

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 040504C]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

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

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

SUMMARY:

The Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS (Office Director) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Office Director has also made a preliminary determination that the activities authorized under the EFPs would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Office Director proposes to issue EFPs that would allow a maximum of six vessels to conduct fishing operations involving the use of one juvenile lobster collector trap per vessel that are otherwise restricted by the regulations governing the American lobster fisheries of the Northeastern United States.

The EFP involves the non-destructive collection of size frequency and population data on legal and sublegal lobsters as part of an ongoing research project to monitor the offshore lobster fishery in Lobster Management Area 3. It would not involve the authorization of any additional trap gear in the area. A maximum of six participating commercial fishing vessels will collect detailed abundance and size frequency data on the composition of lobsters in three general offshore study areas in a collaborative effort with the University of New Hampshire (UNH) and the Atlantic Offshore Lobstermen's Association (AOLA) project. This EFP requests that each participating commercial fishing vessel utilize one modified juvenile lobster collector trap to collect population data. The lobster trap modifications are to the escape vents, and trap entrance head, not to the trap's size or configuration. Therefore,

this modified trap would impact its environment no differently than the regular lobster trap it replaces and will add no additional traps to the area. After data is collected on lobsters in the trap, all sub-legal and berried female lobsters will be immediately returned to the sea. The EFP waives the American lobster escape vent requirement specified at 50 CFR 697.21(c) for a maximum of one trap per vessel for a maximum of six vessels in the program. Therefore, this document invites comments on the issuance of EFPs to allow a maximum of six commercial fishing vessels utilize a maximum of six modified lobster traps and to collect statistical data using modified lobster trap gear.

DATES: Comments on this lobster EFP notification for offshore lobster monitoring and data collection must be received on or before April 27, 2004.

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—Lobster EFP Proposal." Comments also may be sent via facsimile (fax) to 978-281-9117. Comments on the Lobster EFP Proposal may be submitted by e-mail. The mailbox address for providing e-mail comments is Lob0104@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments—Lobster EFP Proposal."

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, (978) 281-9234, fax (978)-281-9117.

SUPPLEMENTARY INFORMATION:**Background**

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The American lobster fishery is the most valuable fishery in the northeastern United States. In 2002, approximately 82 million pounds (37,324 metric tons (mt)) of American

lobster were landed with an ex-vessel value of approximately \$293 million. American lobsters experience very high fishing mortality rates and are overfished throughout their range, from Canada to Cape Hatteras. Although harvest and population abundance are near record levels due to high recent recruitment and favorable environmental conditions, there is significant risk of a sharp drop in abundance, and such a decline would have serious implications. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobsters are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3, and compatible Federal regulations established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

To facilitate the development of effective management tools, extensive monitoring and detailed abundance and size frequency data on the composition of lobsters throughout the range of the resource are necessary. This proposed EFP will continue a project involved in extensive monitoring and detailed population information of American lobster in three offshore study areas using modified lobster trap gear that would otherwise be prohibited.

Proposed EFP

The proposed EFP is a continuation of a project begun in 2003, and is submitted by UNH in a collaborative effort with the AOLA and six commercial lobster fishing vessels that are also members of the AOLA. The EFP proposes to collect statistical and scientific information as part of a project designed to monitor the offshore American lobster fishery to collect data that will assist the development of management practices appropriate to the fishery. Participants in this project are funded by, and under the direction of the Northeast Consortium, a group of four research institutions (University of New Hampshire, University of Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic

Institution) which are working together to foster this initiative.

Each of six commercial fishing vessels involved in this monitoring and data collection program would collect detailed abundance and size frequency data on the composition of all lobsters collected from one string of approximately 40 lobster traps, including data on sub-legal, and egg bearing females in addition to legal lobsters. This EFP would not involve the authorization of any additional lobster trap gear in the area. Two vessels would collect data from each of three general study areas: The Southern—Hudson Canyon Area; the Middle—Veatch Canyon Area; and the Northern—Georges Bank and Gulf of Maine Area. The participating vessels may retain on deck sub-legal lobsters, and egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting the required abundance and size frequency data specified by this project. Data collected would include size, sex, shell disease index, and the total number of legals, sub-legals, berried females, and v-notched females. All sub-legals, berried females, and v-notched females would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

This EFP requests the inclusion of a maximum of one modified lobster trap per vessel, designated as a juvenile lobster collector trap, in the string of approximately 40 traps. This modified lobster trap would have a smaller entrance head, no escape vents and would be made of a smaller mesh than the traditional offshore trap to catch and retain a high percentage of juvenile lobsters in the 30–65 mm carapace length range. The smaller entrance head would exclude large lobsters from this trap and decrease the probability of cannibalism within the trap. The modifications to the trap are to the escape vents, and trap entrance head, not to the trap's size or configuration, therefore this modified trap would impact its environment no differently than the regular lobster trap it replaces. This EFP will add no additional traps to the areas. Due to modifications to the escape vent, the EFP proposed to waive the American lobster escape vent requirement specified at 50 CFR 697.21(c) for a maximum of one trap per vessel for a maximum of six vessels in the program. With the exception of the one modified juvenile lobster collector trap, all traps fished by a maximum of six participating vessels would comply

with all applicable lobster regulations specified at 50 CFR part 697.

All sample collections would be conducted by six federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard every participating vessel.

This project, including the lobster handling protocols, was initially developed in consultation with NOAA Fisheries and University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

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

Dated: April 6, 2004.

Alan D. Risenhoover,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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COMMODITY FUTURES TRADING COMMISSION

Futures Market Self-Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Exchange Act (the "Act"),¹ through Core Principles added by the Commodity Futures Modernization Act of 2000 ("CFMA")² and otherwise, imposes upon trading facilities (designated contract markets or "DCMs" and derivatives transaction execution facilities or "DTEFs"), upon registered futures associations ("RFAs"),³ and upon clearinghouses (derivatives clearing organizations or "DCOs") certain self-regulatory obligations with respect to futures commission merchants ("FCMs") that are members of such DCMs, DTEFs, RFAs, and DCOs (together, "self-regulatory organizations" or "SROs"). In order to avoid duplicative supervisory burdens upon FCMs that are members of more than one SRO, the Commodity Futures Trading Commission (the "Commission" or "CFTC") permits SROs to enter into

¹ 7 U.S.C. 1 *et seq.* (2000).

² See Pub. L. 106-554, 114 Stat. 2763 (Dec. 21, 2000).

³ CFTC Regulation 170.15 requires each FCM to be a member of at least one RFA that is registered with the Commission pursuant to section 17 of the Act. Commission regulations referred to herein may be found at 17 CFR Ch. I (2003).

voluntary, cooperative agreements to both allocate certain supervisory responsibilities among themselves so that each FCM has a single designated self-regulatory organization ("DSRO") and to share relevant financial and risk information among themselves. Under such an agreement, each DSRO is primarily responsible for conducting periodic examinations of firms assigned to it, and the other SROs rely upon the findings of such examinations, yet under the Act and Commission regulations each SRO retains ultimate responsibility for ensuring proper performance of its self-regulatory duties.⁴

Any two or more SROs may propose to enter into an agreement to effectuate a DSRO plan but such a plan may not be implemented unless and until the Commission, following appropriate notice and opportunity for public comment, approves the plan (in whole or in part and as submitted or as modified according to the Commission's direction).⁵ The Commission also may, after appropriate notice and opportunity for hearing, withdraw its approval of a plan (in whole or in part) that it has previously approved if, in the Commission's determination, the plan (or part) no longer adequately effectuates the purposes of the Act or Commission regulations.⁶

In 1984, a number of SROs entered into a Joint Audit Agreement ("1984 Agreement") to effectuate a DSRO plan.⁷ Proposed amendments to the 1984 Agreement were recently submitted for approval ("Proposed Agreement"). In accordance with § 1.52(g) of its regulations and in conjunction with its ongoing review of the self-regulatory system for futures markets, the Commission is publishing this notice to

⁴ DSROs also monitor compliance in the areas of sales practice, recordkeeping, and anti-money laundering protections.

⁵ Regulation 1.52(g) states:

After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it: (1) Is necessary or appropriate to serve the public interest; (2) Is for the protection and in the interest of customers; (3) Reduces multiple monitoring and auditing for compliance with the minimum financial rules of the [SROs] submitting the plan for any [FCM or IB that] is a member of more than one [SRO]; (4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any [FCM or IB that] is a member of more than one [SRO]; (5) Fosters cooperation and coordination among the contract markets; and (6) Does not hinder the development of [an RFA] under [S]ection 17 of the Act.

⁶ See Regulation 1.52(i).

⁷ See 49 FR 28906 (Jul. 17, 1984) (approved in large part on Oct. 10, 1984 ("1984 Commission Letter")).