DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 030502B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Atlantic Coastal Fisheries Cooperative Management; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the American lobster (lobster) fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue EFPs that would allow up to 100 current federally permitted lobster and/or Maine lobster/crab license holders to conduct fishing operations otherwise restricted by the regulations governing the lobster fishery. EFPs would allow federally permitted and/or state-only lobster/crab licensed vessels to fish modified lobster traps to target Jonah crabs to collect important fishery and biological data on the sustainability and practicality of a directed Jonah crab fishery in Exclusive Economic Zone (EEZ) Nearshore Management Area 1 (ENMA1).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 10, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Copies of the proposal and the draft Environmental Assessment are available from the Northeast Regional Office at the address stated above.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Maine Division of Marine Resources (MEDMR) submitted an original application on December 6, 2000, for EFPs to conduct an experimental fishery for Jonah crab in Federal waters of the EEZ. Subsequent amendments to this application were dated April 30, 2001; May 29, 2001; July 9, 2001; and February 13, 2002. Revisions to the original application included: (1) Scaling back the fishery from unlimited participation to 100 participants; (2) an Environmental Assessment was prepared to describe the impacts attributable to the experimental fishery beyond those analyzed under the Draft Final Environmental Impact Statement prepared for the lobster fishery regulations under ACFCMA; (3) addition/removal of gear restrictions to comply with Atlantic Large Whale Take Reduction Plan (ALWTRP) requirements; (4) addition of socioeconomic data to the logbook; (5) addition of a one-time demographic and ethnographic profile survey and fixed-cost survey; (6) reduced minimum soak times to 10 days from 2 weeks and then later changed soak time to a maximum of 2 weeks (operational soak times of less than 1 week); (7) added a requirement that participants pass Level 1 training in identification and disentanglement of whales and sea turtles; (8) clarified that both Jonah crab buoys and Jonah crab traps would be clearly marked as ''CRAB''; (9) requested that state-only licensed vessels be allowed to participate in the Federal portion of ENMA1; and (10) specified that the 40 percent ''exploratory'' (i.e., not yet field tested for targeting Jonah crabs) traps would be of a top-entry design instead of the previous proposal to have the design be at the discretion of the participant. In addition, a January 30, 2002, memorandum clarified that the submission dated December 5, 2001, will be considered a Memorandum of Understanding concerning the Reasonable and Prudent Alternatives outlined in the draft Biological Opinion for the Jonah crab experimental fishery.

The Jonah crab, *Cancer borealis*, is currently an unregulated species in the EEZ and little is known about its biology, distribution, and relative abundance. MEDMR believes it is important to obtain a better understanding of the Jonah crab resource and the feasibility of developing a potential sustainable fishery. Due to a recent increase in Jonah crab abundance and market demand, it may be profitable for lobster fishermen to target Jonah crabs with modified lobster traps during times of low lobster landings (generally in the spring).

Under current State of Maine lobster management (Atlantic States Marine Fisheries Commission (ASMFC) Amendment 3), all traps (defined as structures or other devices, other than nets, that are placed, or intended to be placed, on the ocean bottom) that are designed for or are capable of catching lobsters must contain a lobster trap tag unless exempted. With a limit of 800 trap tags (and in some cases fewer), fishermen who are interested in helping explore and develop the Jonah crab fishery in the EEZ cannot do so unless they receive the necessary exemptions from the Federal lobster regulations at 50 CFR 697.19. The EFPs would facilitate the collection of data on modified lobster trap designs (side-entry and top-entry) to establish acceptable bycatch thresholds of lobsters and allow for the development of a species-specific Jonah crab trap, which would be exempted from the lobster regulations. In addition, the issuance of EFPs for the testing of modified lobster traps under commercial conditions could: (1) Contribute to the development of year-round Jonah crab markets; (2) provide additional economic opportunities for lobster and Jonah crab fishermen who are currently being held to a maximum trap limit; and (3) provide important biological and demographic data on the Jonah crab resource, thus contributing to baseline information on the Jonah crab life cycle and population structure. The overall goal of the experiment is to develop a permanent Jonah crab fishery that could someday ease pressure and decrease reliance on the harvesting of lobsters by allowing fishermen to diversify fleet options through their pursuit of new markets.

The experiment would expand on pilot studies in nearshore and offshore waters (within 3 nautical miles from shore) of the Gulf of Maine, which were conducted in spring and summer 2000. These pilot studies tested various gear modifications in areas of both high and low seasonal lobster abundance. The

results of this preliminary research suggested that a modified side-entry trap may be the best design for targeting Jonah crabs with negligible lobster bycatch.

The proposed experiment would be conducted in ENMA1, defined at 50 CFR 697.18(a), for 1 year from the date of EFP issuance, and would be carried out according to the specifications detailed below. The experimental area would be concentrated along the Maine coast between the western and eastern boundaries of the ENMA1. The results of the NMFS trawl survey suggest that Jonah crabs are most abundant at depths of 60-200 m, which occur about 3 to 20 nautical miles offshore.

While at least 60 percent of the traps used in the experiment would have the preferred modified side-entry trap design, the remaining 40 percent of experimental traps could incorporate a top-entry design that has proven effective in decreasing lobster bycatch in State crab fisheries. The following side-entry trap dimensions were developed through preliminary research and modeling and are in compliance with current lobster trap requirements: (1) Side-entry hoops not to exceed 2.5 inches (6.35 cm) in height; (2) a minimum of two, 3.25–inch (8.26–cm) circular escape vents in the parlor and kitchen of the trap; and (3) a minimum of one standard 1.94–inch (4.93–cm) x 5.75–inch (14.61–cm) rectangular escape vent in the parlor of the trap. Although preliminary testing of side-entry traps was conducted with escape vents of 3.0 inches (7.62 cm) in diameter, a projected escape pattern model based on Jonah crab carapace length and width revealed that the 3.25–inch (8.26–cm) escape vent would be most efficient at retaining legal crabs and excluding lobsters. The top-entry ''exploratory'' traps would be required to have a minimum circular entrance-opening diameter of 3.6–inches (9.14–cm), as well as the same circular and rectangular escape vent requirements outlined above for modified side-entry traps.

In response to MEDMR's July 30, 2001, request that NMFS initiate an ESA section 7 consultation on this fishery, a draft Biological Opinion on the Jonah crab fishery concluded that the proposed EFP activities, described in the original application and all subsequent amendments, are likely to jeopardize the continued existence of the endangered western North Atlantic right whale. Therefore, the proposed Reasonable and Prudent Alternative (RPA) is designed to avoid the likelihood that the Jonah crab experimental fishery will jeopardize the continued existence of the western North Atlantic right whale. The proposed measure is intended to remove the potential for entanglement of western North Atlantic right whales in Jonah crab trap gear during the period when the whales are most likely to occur in the experimental fishing area. The proposed RPA would limit Jonah crab experimental fishery participants to no more than their current lobster trap allocation (800 traps or fewer), unless the fisher uses either neutrally buoyant or sinking groundline for any traps in excess of his/her lobster trap allocation, during those times that western North Atlantic right whales are expected to be in the experimental fishing area (June 1 through October 31).

Vertical lines (e.g., buoy lines) and horizontal lines (e.g., lobster pot trawl groundlines) in the water column have been shown to adversely affect Endangered Species Act (ESA)-listed marine mammals and sea turtles, and precautions must be taken to prevent gear entanglements with these species. It is generally believed that floating line poses more of an entanglement risk to sea turtles and whales than sinking or neutrally buoyant line because it is loosely suspended in the water column, making it more likely to be encountered by a whale or sea turtle swimming through the area. Thus, the use of sinking or neutrally buoyant line rather than floating line as a condition of the EFP would reduce the chances of entanglement.

Additional gear restrictions that would meet the requirements of the Atlantic Large Whale Take Reduction Plan (ALWTRP), as well as additional measures to minimize the risk to protected species are as follows: (1) A minimum of 10 traps per vertical line; (2) no interspersed lobster traps per single line of Jonah crab traps; (3) a MEDMR requirement to clearly mark each buoy with the word ''CRAB'' under the State lobster/crab license number; (4) maximum soak times of 2 weeks (operational soak time will less than 1 week); and (5) a MEDMR requirement to mark each Jonah crab trap with the State lobster/crab license number and the word ''CRAB.''

The following additional conservation measures would be required of all Jonah crab experimental participants. Unlike lobsters, most crabs reach reproductive size before the size of harvest. Therefore, the MEDMR is recommending that there be a minimum legal carapace width of 5 inches (127 mm), no retention of females, and no retention of regulated species, in particular lobster. MEDMR would require participating fishermen to record catch information including, but not limited to, numbers of trap hauls, type of trap, soak times, and bycatch (specifically, count of undersized and legal-sized lobsters). The MEDMR would designate a minimum of 2 observer days per month to this experimental fishery. Observer data collected would complement the MEDMR-supplied logbooks, and would include detailed fisheries, trap design and fishing methods information on randomly sampled individual trap hauls. For each trap haul sampled, all crabs and lobster bycatch retained would be measured for carapace width (length for lobsters), sex, molt condition, and egg development. All illegal crabs and all bycatch, including all lobsters incidental to the catch of Jonah crabs, would be returned to the sea promptly after data collection. In addition, a one-time MEDMR survey will provide baseline demographic and ethnographic profiles on the Jonah crab fishery, and information on fixed costs (gear modifications, rope, etc.).

While alternative top-entry trap designs have proven to be less capable of catching lobsters, the MEDMR proposed that these ''exploratory'' traps be monitored directly by periodic onboard observer trips. In addition, the Maine Marine Patrol (MMP) would routinely haul gear to ensure compliance with experimental crab trap specifications and gear restrictions described above. A cooperative agreement that was signed on March 8, 2001, between NMFS and the MMP will allow State enforcement officials to enter Federal waters and act as deputized Federal law enforcement agents in upholding the regulations promulgated under the Magnuson-Stevens Act, ACFCMA, ESA, Marine Mammal Protection Act, National Marine Sanctuaries Act, and the Lacey Act.

The EFPs would exempt up to 100 vessels from the requirements of the lobster fishery regulations according to the provisions at 50 CFR parts 600.745 and 697.22, as follows: (1) Permit, tagging and trap limit requirements under § 697.4(a) and (d), and § 697.19(a)(2) and (c); (2) temporary possession of lobster less than the minimum carapace size specified at § 697.20(b)(1) and (2) for data collection purposes; (3) trap tag identification requirements at § 697.21(a)(2); and (4) deployment and gear configuration requirements at § 697.21(b)(2).

Based on the results of this EFP, this action may lead to future rulemaking.

Dated: March 19, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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