

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

[Docket No. 070717357-7399-01]

RIN 0648-AV77

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 (ANPR).

SUMMARY: NMFS announces that it is considering and seeking public comment on the potential implementation of management measures in the Federal American lobster (*Homarus americanus*) fishery compatible with recommendations for Federal action as specified in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). These management measures may include: 100 percent mandatory dealer reporting requirements for Federal American lobster dealers; implementation of an American lobster maximum size limit (maximum carapace length restriction) in several Lobster Management Areas (LMA); and, revision to the definition of a V-notch for protection of egg-bearing female American lobsters in several LMAs in the Federal American lobster fishery. NMFS is considering implementation of these management measures based on ISFMP actions taken by the Commission in response to recommendations provided in the most recent peer-reviewed lobster stock assessment, completed by the Commission in December 2005.

DATES: Comments must be received by October 22, 2007.

ADDRESSES: Written comments should be sent to Harold Mears, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via e-mail to LobsterJuly07@noaa.gov, via fax (978) 281-9117 or via the Federal e-Rulemaking portal at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Robert Ross, Fishery Management Specialist, (978) 281-9234, fax (978) 281-9117, e-mail bob.ross@noaa.gov.

SUPPLEMENTARY INFORMATION: American lobsters are managed within the framework of the Commission. In 1999, NMFS transferred its Federal lobster fishery regulations from the New England Fishery Management Council (Council) to the Commission (64 FR 68228, dated December 6, 1999). The logic was straightforward, since 80 percent of the lobster fishery occurs in state waters, Federal action alone could no longer ensure that the Council process could prevent overfishing. The Commission is a deliberative body comprised of representatives both from the Atlantic coastal states and the Federal Government. 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 Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C. 5101 *et seq.*, directs the Federal Government to support the management efforts of the Commission. Additionally, to the extent the Federal Government seeks to regulate a Commission species, 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 Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). These Federal regulations are promulgated pursuant to the Atlantic Coastal Act and are codified at 50 CFR part 697.

The Commission set forth the foundation of its American Lobster ISFMP in Amendment 3 to the ISFMP (Amendment 3), approved in December 1997. However, 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 intent of Amendment 3 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 Board to meet the lobster egg production and effort reduction goals of the ISFMP. Eleven addenda to Amendment 3 have been approved since 1999, including Addendum X to Amendment 3 (Addendum X), approved in February 2007, and Addendum XI to Amendment 3 (Addendum XI), approved in May 2007. The measures proposed in this ANPR, and the recommendation by the Commission for the Federal Government to implement complementary regulations to those measures, are contained in Addenda X and XI.

The purpose of Addenda I through IX to Amendment 3 was summarized in a previous ANPR published in the **Federal Register** on December 18, 2006 (71 FR75705). The actions specified in this document are based on actions taken by the Commission as a result of information contained in the most recent peer-reviewed lobster stock assessment completed by the Commission in December 2005. The 2005 lobster stock assessment reported that the American lobster resource presents a mixed picture for the three stocks of American lobster. The assessment indicated that there is stable abundance for the offshore 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. In addition, echoing recommendations from the 2000 stock assessment, the 2005 assessment report stated that the scientific and statistical data available for lobster assessments are woefully inadequate for the management needs of the fishery, and that the primary limitation on the ability to manage lobster is limited data. One of the key recommendations of the 2005 assessment report was the need for implementation of a standardized mandatory reporting system for American lobster.

Based on the 2005 stock assessment recommendations, a standardized mandatory reporting system for American lobster was incorporated in Addendum X. Addendum X establishes a coast-wide reporting and data collection program that includes both dealer and harvester reporting requirements. Specifically, the addendum requires states to implement,

by January 1, 2008, 100 percent mandatory dealer reporting consistent with protocols under the Atlantic Coastal Cooperative Statistics Program (ACCSP) found at <http://www.accsp.org/cfstandards.htm>, and a reporting requirement for at least 10 percent of harvesters. Addendum X also includes recommendations for complementary Federal action. A review of 3,217 American lobster vessel permits indicates that an estimated 2,000 Federal lobster permit holders (62 percent of all Federal lobster fishing vessels) are subject to mandatory reporting requirements by virtue of regulations pertinent to other Federally managed fisheries. Thus, NMFS is already achieving the 10 percent target for the harvesting sector specified in Addendum X, and intends no further requirements for vessel reporting at this time. Conversely, review of reporting requirements for 505 Federally permitted lobster dealers indicates that of these, 356 Federal lobster dealers or approximately 70 percent, are currently obligated to report lobster sales by virtue of regulations for other Federally managed fisheries. Therefore, NMFS announces that it is considering and seeking public comment on implementation of Federal regulations that would extend full mandatory reporting coverage to the remaining 30 percent of Federal lobster dealer permit holders not already encompassed by existing Federal regulations.

Of particular concern in the 2005 assessment report is the SNE stock,

where depleted stock abundance and poor recruitment of juvenile lobsters, coupled with high fishing mortality rates, led the stock assessment and peer review panel to recommend additional harvest restrictions for SNE. The SNE stock extends from the waters south of Cape Cod, Massachusetts to the waters off North Carolina, and encompasses all of Lobster Conservation Management Areas (Area) 4, 5, and 6, and part of Area 2 and 3. According to the assessment, in SNE, 61–72 percent of the fishable stock is made up of new entrants into the legal fishery, and the 2005 stock assessment report noted concern that the fishery is too dependent on these new recruits. Based on recommendations in the 2005 assessment report, the Commission, in May 2007, approved Addendum XI that specifies additional lobster management measures for the SNE stock. Addendum XI also includes recommendations for complementary Federal action. Specific to this regulatory action, Addendum XI requires impacted states to implement a maximum legal carapace size limit of 5–1/4 inches (13.34 centimeters (cm)) in all SNE nearshore Areas (Area 2, 4, 5, and 6) by July 1, 2008, and implement a maximum legal carapace size limit of 7 inches (17.78 cm) in the offshore Area 3, and subsequently decreasing over a two year period to 6–3/4 inches (17.15 cm) by July 1, 2010. In addition to the maximum size limit, Addendum XI modifies the current V-notch definition in SNE. Current Federal regulations

prohibit possession of a female lobster bearing a V-shaped notch on its tail. The current Federal standard V-notch definition in SNE is defined to be any female lobster that bears a straight sided triangular cut, without setal hairs, a least 1/4 inch (0.64 cm) deep, and tapering to a point. This standard V-notch definition is likely to protect notched lobsters until they molt or shed their exoskeleton for the first time after notching. Addendum XI modifies the V-notch definition to be any female lobster that bears a notch or indentation at least 1/8th inch (0.32 cm) deep, with or without setal hairs. This modified V-notch definition may protect notched lobsters for up to two molt cycles, a period that may span three or more years. This Notice announces and seeks public comment on NMFS' intention to implement a lobster maximum legal carapace size limits and modified V-notch definition compatible with those specified in Addendum XI.

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: September 14, 2007.

Samuel D. Rauch III,

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

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