

There are no recordkeeping or reporting requirements associated with this rule.

A copy of the IRFA is available from the Council (see ADDRESSES).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to Patricia A. Kurkul, the Regional Administrator (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 28, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.21, paragraph (e) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(e) *Distribution of annual Loligo squid commercial quota.* (1) Beginning January 1, 2001, a commercial quota will be allocated annually for *Loligo* squid into quarterly periods, based on the following percentages:

COMMERCIAL QUOTA	
Quarter	Percent
I January-March	33.23
II April-June	17.61
III July-September	17.30
IV October-December	31.86

(2) Beginning January 1, 2001, any overages of commercial quota landed from Quarter I will be subtracted from Quarter III and any overages of commercial quota landed from Quarter II will be subtracted from Quarter IV.

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3. In § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* NMFS shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that DAH will be attained for mackerel, NMFS will close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. NMFS will close the directed fishery in the EEZ for *Loligo* when 80 percent is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. The closure of the directed fishery will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section. NMFS will close the directed fishery in the EEZ for *Illex* or butterfish when 95 percent of the DAH has been harvested. The closure of the directed fishery will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 001120327-0327-01; I.D. 091800H]

RIN 0648-AO58

American Lobster Fishery

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to modify the management measures applicable to the American lobster fishery. This action would exempt black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits from the more restrictive gear requirements in the lobster regulations when fishing in Lobster Management Area (LMA) 5 if

they elect to be restricted to the non-trap lobster allowance while targeting sea bass in LMA 5. This regulation also clarifies that lobster trap regulations do not affect trap gear requirements for fishermen who do not possess a limited access American lobster permit. The intent of these regulations is to relieve restrictions on fishers that were unintended, without compromising lobster conservation goals.

DATES: Comments on this proposed rule must be received at the appropriate address (see ADDRESSES) no later than 5 p.m., eastern standard time, on December 26, 2000.

ADDRESSES: Send written comments on this proposed rule to, and obtain copies of supporting documents that also include a Draft Environmental Assessment/Regulatory Impact Review (DEA/RIR) from, the Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments will not be accepted if submitted via e-mail or Internet. Comments regarding the collection of information requirements contained in the proposed rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NMFS, Northeast Region, 978-281-9234.

SUPPLEMENTARY INFORMATION: NMFS proposes regulations to modify the Federal lobster conservation management measures issued as part of a Federal/state cooperative management effort under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Section 804(b) of ACFCMA authorizes NMFS to issue regulations governing fishing in the Exclusive Economic Zone (EEZ) that are compatible with the effective implementation of the Atlantic States Marine Fisheries Commission's American Lobster Interstate Fishery Management Plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 6, 1999, NMFS, in an effort to end overfishing of the American lobster resource, published a final rule (64 FR 68228) creating seven LMAs; imposing trap limits (800 traps/vessel in LMA 5), trap tagging requirements, and a maximum trap size; increasing the lobster escape vent size; restricting lobster trap fishers to their annually selected LMAs; and establishing a harvest limit for non-trap vessels. A Final Environmental Impact

Statement/Regulatory Impact Review was prepared for the action and was published on May 28, 1999 (64 FR 29025).

The lobster management program uses a gear conservation and effort limitation strategy to control lobster mortality. Fishing effort is limited by limiting the access of new vessels to the fishery and the number and size of traps that may be fished per vessel. To enforce these measures, lobster traps must be tagged, and the tags must be traceable to the owner of each vessel. A minimum lobster size combined with a corresponding escape vent opening in traps helps control mortality on juvenile lobsters. A maximum trap size was imposed to preclude possible increases in trap efficiency. These measures are applied to all traps designed for, and capable of, catching lobster. NMFS does not consider traps targeting other species and fished by non-lobster permit holders to be "designed for" or "capable of" catching lobsters. This proposed rule would remove the present definition of trap and add a definition for lobster trap to in essence exclude those traps fished by vessels not eligible for limited access lobster permits (non-eligible vessels). Non-eligible vessels are prohibited from retaining, landing, or possessing American lobster.

The black sea bass fishery is managed under the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass (FMP) developed by the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) under the Magnuson-Stevens Act. The black sea bass fishery was added to the FMP when Amendment 9 was approved and implemented in 1997 (61 FR 58461, November 15, 1996). Amendment 9 to the FMP established a limited access permit system for the entry of new vessels to the fishery.

Black sea bass (*Centropomus striata*) and American lobster (*Homarus americanus*) are often harvested using similarly configured fish traps or pots, although black sea bass traps are not usually baited. Black sea bass fishermen prefer to use as many as 1,500 traps/vessel but are now restricted by the lobster regulations under 50 CFR part 697 to 800 traps/vessel when fishing in LMA 5. Black sea bass fishermen also prefer to use traps with smaller escape vents than the lobster regulations allow. In the Mid-Atlantic where the two fisheries overlap considerably, the two management strategies come into conflict. Concerned about the impacts on commercial fishing enterprises from differing management systems, the Mid-Atlantic Council and the ASMFC requested that NMFS provide an

exemption from the lobster gear requirements to black sea bass fishers when fishing in LMA 5. LMA 5, which is located in the Mid-Atlantic area, has historically represented less than 2 percent of the total annual lobster landings. The Mid-Atlantic Council and ASMFC recommended further that the non-trap lobster allowance that applies to non-trap lobster fishers be applied to exempted black sea bass fishers. As a result, NMFS prepared a DEA/RIR and this proposed rule to address this management issue.

This action would allow dual permit status vessels—vessels having limited access eligibility in the black sea bass and lobster fisheries—to elect to participate in a program that exempts them from the lobster gear restrictions while targeting black sea bass in LMA 5 but which limits them to the non-trap lobster allowance. The non-trap allowance is a landing limit of 100 lobsters per day and up to 500 lobsters per trip for trips 5 days or longer.

To participate in the proposed exemption, a vessel would obtain an "Area 5 Trap Waiver" category permit through the normal permitting process. A vessel with the waiver would be limited to the non-trap allowance and may only land lobsters in greater numbers by formally canceling the "Area 5 Trap Waiver" permit and switching to the commercial lobster category, again through the normal Federal permitting process. Cancellations of the "Area 5 Trap Waiver" permit would be treated administratively as a lobster permit category change and would not result in the loss of limited access eligibility in either the lobster or the black sea bass fisheries. Vessels would be required to comply with the regulations that are appropriate for the target fishery and with the category of permits presently issued.

The creation of this new permit category addresses a common problem in managing overlapping or mixed fisheries. Ideally, conservation restrictions should be tailored as closely as possible to the target fishery; for instance, lobster fishers would be required to comply with the lobster gear restrictions and black sea bass fishers with sea bass restrictions. In mixed fisheries, tailoring becomes more difficult because the least restricted fishery can be used as a loophole for the other; in this case, black sea bass traps can become a loophole in the lobster conservation program. This proposed rule isolates and prohibits the problematic trips, namely, those that would target lobster with black sea bass traps. Only incidental amounts of

lobster could be retained from such trips.

NMFS has prepared a DEA/RIR that discusses the impacts of this proposed rule as well as the impacts of the reasonable alternatives. Because access to both the lobster and black sea bass fisheries is closed to new entrants, the universe of vessels that may be affected by this rule is estimated as the number of vessels from states bordering LMA 5 that are currently eligible to fish in both fisheries, or 204 vessels. Fewer vessels actually land both species in 1 year or have selected LMA 5 to fish in.

The impacts on the lobster resource, essential fish habitat, or protected resources from the exemption are expected to be neutral, while a positive economic benefit should accrue to some fishers. The exemption provides an opportunity for dual permit status vessel owners to maintain their limited access eligibility in the fisheries in which they have historically participated. Although there is an additional administrative burden imposed on NMFS and on those opting for this exemption, NMFS believes this is an important and necessary trade-off for enforceability and conservation effectiveness.

This alternative preserves the ability to fish in both fisheries in a single year under rules appropriate to the fisher's preferred target and without the loss of limited access status in either fishery. Detection of violations is simplified through the permit mechanism because an agent would need only to compare the observed landings with the rules associated with the permit.

Environmental benefits to marine habitat, mammals, and other protected species are generally considered to increase as the amount of gear in the water decreases. A change in the number of traps deployed as a result of this or of any alternative would depend on whether dual status vessels previously used separate traps for the lobster and black sea bass fisheries and on the individual decisions made by the affected fishers in reaction to the measures imposed. If a lobster/black sea bass vessel historically fished a separate set of traps for each fishery, the preferred alternative would potentially restore this dual ability, but would not allow simultaneous fishing of both types of traps. While data is not available on the number of dual status vessels fishing separate traps for each fishery, environmental impacts are expected to be neutral.

Classification

This proposed rule is published under the authority of the ACFCMA.

Paragraphs (A) and (B) of section 804(b)(1) of the ACFCMA authorize the Secretary of Commerce (Secretary) to issue regulations in the EEZ that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. This authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has preliminarily determined that these actions are consistent with the national standards of the Magnuson-Stevens Act. The AA, before making the final determinations, will take into account the data, views, and comments received during the comment period.

An updated Biological Opinion under section 7 of the Endangered Species Act (ESA) was issued for the American Lobster fishery on December 17, 1998. A formal consultation concluded that the continued operation of the American lobster fishery operating under new measures implemented to reduce entanglements, "may affect but is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle and is not likely to destroy or adversely modify critical habitat that has been designated for the northern right whale."

As a result of entanglement events in 1999, including one mortality of a right whale, NMFS is currently revising the Atlantic Large Whale Take Reduction Plan (ALWTRP) to determine what changes or additional measures are necessary to meet the plan objectives. NMFS has re-initiated consultation on the lobster fishery to determine whether the revised ALWTRP will be an acceptable reasonable and prudent alternative to remove the likelihood of jeopardy to right whales caused by the lobster fishery.

As a result of the proposed measures, traps targeting black sea bass in the waters of LMA 5 could potentially increase to levels in place prior to the imposition of lobster trap limits. However, there have been no observed takes of ESA or Marine Mammal Protection Act listed species in the black sea bass trap fishery, and these measures are expected to affect only a small number of fishers. Therefore, this proposal would not change the basis of the Biological Opinion made on December 17, 1998, or affect any ongoing consultation for this fishery under section 7 of the ESA.

The proposed measures for a LMA 5 Black Sea Bass Trap Waiver fall within the scope of consultations on previous

American lobster and Black Sea Bass FMP actions. Given the number of vessels affected by these proposed measures, the limited presence of protected species most susceptible to trap gear (i.e., right whales, humpback whales) in the area, and the application of ALWTRP measures to black sea bass trap fishers, none of the proposed measures is expected to result in the addition of adverse impacts that would change the basis for the determinations in those consultations. Should activities under this action change or new information become available that changes the basis for this determination, consultation will be re-initiated.

NMFS has prepared a DEA/RIR, supplemented by the preamble to this proposed rule that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). All participants in the lobster and black sea bass fisheries are considered to be small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is based on the analysis in the DEA/RIR, which takes into account the applicable criteria established by the agency for determining whether economic impacts on small entities are "significant" under the Regulatory Flexibility Act. The factual basis for the certification is as follows:

NMFS found no significant impact on small entities because the proposed rule would relieve a restriction on black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits and are thus subject to the more restrictive gear requirements in the lobster regulations. The intent of these regulations is to relieve unintended restrictions without compromising lobster conservation goals. Participating vessels in the LMA 5 trap waiver program would be exempt from the 800 lobster traps per vessel limit and the trap tagging requirements, the maximum trap size requirement, and the increased lobster escape vent size requirement. Because of not being subject to the smaller vent size requirement, they would be able to harvest black sea bass and because of not being subject to the 800 traps/vessel limitation some may even catch a greater number of lobsters. Participating vessels would be allowed to land the non-trap allowance of lobster (100 lobsters per day and up to 500 lobsters

per trip for trips of over 5 days). In addition, to the extent that a black sea bass vessel is relieved from the lobster gear restrictions, compliance costs reductions of up to \$1180 per inshore vessel may be experienced. Eligible vessels will not have to incur the costs of converting black sea bass traps to conform to the lobster regulations, will not be forced to use less efficient lobster gear when targeting black sea bass, and will have greater flexibility to fish under regulations and possession limits appropriate to the target fishery. Eligible vessels will also not be forced to incur the cost of switching from trap gear to towed gear. While these savings are not considered substantial in terms of their proportion to overall operating costs per inshore vessel, each of these considerations will enable participating vessels to achieve higher levels of gross revenue. The prospects for higher gross revenue resulting from this regulatory action, as well as the ability to maintain and possibly improve the relative competitive position for each affected business, will result in a net improvement in distributive impacts of regulatory action.

The preferred alternative would also allow dual permit holders to retain their dual limited access status and to alternately fish in the black sea bass and lobster fisheries under appropriate regulations for each of those species. The need to permanently cancel access to one or the other limited access fisheries to avoid a conflicting regulatory regime would be eliminated, allowing fishers flexibility to adjust to changing economic conditions in one or the other fishery.

As a result, an initial regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. The following are the proposed new collection-of-information requirements and their respective estimated response times that have been submitted to OMB for approval:

1. Initiate a permit category change and select the LMA 5 Trap Waiver Permit category (15 minutes);
2. Return a suspended limited access lobster trap permit to NMFS (2 minutes); and

3. Initiate cancellation of a LMA 5 Trap Waiver Permit and re-activate a suspended limited access lobster trap permit (15 minutes).

The following collection-of-information requirements are being restated and have already been approved by OMB as shown: vessel permit applications approved under OMB control number 0648-0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications, and a lobster trap tag requirement approved under OMB control number 0648-0351 with a response time of 1 minute per tag.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including information through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the Office of Information and Regulatory Affairs (see ADDRESSES).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: November 28, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR 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.*

Subpart A—General Provisions

2. In § 697.2, the definition of “Trap” is removed and a definition for “Lobster trap” is added to read as follows:

§ 697.2 Definitions.

* * * * *

Lobster trap means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters. Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), and fishing gear fished by a vessel not issued a limited access lobster permit under § 697.4(a), are gear deemed not to be lobster traps for the purpose of this part, and are not subject to the provisions of this part.

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3. In § 697.4, paragraph (d)(1) is revised and paragraph (p) is added to read as follows:

§ 697.4 Vessel permits and trap tags.

* * * * *

(d) * * * (1) Beginning fishing year 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member, unless exempt under § 697.26.

* * * * *

(p) *Permit category change.* A vessel permit category change may be issued by the Regional Administrator when requested in writing by the owner or by an authorized representative of a vessel meeting the eligibility requirements under § 697.26(a).

4. In § 697.7, paragraphs (c)(1)(vii) through (x) are revised to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(vii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19 unless exempted pursuant to § 697.26.

(viii) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear that does not satisfy the requirements on gear identification and marking, escape vents, ghost panel and maximum trap size specified in § 697.21, unless such gear has been rendered unfishable, or unless exempted pursuant to § 697.26.

(ix) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not tagged in accordance with the requirements in § 697.19, unless such gear has been rendered unfishable, or unless exempted pursuant to § 697.26.

(x) Fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer, unless exempted pursuant to § 697.26.

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Subpart B—Management Measures

5. In § 697.19, paragraph (e) is added to read as follows:

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

* * * * *

(e) *Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.26(a) is exempt from the provisions of this section.

6. In § 697.21, paragraph (g) is added to read as follows:

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

* * * * *

(g) *Exemption.* Any vessel issued a permit under § 697.26(a) is exempt from the provisions of this section.

7. A new § 697.26 is added to subpart B to read as follows:

§ 697.26 Lobster Management Area 5 Trap Waiver.

(a) *Eligibility.* Vessels eligible for limited access lobster permits under § 697.4(a)(1) and limited access black sea bass permits under § 648.4(a)(7)(i) of this title may request an Area 5 Trap Waiver Permit, under the procedures described in § 697.4.

(b) *Restrictions.* A vessel issued an Area 5 Trap Waiver permit under this section may engage in trap fishing for black sea bass in Lobster Management Area 5 and is exempt from the provisions of § 697.19 and § 697.21 if such fishing is conducted in accordance with all other provisions of this section except § 697.19 and § 697.21 and all other Federal and state laws and regulations applicable to lobster and black sea bass fishing.

(1) A vessel issued a permit under this section may retain, land and sell an incidental allowance of lobster equal to the non-trap harvest restrictions specified in § 697.17(a).

(2) A vessel issued a permit under this section may not possess on board or deploy bait or baited traps.

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