified in paragraph (a) of this section.

\* \* \* \* \*

4. In § 697.21, paragraph (c) is revised to read as follows:

**§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.**

\* \* \* \* \*

(c) *Escape vents.* (1) All American lobster traps deployed or possessed in the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 1<sup>15</sup>/<sub>16</sub> inches (4.92 cm) by 5<sup>3</sup>/<sub>4</sub> inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2<sup>7</sup>/<sub>16</sub> inches (6.19 cm) in diameter.

(2) All American lobster traps deployed or possessed in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2 inches (5.08 cm) x 5<sup>3</sup>/<sub>4</sub> inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2<sup>5</sup>/<sub>8</sub> inches (6.67 cm) in diameter.

(3) Effective through June 30, 2010, all American lobster traps deployed or possessed in the EEZ Offshore Management Area 3, or deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish the EEZ Offshore Management Area 3, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of

the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2 inches (5.08 cm) 5<sup>3</sup>/<sub>4</sub> inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2<sup>5</sup>/<sub>8</sub> inches (6.67 cm) in diameter.

(4) Effective July 1, 2010, all American lobster traps deployed or possessed in the EEZ Offshore Management Area 3, or deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Offshore Management Area 3, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2<sup>1</sup>/<sub>16</sub> inches (5.24 cm) x 5<sup>3</sup>/<sub>4</sub> inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2<sup>1</sup>/<sub>16</sub> inches (6.82 cm) in diameter.

(5) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this final rule, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraph (c) of this section.

\* \* \* \* \*

5. In part 697, Table 1 to part 697 is revised to read as follows:

TABLE 1 TO PART 697—AREA 3 TRAP REDUCTION SCHEDULE

HISTORIC Trap Allocation	Year 2006 Trap Allocation	Year 1—5% Trap Reduction Effective November 1, 2007	Year 2—5% Trap Reduction Effective July 1, 2008	Year 3—2.5% Trap Reduction Effective July 1, 2009	Year 4—2.5% Trap Reduction Effective July 1, 2010
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
200	200	190	181	176	172
240	240	228	217	211	206
250	250	238	226	220	214
264	264	251	238	232	226
300	300	285	271	264	257
320	320	304	289	282	275
325	325	309	293	286	279
360	360	342	325	317	309
370	370	352	334	326	317
400	400	380	361	352	343
450	450	428	406	396	386
480	480	456	433	422	412
500	500	475	451	440	429
590	590	561	532	519	506
600	600	570	542	528	515
700	700	665	632	616	601
720	720	684	650	634	618
768	768	730	693	676	659
800	800	760	722	704	686
883	883	839	797	777	758
900	900	855	812	792	772

TABLE 1 TO PART 697—AREA 3 TRAP REDUCTION SCHEDULE—Continued

HISTORIC Trap Allocation	Year 2006 Trap Allocation	Year 1—5% Trap Reduction Effective November 1, 2007	Year 2—5% Trap Reduction Effective July 1, 2008	Year 3—2.5% Trap Reduction Effective July 1, 2009	Year 4—2.5% Trap Reduction Effective July 1, 2010
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
930	930	884	839	818	798
1000	1000	950	903	880	858
1004	1004	954	906	883	861
1020	1020	969	921	898	875
1100	1100	1045	993	968	944
1150	1150	1093	1038	1012	987
1170	1170	1112	1056	1030	1004
1200–1299	1200	1140	1083	1056	1030
1300–1399	1200	1140	1083	1056	1030
1400–1499	1200	1140	1083	1056	1030
1500–1599	1276	1212	1152	1123	1095
1600–1699	1352	1284	1220	1190	1160
1700–1799	1417	1346	1279	1247	1216
1800–1899	1482	1408	1338	1304	1271
1900–1999	1549	1472	1398	1363	1329
2000–2099	1616	1535	1458	1422	1386
2100–2199	1674	1590	1511	1473	1436
2200–2299	1732	1645	1563	1524	1486
2300–2399	1789	1700	1615	1574	1535
2400–2499	1845	1753	1665	1623	1583
2500–2599	1897	1802	1712	1669	1628
2600–2699	1949	1852	1759	1715	1672
2700–2799	2000	1900	1805	1760	1716
2800–2899	2050	1948	1850	1804	1759
2900–2999	2100	1995	1895	1848	1802
3000–3099	2150	2043	1940	1892	1845
3100–3199	2209	2099	1994	1944	1895
>3199	2267	2154	2046	1995	1945

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