

co-equal priority). The service area of the replacement translator shall be limited to only a demonstrated loss area. The license for the replacement digital television translator will be associated with the full power station's main license and may not be separately assigned or transferred and will be renewed with the full-service station's main license.

(ii) Each original construction permit for the construction of a replacement digital television translator station shall specify a period of six months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of § 74.788(c) shall apply for stations seeking additional time to complete construction of their replacement digital television translator station.

(iii) A public notice will specify the date upon which interested parties may begin to file applications for replacement digital television translators. Such applications shall be filed on FCC Form 346, shall be subject to the appropriate application fee and shall be accepted on a first-come, first-serve basis. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 *et seq.* and § 73.5000 *et seq.* of this chapter.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 0812121592-81605-01]

RIN 0648-AX40

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

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

**ACTION:** Advance notice of proposed rulemaking; Consideration of a control date for the American lobster fishery.

**SUMMARY:** NMFS announces that it is considering, and is seeking public comment on a proposed rulemaking that would limit or restrict future access to

the American lobster (*Homarus americanus*) trap fishery in the Federal waters of Lobster Management Area 1 (Area 1), the inshore Gulf of Maine, based upon a permit holder's ability to document a history of fishing with lobster traps in Area 1 prior to the date of this notice. This notice should discourage American lobster non-trap vessels from entering the lobster trap fishery, and discourage American lobster trap vessels fishing in other lobster management areas from entering the Area 1 lobster trap fishery, based upon economic speculation while NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission), considers whether and how access and effort should be controlled. This document, therefore, gives the public two-fold notification: first, that interested participants should locate and preserve records that substantiate and verify their past participation in the American lobster trap fishery in Federal waters; and second, that new participants to the Area 1 lobster trap fishery may be restricted from fishing in Area 1 with traps in the future depending upon the limited access criteria developed if, in fact, NMFS proceeds forward in this rulemaking.

**DATES:** Comments must be received no later than 5 p.m. eastern standard time on or before February 2, 2009.

**ADDRESSES:** You may submit comments, identified by RIN number 0648-AX40, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.
- Fax: (978) 281-9117, Attn: Bob Ross.
- Mail: Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on Lobster Control Date."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel,

WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Bob Ross, Supervisory Fishery Management Specialist, 978-281-9234.

**SUPPLEMENTARY INFORMATION:** The American lobster fishery in the United States takes place from North Carolina to Maine. Over three-quarters of all American lobsters are landed in Maine, with most of the other landings occurring in or from Massachusetts, Rhode Island, Long Island Sound, and Georges Bank. The majority of American lobsters are taken in state waters, which extend from the coast to 3 nautical miles (5.56 kilometers) from shore. The offshore trap fishery, which occurs primarily in the offshore canyon areas at the edge of the continental shelf, has developed in the past 25 years and accounts for most of the remaining landings. The American lobster fishery is a year-round fishery in the United States, including the summer and fall months when the lobsters are molting. Approximately 96 percent of lobsters are taken in lobster traps. The rest are taken in trawls, gillnets, dredges, and by divers.

The Commission develops 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 Fisheries Cooperative Management Act (Atlantic Coastal Act), decides upon a management strategy 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 the Commission's American Lobster Interstate Fishery Management Plan (ISFMP) and overall fishery management efforts. At its October 2008 Annual Meeting, the Commission voted to initiate an addendum to the ISFMP that includes options for a limited entry program for Area 1. In the same motion, the Commission voted to request the Secretary of Commerce publish a control date in the **Federal Register** that may be used to limit future participation in the Area 1 Federal American lobster trap fishery to those Federal permit holders who could document trap fishing history prior to the control date. The control date is the publication date of this advance notice of proposed rulemaking in the **Federal Register**.

There has been a dramatic increase in fishing effort since the 1970s and effort

continues at historically high levels. NMFS estimates that each American lobster trap remains in the water about 30 percent longer than in 1970 before being hauled. Current fishing effort removes a large proportion of lobsters before they have had a chance to spawn even once, and the average size of lobsters landed continues to drop. The most recent peer-reviewed lobster stock assessment, completed 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.asmfmc.org](http://www.asmfmc.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 Southern New England (SNE) stock and in Statistical Area 514 (Massachusetts Bay and Stellwagen Bank) in the GOM stock. Of particular concern in the 2005 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 lobster fishing 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 assessment noted the female proportion of the GBK 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.

NMFS is also aware that recent constraints on participation in several traditional otter trawl fisheries, including the Mid-Atlantic summer flounder, scup, and black sea bass fisheries and the New England multispecies fisheries, and broader use of area closures may result in a shift in non-trap lobster fishing effort to the lobster trap fishery by vessels that have traditionally harvested lobsters by non-trap methods. Further, limited access programs in other lobster management areas have the potential to cause fishermen who do not qualify in that area to shift trap fishing operations to Area 1, the last remaining open access area. An unchecked increase in effort in the lobster trap fishery, as a result of a shift from non-trap to trap gear and/or as a result of an influx of fishing operations from other areas to Area 1, may jeopardize current efforts to achieve the objectives of the ISFMP and rebuild stocks.

For these reasons, NMFS, in consultation with the Commission, is considering proposed rulemaking to address whether and how to limit entry of vessels which have not fished with traps in Area 1 in the past from fishing in Area 1 with traps in the future, or which have not fished with traps in the past from fishing with traps in the future. The proposed rulemaking may include potential eligibility criteria that would prove trap fishing history or trap fishing history in Area 1 prior to the date of this notice. Such proof might include, but is not necessarily limited to documentation of fishing for lobster with traps, documentation of the purchase of lobster trap tags, and/or the election of Area 1 on their Federal

lobster vessel permit. Further, proof may or may not be required for multiple years preceding the date of this notice, for example, proof of Area 1 trap fishing history for the 2008, 2007 and/or 2006 fishing seasons.

Consideration of a control date does not commit the Commission or NMFS to any particular management regime or criteria for entry into the fishery. Fishermen would not be guaranteed future participation in the fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. NMFS, in consultation with the Commission, may choose to use a different control date, or to give variably weighted consideration to fishermen active in the fishery before and after the control date. NMFS subsequently may choose a different control date or may choose a management regime that does not make use of a control date. Other qualifying criteria, such as, but not limited to, documentation of landings and sales, may be applied for entry. NMFS may also choose to take no further action to control entry or access into the lobster management areas or address the shift in effort from non-trap to trap gear, in which case the control date may be rescinded. Any action will be taken pursuant to the requirements established under the Atlantic Coastal Act. This document, therefore, gives the public notification that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery in Federal waters.

**Authority:** 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Dated: December 24, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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