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Copies of the petition are available upon request at the address specified above and are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Jackie Wilson or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:**

**Petition for Rulemaking**

On March 7, 2005, NMFS received a request from the Petitioner to initiate rulemaking for a regulatory amendment to 50 CFR 635.2 in the definition of the "Mid-Atlantic shark closed area." The proposal would reduce the current closed area by changing the boundary from 55 fathoms to only include waters out to 15 fathoms coastwide for North Carolina. The Petitioner has stated that this action would allow North Carolina fishermen access to the larger sharks in deeper waters from 15 to 55 fathoms and minimize discards of juvenile and protected sharks to a reasonable extent. The Petitioner states that the available data suggest that juvenile sharks occur predominately near shore. Thus, the Petitioner proposes that closing out to 15 fathoms along the entire North Carolina coastline instead of out to 55 fathoms for the northern part of North Carolina will still attain the management goal of protecting juvenile sandbar and prohibited dusky sharks. The Petitioner believes that the offshore extent of the current closed area encompasses the primary shark fishing grounds off North Carolina and severely restricts access to the shark quota off North Carolina, particularly during the first trimester.

The Petitioner asserts that the current time/area closure off of North Carolina is not justified based on available data, and has been implemented in violation of at least three National Standards (e.g., 14, 8, and 10) of the Magnuson-Stevens Fishery Conservation and Management Act. The Petitioner notes that the proposed change could address the above concerns and have positive significant economic benefits to fishermen, dealers, and fishing communities in the South Atlantic.

During the proposed rule stage of Amendment 1 (August 1, 2003, 68 FR 45196) of the Highly Migratory Species Fishery Management Plan, NMFS took comment on a much larger time/area closure (31,387 square nautical miles from VA to SC) than the current time/

area closure. Based on comments from fishermen, NMFS conducted additional analyses and adjusted the time/area closure's seaward boundary to follow the 60 to 80 fathom contour (4,490 square nautical miles). This area was selected to include all observed catches of dusky and sandbar sharks while mitigating social and economic impacts on fishing communities in North Carolina compared to the originally proposed closed area. The analyses conducted in Amendment 1 indicated that the current time/area closure should reduce dusky shark catch by 79 percent, and neonate and juvenile sandbar shark catch by 55 percent. Because the rebuilding plan for large coastal sharks (LCS) incorporated the mortality reductions anticipated for the existing time/area closure, it is possible that changes to the closure of the magnitude suggested by the Petitioner would require an amendment to the rebuilding plan.

In the final rule, NMFS also delayed implementation of the time/area closure for a year to allow fishermen time to adjust to the new regulations (December 24, 2003, 68 FR 74746). Thus, this closure has not yet been in place for a full year.

The Petitioner notes that North Carolina's interest in changing the time/area closure is on record. In addition, on March 23, 2005, the Petitioner presented this issue to the HMS Advisory Panel (AP), stating that the time/area closure disproportionately affects fishermen operating from home ports in the State of North Carolina. AP members noted that the LCS stock assessments determined that sandbar and dusky sharks have been overfished and are not currently rebuilt, thus warranting further management actions to rebuild these stocks. AP members also stated that any amendment to the current time/area closure must not increase mortality on large juvenile sandbar or dusky sharks because rebuilding these stocks requires lowering the mortality rate of large juveniles. AP members also discussed alternatives, such as the Atlantic States Marine Fisheries Commission working with other East Coast states for more statewide compliance with regulations at least as restrictive as Federal regulations.

**Request for Comments**

NMFS solicits comments from the public regarding the need to proceed with rulemaking to amend the current Mid-Atlantic shark closed area. NMFS is specifically requesting that the public provide comments on the social, economic, and biological impacts that a potential regulatory amendment to the

closure would have on the LCS rebuilding plan. NMFS will consider this public input in determining the need to amend regulations.

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

Dated: May 3, 2005.

**Alan D. Risenhoover,**

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

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 697**

[Docket No. 050329085-5085-01; I.D. 032305A]

**RIN 0648-AT31**

**Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery**

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

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR), Notice of Intent (NOI) to combine rulemaking and prepare an Environmental Impact Statement (EIS); request for comments.

**SUMMARY:** NMFS announces its intent to consider revisions to the Federal lobster regulations in response to the effort control recommendations of the Atlantic States Marine Fisheries Commission (Commission) in Addenda II, III, IV, V and VI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP), and prepare an EIS to assess the impact on the human environment of controlling fishing effort in the American lobster fishery, in the U.S. Exclusive Economic Zone (EEZ). Written comments are requested from the public regarding issues that NMFS should address in this EIS relative to fishing effort reduction measures as proposed in Addenda II through VI.

**DATES:** Written comments must be received no later than 5 p.m. Eastern Standard Time on or before June 9, 2005.

**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 email at [Lob0105@noaa.gov](mailto:Lob0105@noaa.gov), via fax (978) 281-

9117, or via the Federal e-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Thomas Fletcher, (978) 281-9349, fax (978) 281-9117, e-mail [tom.fletcher@noaa.gov](mailto:tom.fletcher@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Commission proposed a wide range of measures in Addenda II through VI, such as transferable trap programs, that aim to control lobster fishing effort. Because the effort control measures contain similar interrelated elements and might involve the creation of a single management program, these measures lend themselves to a single rulemaking and analysis. Although Addenda II and III have effort control elements, those addenda principally relate to broodstock protective measures, and the effort control measures are presented in less detail. The Commission's Addenda IV, V, and VI recommendations, however, principally involve effort control measures and more robustly present effort control measures. Accordingly, NMFS proposes to combine measures from all five addenda that control fishing effort for the American Lobster into one rulemaking and a single environmental impacts analysis.

This action augments an earlier ANPR and NOI (67 FR 56800) that NMFS published on September 5, 2002, in response to the Commission's recommendation that NMFS implement regulations in the EEZ that are compatible with Addenda II and III to Amendment 3 of the ISFMP. That earlier document explains NMFS' intention to solicit written comments and inform the public of the development of an EIS relative to Addenda II and III. In addition, that earlier document further stated NMFS' intention to combine the Addendum II and Addendum III rulemakings because the addenda involved similar subject matter - namely management measures designed to increase egg production and protect broodstock. Those measures included: a series of minimum gauge size increases (increases to the minimum legal length of the carapace, defined as the unsegmented body shell of the American lobster), and an increase in the minimum escape vent size of lobster trap gear fished in the following state and Federal waters of Lobster Conservation Management Area 2 (Area 2) (inshore Southern New England), Area 3 (offshore area, comprised entirely of Federal waters), Area 4 (nearshore Northern Mid-Atlantic), Area 5 (nearshore Southern Mid-Atlantic), and the Outer Cape Area (nearshore waters east of Cape Cod); a

maximum gauge increase in Areas 4 and 5; a boundary change between Areas 3 and 5; and amending the timeline to end overfishing. The effects of these broodstock measures will be analyzed in a forthcoming environmental assessment.

Although designed principally as broodstock protection plans, Addenda II and III contain other management measures aimed at reducing fishing effort in the American lobster fishery. These measures are set forth in greater detail and relate to different lobster management areas in the subsequently developed Addenda IV, V and VI.

### Background

The following is a summary of effort control measures approved by the Commission and recommended for Federal rulemaking.

Addenda II through VI are part of an overall management regime set forth in Amendment 3 to the ISFMP. The intent of Amendment 3, approved by the Commission in December of 1997, is 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. Amendment 3 employed a participatory management approach by creating the seven lobster management areas, each with its own lobster conservation management team (LCMT) comprised of industry members.

Amendment 3 tasked the LCMTs with providing recommendations for area-specific management measures to the Commission's American Lobster Management Board (Board) to meet the lobster egg production and effort reduction goals of the ISFMP. Certain effort reduction measures of the area plans were approved by the Board in August of 1999 as part of Addendum I to Amendment 3 (Addendum I). After technical evaluation, the Board approved the egg production measures as Addenda II and III in February 2001, and February 2002, respectively, and recommended that NMFS implement complementary Federal regulations. NMFS has the authority under the Atlantic Coastal Fisheries Cooperative Management Act (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 Fishery Conservation and Management Act. These Federal regulations are promulgated pursuant to the ACFCMA and are codified at 50 CFR part 697.

A brief outline of lobster effort control measures in Addenda II through VI are summarized in the following sections.

### Addendum II Summary

Addendum II, approved on February 1, 2001, updated the lobster egg production rebuilding schedule and reconvened the LCMTs to develop recommendations for area management based on the stock assessment completed in 2000. The measure that addresses effort control is the following:

Trap Reduction Schedule for Areas 3, 4, and 5

In Addendum I, the Commission implemented a plan that limited fishing access to Areas 3, 4 and 5, allocated traps to qualifiers and capped the number of traps that can be fished. Addendum II established a timeline for additional trap reductions for qualified permit holders in Area 3. Each trap allocation in Area 3, that exceeds 1,200 traps, would be reduced on a sliding scale over four years, with reductions not going below a baseline of 1,200 traps. Allocations of less than 1,200 traps would remain at their initial qualifying level. This measure was implemented by Federal rulemaking dated March 27, 2003, (68 FR 14902).

### Addendum III Summary

Addendum III, approved February 20, 2002, was developed in response to an Addendum II requirement whereby each LCMT was asked to review the revised egg rebuilding schedule and area management plan and present the Board with alternative measures that are intended to achieve the stock rebuilding targets. Measures that address lobster effort control include:

#### Trap Reduction in the Outer Cape Area

In Addendum III, the Commission proposed limiting fishing access to the Outer Cape Area, allocating traps to qualifiers and then reducing the numbers allocated, and allowing traps to be transferred among those permit holders who qualify for access. Beginning in 2002 and extending through 2008, a 20-percent reduction in trap allocations was proposed for the Outer Cape Area. These trap allocations may be transferred among Outer Cape lobster fishers to allow an individual business to build up or down within the maximum allowable 800 trap limit. Any trap transfer invokes a 10-percent trap reduction or "conservation tax" on the number of traps involved in the transfer. An additional 5-percent reduction, per year, in trap allocations may be employed in 2006 and 2007, if

necessary, to meet lobster egg production goals and objectives.

#### Choose and Use in Area 3

The Commission in Addendum III approved a management measure specific to Area 3 entitled "Choose and Use". Currently, Federal permit holders are allowed to elect which Area(s) they intend to fish on an annual basis. However, Choose and Use would obligate Area 3 permit holders to designate (i.e. "choose") Area 3 on their Federal permits when renewing Federal permits each year. If a permit holder did not choose Area 3, then that permit holder would be prohibited from designating Area 3 on the vessel permit in future years. The permit would still retain its Area 3 qualification, and each successive owner would be given the opportunity to either permanently designate Area 3 or drop the Area 3 designation for the duration of possession of the qualified permit.

#### Addendum IV Summary

Addendum IV, approved December 17, 2003, addresses four issues: an effort reduction proposal from the Area 3 LCMT; broodstock and effort control measures in Area 2; new information about escape vent selectivity; and a change to the interpretation of the most restrictive rule. Measures that address effort control include:

##### Trap Reduction in Area 3

Addendum IV includes a plan to increase trap reductions by 10-percent (5-percent in each year for 2007 and 2008) for all qualified Area 3 permit holders.

##### Trap Transferability and Passive Reduction in Area 3

The Area 3 transferable trap plan includes measures that would allow transfers of trap allocations among qualified Area 3 permit holders. These measures include: trap transfer

minimums, an anti-monopoly clause, and a 10-percent trap reduction or "conservation tax" on any trap transfers.

#### Changes to the Most Restrictive Rule

In Amendment 3, the ISFMP for American lobster required multiple area fishermen to comply with the most restrictive management measures of all areas fished including the smallest number of traps allocated to them for each of the areas fished. The original intention of the most restrictive rule was to allow multi-area fishermen to continue to fish in the areas that they historically have fished in while maintaining the conservation benefits unique to each area. With the implementation of Amendment 3, permit holders in all areas were restricted to a maximum of 800 to 1,800 traps; however, qualification for historic participation in several areas resulted in individual area-specific trap allocations that vary from the initial fixed trap limits in Amendment

3. An unintended consequence of this rule limited multi-area fishermen to the lowest number of traps they have been allocated in any Area.

#### Effort Control in Area 2

The Commission approved an effort control plan developed by the Area 2 LCMT that proposed limiting fishing access to Area 2, allocating traps to qualifiers, allowing traps to be transferred among qualifiers, and a passive trap reduction or "conservation tax" on any trap transfers. Due to implementation concerns identified by the impacted regulatory agencies, the effort control components of the Area 2 plan were withdrawn in Addendum VI in February 2005, and will be amended in a forthcoming Addendum.

#### Addendum V Summary

Addendum V, approved March 2004, was initiated to address one particular aspect of the Area 3 trap transferability

program approved in Addendum IV: a new proposal that reduced the overall trap cap from 2,600 to 2,200, with a higher passive reduction or "conservation tax" imposed when the purchaser owns 1,800 to 2,200 traps rather than 2,200 to 2,600 traps.

Measures that address effort reduction include:

##### Total Trap Cap and Conservation Tax

A conservation tax (passive reduction) of 10-percent would be assessed for each transfer that equates to a purchaser owning up to 1,800 traps. For all transfers where the transfer of traps results in a permit exceeding 1,800 traps, those traps over 1,800 would be taxed at 50-percent, up to the total trap cap of 2,200. This measure would be applicable to Area 3 permit holders only.

#### Addendum VI Summary

Addendum VI withdrew the Addendum IV effort control plan for Area 2 except for two points; a prohibition on issuance of any new lobster permits for Area 2 and the eligibility period for participation in the fishery. It also directs all jurisdictions with Area 2 permit holders and the Area 2 LCMT to develop a new effort control plan, which caps effort at or near current levels with the potential to adjust the levels based on the outcome of the upcoming stock assessment.

#### Classification

This ANPR has been determined to be significant for the purposes of Executive Order 12866.

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

Dated: May 5, 2005.

#### Rebecca Lent,

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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