

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, a new paragraph (g) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(g) Klamath Mountains Province steelhead (*Oncorhynchus mykiss*).

[FR Doc. 95-6459 Filed 3-10-95; 4:47 pm]

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50 CFR Part 649

[Docket No. 950224059-5059-01; I.D. 011195C]

RIN 0648-AH36

American Lobster Fishery; Framework Adjustment 2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 2 to the American Lobster Fishery Management Plan (FMP). This framework adjustment would change the eligibility requirements for lobster limited access permits to address potentially unequal standards for lobster fishers who reside in different states.

DATES: Comments on the proposed rule must be received on or before March 30, 1995.

ADDRESSES: Comments on the proposed rule, Framework Adjustment 2, or supporting documents should be sent to Jon Rittgers, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Lobster Framework 2."

Copies of Amendment 5 to the FMP, including the regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and final supplemental environmental impact statement (FSEIS)

are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION:

Background

Currently, eligibility for a Federal lobster limited access permit can be established with a vessel's or a person's state permit history (59 FR 31938, June 21, 1994). Because the various states have not had uniform permitting systems, potentially unequal eligibility criteria were inadvertently created for lobster fishers who reside in different states.

To qualify for a limited access American lobster permit, which may be issued only to a vessel, the vessel or vessel owner must have been issued a Federal American lobster permit, or a federally endorsed state lobster permit, and must have landed American lobster prior to March 25, 1991. Because this rule would change the qualification criteria for obtaining a limited access American lobster permit for 1995, it would also change the dates by which vessel owners are required to obtain permits. In states with Federal endorsement programs, such as Maine, fishers who did not own a lobster vessel could use their state permit to qualify for a Federal limited access permit; however, in other states lacking a Federal lobster permit endorsement program, such as Rhode Island, fishers who did not own a lobster vessel and thus had no state permit could not qualify for a Federal limited access permit. For example, a person serving as a crew member in Maine could potentially qualify for a Federal limited access permit, whereas a person employed in the same job on a lobster boat licensed by Rhode Island could not be eligible. Such a result could violate the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, which prohibits, among other things, discrimination between residents of different states.

This proposed action would eliminate the potentially unequal eligibility criteria for lobster fishers residing or fishing in different states. In order to obtain a Federal limited access lobster permit, all permit applicants who base their eligibility on a federally endorsed state license would be required to demonstrate that they owned a boat and used it to land lobsters during the qualification period. These applicants would be required to show proof of

ownership of a fishing vessel and of having landed lobsters from that vessel prior to March 25, 1991.

Sections of the current regulations dealing with transferability of permit eligibility are written from the perspective of Federal permits issued to vessels. As a result, the regulations are not directly applicable to the transfer of eligibility based on federally endorsed state lobster permits that are issued to individuals. To be consistent with the transferability of eligibility associated with federally permitted vessels, this rule proposes regulatory language at § 649.4(b)(1)(i)(B)(2) and (b)(3)(ii) to clarify that eligibility based on a federally endorsed state lobster permit can be transferred with the sale of a vessel after March 25, 1991, if the intent to transfer such rights is verified by credible written evidence.

This adjustment is proposed through the framework process (§ 649.43) and is within the scope of analyses contained in Amendment 5 and the FSEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustment 2 (**see ADDRESSES**).

The New England Fishery Management Council (Council) followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by developing and analyzing the actions at two Council meetings, on September 21-22 and October 28-29, 1994. However, because this action was initiated at the first of these meetings without adequate notice to the public, the Council recommended that NMFS publish the measures contained in Framework Adjustment 2 as a proposed rule to ensure that the public is afforded sufficient prior notice and an opportunity for comment.

In accordance with the regulations, public comments on the framework adjustment were solicited by the Council during its September 21-22 and October 28-29, 1994, meetings. No comments were received on the proposed adjustment.

This rule also proposes several minor modifications to §§ 649.4(p) and (q) to ease the public's administrative burden and to conform the requirement to the Council's recommendation.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce has certified to the Chief

Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated in final, would not affect a substantial number of small entities. The proposed rule will affect only those fishers who base their application for a Federal limited access lobster permit on a federally endorsed state permit and who purchased a boat since the March 25, 1991, control date. The analysis concludes that no more than 13.6 percent of the total number of fishers meet both criteria. It is not possible to know how many, if any, of these fishers will actually apply for a permit. As a result, a Regulatory Flexibility Analysis was not prepared.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is proposed to be amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.4, the first sentence of paragraph (a)(1), the first sentence of paragraph (b) introductory text, and paragraphs (b)(1)(i), (b)(2)(i), (b)(3), (p), and (q) are revised; and paragraph (b)(2)(iii) is added to read as follows:

§ 649.4 Vessel permits.

(a) * * *

(1) Through April 30, 1995, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry onboard a valid permit required by or issued under this part. * * *

(b) * * * From May 1, 1995, through December 31, 1999, any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry onboard a valid Federal limited access American lobster permit. * * *

(1) * * *

(i) To be eligible for a limited access permit for 1995, a vessel or the permit applicant must meet one of the following criteria:

(A) The vessel was issued a Federal American lobster permit and landed American lobster while in possession of the lobster permit prior to March 25, 1991; or

(B) *Either.* (1) The permit applicant was issued a federally endorsed state American lobster permit, and landed American lobster prior to March 25, 1991, and owned a vessel that landed American lobster while in possession of the lobster permit prior to March 25, 1991; or

(2) The vessel was owned by a person who landed lobster prior to March 25, 1991, while in possession of a valid federally endorsed state American lobster permit, and the vessel was transferred to the current vessel owner in accordance with the exception to the presumption specified in paragraph (b)(3)(ii) of this section; or

(C) The permit applicant owned a vessel that was under written agreement for construction or for re-rigging for directed American lobster fishing as of March 25, 1991, and the vessel was issued a Federal American lobster permit, or the vessel applicant was issued a federally endorsed state American lobster permit, prior to March 25, 1992, and the vessel landed lobster while in possession of that permit; or

(D) The vessel is replacing a vessel that meets any of the criteria set forth in paragraphs (b)(1)(i)(A), (B), (C), or (D) of this section.

* * * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit after 1995, a vessel or permit applicant must have been issued either a limited access lobster permit or a confirmation of permit history for the preceding year, or a vessel must be assuming a valid limited access American lobster permit or permit history confirmation from the preceding year. If more than one applicant claims eligibility to apply for a limited access American lobster permit based on one fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

* * * * *

(iii) A limited access American lobster permit for 1996 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1996.

(3) *Change in ownership.* (i) The fishing and permit history of a vessel

that qualifies under paragraphs (b)(1)(i)(A) and (C) of this section is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(ii) The fishing and permit history of a vessel owner and a vessel that qualifies under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with such owner for any transfers of the vessel before and including March 25, 1991; and for any transfers of ownership of the vessel after March 25, 1991, the fishing and permit history necessary to qualify for a limited access lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with the last owner of the vessel as of or prior to March 25, 1991, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring the fishing and permit history of a vessel necessary to qualify for a limited access lobster permit under paragraph (b)(1)(i)(B) of this section to the transferee/buyer.

* * * * *

(p) *Limited access American lobster permit renewal.* To apply for a limited access American lobster permit in 1995, a completed application must be received by the Regional Director by December 31, 1995. Failure to renew a limited access American lobster permit or confirmation of permit history in any year bars the renewal of such in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit or confirmation of permit history is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit or confirmation of permit history may be re-issued or renewed based on that vessel's history, or to any vessel relying on that vessel's history.

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