

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****49 CFR Part 1111**

[STB Ex Parte No. 586]

**Arbitration—Various Matters Relating to Its Use as an Effective Means of Resolving Disputes That Are Subject to the Board's Jurisdiction****AGENCY:** Surface Transportation Board, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board is instituting this proceeding to address various matters relating to arbitration of disputes in lieu of Board adjudication. The Board is proposing to: Update the Board's files regarding qualified arbitrators that are available to handle the types of disputes that could be brought to arbitration under the Board's existing rules at 49 CFR 1108; establish a requirement that a formal complaint include a statement that the complainant has considered arbitration but either decided against it or could not obtain the agreement of the other parties to the dispute; and solicit public comments, in order to assist Congress, by providing a record on whether binding arbitration should be legislatively prescribed for small rate disputes.

**DATES:** An original and 10 copies of written comments are due by November 23, 2001, and an original and 10 copies of replies are due December 24, 2001. In addition, parties must submit to the Board, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, Word Perfect 9.0 format) an electronic copy of their comments, including any graphics. The diskettes shall be clearly labeled with the filer's name and the docket number, STB Ex Parte No. 586. Any party may seek a waiver from the electronic submission requirements.<sup>1</sup>

Additionally, all interested qualified persons (those experienced in rail transportation or economic issues similar to those arising before the Board) who wish to be placed on a roster of arbitrators available to arbitrate disputes pursuant to 49 CFR 1108 (including those who previously submitted their names and qualifications in 1997, if they remain available) should submit (or, as relevant, resubmit) an original and 3 copies of their names and qualifications by November 8, 2001.

**ADDRESSES:** All pleadings, referring to STB Ex Parte No. 586, must be filed

with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. Copies of the written comments and replies will be available from the Board's contractor, Dā-2-Dā Legal, 1925 K Street, NW., Room 405, Washington, DC 20423-0001, phone (202) 293-7776. The comments and replies will also be available for viewing and self-copying in the Board's Microfilm unit, Room 755, and posted on the Board's Web site ([www.stb.dot.gov](http://www.stb.dot.gov)).

**FOR FURTHER INFORMATION CONTACT:**  
Joseph H. Dettmar, (202) 565-1600.  
(TDD for the hearing impaired: 1-800-877-8339).

**SUPPLEMENTARY INFORMATION:**  
Additional information is contained in the Board's decision. To purchase a copy of the decision, write to, call, or pick up in person from Dā-2-Dā Legal. The decision is also posted on the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

**List of Subjects in 49 CFR Part 1111**

Administrative practice and procedure.

**Authority:** 49 U.S.C. 721(a).

Decided: September 18, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

**Vernon A. Williams,**  
*Secretary*

For the reasons set forth in the preamble, title 49, chapter X, part 1111 of the Code of Federal Regulations, is proposed to be amended as follows:

**PART 1111—[AMENDED]**

1. The authority citation for 1111 continues to read as follows: 49 U.S.C. 721, 10704, and 11701.

2. In § 1111.1(a), paragraph (11) is added to read as follows:

**§ 1111.1 Content of formal complaints; joinder.**

\* \* \* \* \*

(a) \* \* \*

(11) For matters for which voluntary, binding arbitration is available pursuant to 49 CFR part 1108, the complaint shall state that arbitration was considered, but rejected, as a means of resolving the dispute.

\* \* \* \* \*

<sup>1</sup> Documents transmitted by facsimile (FAX) or electronic mail (e-mail) will not be accepted.

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

[I.D. 091701B]

**American Lobster; Intent To Prepare an Environmental Impact Statement**

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

**ACTION:** Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

**SUMMARY:** NMFS announces its intent to prepare an EIS to assess the impact on the human environment of potential management measures for the American lobster fishery in the U.S. Exclusive Economic Zone (EEZ). This NOI requests public input in the form of written comments regarding issues that NMFS should address in the EIS relative to Addendum II to Amendment 3 of the Interstate Fishery Management Plan for American lobster (ISFMP).

**DATES:** Written comments on the intent to prepare the EIS must be received no later than 5 p.m. Eastern Standard Time on or before October 24, 2001.

**ADDRESSES:** Written Comments should be sent to Harold C. Mears, Director, State, Federal, and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via fax to (978) 281-9117. Comments submitted via e-mail or Internet will not be accepted.

**FOR FURTHER INFORMATION CONTACT:**  
Peter Burns, (978) 281-9144, fax (978) 281-9117, e-mail [peter.burns@noaagov](mailto:peter.burns@noaagov).

**SUPPLEMENTARY INFORMATION:** The fishery for American lobster takes place from North Carolina to Maine. More than 50 percent of American lobsters harvested are landed in Maine, with the balance landed mostly in or from Massachusetts, Rhode Island, Long Island Sound, and Georges Bank. Over 80 percent of the lobster harvest occurs in state waters, which extend from the coast to 3 nautical miles (5.56 km) from shore. The lobster fishery occurs year-round in the United States, including the summer and fall months when the lobsters are molting. Approximately 97 percent of lobsters are taken in lobster traps. The rest are taken in trawls, gillnets, dredges, and by divers.

Prior to December 1999, the American lobster resource was managed in state waters by the Atlantic States Marine

Fisheries Commission (ASMFC), and in Federal waters by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Acknowledging that approximately 80 percent of the American lobster harvest occurs in state waters, and in an effort to establish a more effective lobster management regime by enhancing interjurisdictional cooperation, NMFS issued a final rule in December 1999 (64 FR 68228) for the American lobster fishery. This action transferred authority for the management of the lobster resource in the EEZ from the Magnuson-Stevens Act to the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Consequently, NMFS has the authority under the ACFCMA to implement regulations in Federal waters that are compatible with the effective implementation of the ISFMP and consistent with the national standards of the Magnuson-Stevens Act. Such Federal regulations are promulgated pursuant to ACFCMA at 50 CFR part 697.

Amendment 3 of the ISFMP was approved by the ASMFC in December 1997 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. Following the May 2000 release of an updated peer-reviewed lobster stock assessment (ASMFC Stock Assessment Peer Review Report No. 00-01), which revised lobster egg production estimates and confirmed that overfishing of lobster stocks is occurring throughout the species range, the ASMFC developed Addendum II to Amendment 3 for implementing additional measures needed to rebuild American lobster stocks. Addendum II, approved in February 2001, establishes a revised egg production schedule to restore egg production in each lobster conservation management area (LCMA) to greater than the overfishing definition by the end of 2008. Measures under the addendum to help achieve this goal include a series of minimum gauge size increases and an increase in the minimum escape vent size of lobster trap gear fished in state and Federal waters of LCMA 2 (inshore Southern New England), LCMA 3 (offshore waters), LCMA 4 (inshore Northern Mid-Atlantic), LCMA 5 (inshore Southern Mid-Atlantic), and the Outer Cape Management Area, but not of LCMA 1 (Gulf of Maine) and LCMA 6 (Long Island Sound). The addendum

also calls for a revised timeline for LCMA 3 lobster trap reductions, previously approved by the ASMFC under Addendum I. By approving Addendum II, the States have agreed to implement the first annual LCMA-specific gauge increases by December 31, 2001, and to implement the escape vent increase by 2003. In a letter dated February 13, 2001, the ASMFC recommended that NMFS implement complementary Federal measures for Federal waters of LCMA 2, 4, 5, and the Outer Cape, as well as of LCMA 3 (comprising entirely Federal waters).

Specifically, the minimum allowable harvest size of American lobster in state waters of LCMA 2, 4, 5 and the Outer Cape is scheduled to increase from 3 1/4 inches (in) (8.26 cm) to 3 9/32 in (8.33 cm) in 2001, and to be increasing 1/32 in (0.08 cm) annually until 2004 to an ultimate minimum size of 3 3/8 in (8.57 cm). The ASMFC recommends that the gauge increases in Federal waters of LCMA 2, 4, 5, and the Outer Cape, as well as of LCMA 3, follow this same schedule. If the egg production targets of the ISFMP have not been reached by 2004, ASMFC further recommends additional annual increases in LCMA 3 of 1/32 in (0.08 cm), until 2008, to an ultimate minimum size of 3 1/2 in (8.89 cm). The current minimum allowable harvest size for American lobster in all Federal waters is 3 1/4 in (8.26 cm).

Under Addendum II, states will require all lobster traps to have at least one rectangular escape vent measuring 2 in (5.08 cm) by 5 3/4 in (14.61 cm) per trap, or at least two circular escape vents per trap, measuring 2 1/2 in (6.35 cm) in diameter. The ASMFC recommends that Federal regulations implement these new lobster trap escape vent size requirements in Federal waters. At the current time, Federal regulations require that all lobster trap gear have a rectangular portal with an unobstructed opening not less than 1 15/16 in (4.92 cm) by 5 3/4 in (14.61 cm); or two circular portals with unobstructed openings not less than 2 7/16 in (6.19 cm) in diameter.

Also, Addendum II recommends that the lobster trap reduction schedule previously adopted by the ASMFC for LCMA 3 under Addendum I of Amendment 3 to the ISFMP be updated to account for the elapsed time between the two addenda. The updated LCMA 3 trap reduction schedule requires that each LCMA 3 trap allocation of greater than 1,200 lobster traps be reduced on a sliding scale basis over 4 years, not to fall below 1,200 lobster traps. LCMA 3 allocations of less than 1,200 lobster traps would remain at their initial qualifying level and not increase from

that baseline number. No allocation would exceed 2,656 lobster traps during the first year of implementation. At the end of the fourth year, the maximum number of lobster traps allowed for any vessel would be 2,267. Under current Federal regulations, lobster trap fishing effort in LCMA 3 is restricted to a fixed maximum limit of 1,800 lobster traps per vessel. Implementation of the updated lobster trap reduction schedule for LCMA 3 is contingent upon Federal rulemaking procedures currently underway to address historical participation in the lobster trap fishery as recommended by the ASMFC in Addendum I.

Addendum II, furthermore, recommends that NMFS require LCMA 3 lobstermen to maintain vessel logs to record lobster harvest. Current Federal regulations do not require vessel logs. Another component of the addendum includes a review of management measures in all LCMA, by June 2001, to determine whether other measures are needed to achieve ISFMP stock rebuilding objectives. Any adjustments would be adopted by ASMFC as a separate addendum by January 2002, at which time ASMFC may recommend further changes to Federal regulations.

NMFS published an advance notice of proposed rulemaking (ANPR) in the Federal Register on May 24, 2001, (66 FR 28727) to seek public comment on whether NMFS, under the ACFCMA, should implement Addendum II's revised egg production schedule in all EEZ areas throughout the range of the lobster resource and implement the associated management measures (gauge increases, modifications to lobster trap gear requirements and LCMA 3 lobster trap reduction schedule, and vessel log reporting requirement) in the Federal waters of the applicable LCMA.

A total of 16 comments were received on or before the deadline in response to the ANPR, submitted by 15 individual lobster trap fishermen and 1 representative of a lobster fishermen's organization. Fifteen comments were received in favor of the recommended minimum gauge and escape vent size increases, one of which favored Area 3 gauge increases only up to a limit of 3 3/8". One commenter was opposed to any minimum gauge or escape vent size increases. Eleven commented that they support the implementation of an accelerated lobster trap reduction schedule for Area 3, but three fishermen supported the current 1,800 trap cap in Area 3, while still allowing only vessels that qualify under a historical participation effort reduction program to participate in the Area 3 trap fishery. Several of the comments emphasized

that the implementation of the Area 3 lobster trap reduction schedule is necessary in order to benefit the lobster resource, minimize gear conflicts, and decrease the chance of interactions between lobster gear and marine mammals. Fourteen of the comments received support the implementation of a mandatory logbook requirement in Area 3. Federal lobster permit holders will be affected by actions resulting

from the subsequent EIS if regulations that restrict further the minimum legal size of lobster, implement a revised lobster trap reduction schedule for LCMA 3, increase the escape vent size, and require logbooks are promulgated. Accordingly, NMFS requests public input on these issues to assist in conducting a comprehensive assessment of the impacts of these and other

associated measures to the human and natural environment in the EIS.

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

Dated: September 18, 2001.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 01-23793 Filed 9-21-01; 8:45 am]

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