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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 150401332-7999-01]

RIN 0648-BF01

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for Lobster Conservation Management Areas

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: This document announces that NMFS is considering changes to the lobster management program and may select a control date to restrict the number of permits or traps an individual or business entity may own, with specific emphasis on Lobster Conservation Management Areas (LCMAs) 2 and 3. NMFS may use the existing control date of January 27, 2014, which was published in the *Federal Register*, the publication date of this present ANPR, or another date for this purpose, pending public comment and further input by the Atlantic States Marine Fisheries Commission (Commission). This action may be necessary to control effort in the American lobster fishery and mitigate impacts on the depleted Southern New England (SNE) lobster stock. NMFS intends for this document to promote awareness of possible rulemaking and notify the public that actions taken to acquire lobster trap allocation and permits after the

control date may not be recognized in the future.

DATES: We must receive written comments on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by

NOAA-NMFS-2013-0169 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0169*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Lobster Control Date.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. We may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). We accept attachments to electronic comments only in Microsoft

Word or Excel, WordPerfect, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Policy Analyst, 978-281-9144.

SUPPLEMENTARY INFORMATION:

Background

NMFS works cooperatively with the states to conserve the American lobster resource within the framework of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster (ISFMP). Through the ISFMP, the Commission adopts fishery conservation and management strategies for the American lobster resource and coordinates the efforts of the states and NMFS to implement these strategies.

The Commission, NMFS, and the affected states have worked to develop a strategy to address the declining SNE stock and control effort in the American lobster fishery. That strategy, which took shape in several addenda to Amendment 3 of the Commission's ISFMP, attempted to achieve this goal while maintaining the historic character of the lobster fishery, which has traditionally been comprised of small owner-operator businesses. As the Commission's ISFMP limited access to the fishery, the Commission was concerned that lobster permits might consolidate among a concentrated number of larger conglomerates. As a result, the Commission's ISFMP introduced the concept of permit restrictions in 2003 in Addendum IV and again in 2005 in Addendum VII. These two addenda contemplated limiting the aggregate number of permits an individual or entity may own in LCMAs 2 and 3.

Concern about fishery consolidation and conglomeration intensified with the advent of

the Commission's Trap Transfer Program in 2014. The Trap Transfer Program allows lobster fishermen to buy or sell partial trap allocations up to, but not exceeding, any applicable LCMA trap cap. Attrition in the fishery from the SNE stock decline resulted in a relatively high amount of latent trap effort in the SNE LCMAs. The Commission became concerned that businesses could cheaply purchase and combine latent permits and then activate them by transferring the trap allocation onto the permit or by activating traps that were already associated with a permit under the trap banking provisions of Addendum XVIII. Accordingly, the Commission revisited permit and effort restriction strategies in Addendum XXI in August 2013 and Addendum XXII in October 2013. These addenda limit the number of traps that any one individual or entity may own in LCMAs 2 and 3 and are the focus of this rulemaking action. Under these addenda, permit holders may also purchase traps in excess of the active permit cap and "bank" them. The banked allocation may be used in the future to offset the economic impacts associated with a multi-year schedule of annual trap reductions in LCMAs 2 and 3 that were adopted in Addendum XVIII to address the continued decline in the SNE lobster stock.

In response to the Commission's recommendations for Federal action in Addenda XXI and XXII, NMFS notified the public that we were considering establishing a control date for the purposes of determining the number of traps or permits an individual or entity may hold in LCMAs 2 and 3. The notification, an advance notice of proposed rulemaking (79 FR 4319; January 27, 2014), announced that NMFS could use that publication date, January 27, 2014, or another date for such purpose and that it was developing a rulemaking action to consider the measures set forth in Addenda XXI and XXII.

Subsequently, the Commission announced the results of the 2015 American Lobster Stock Assessment that found the SNE lobster stock was severely depleted, with record low

abundance and recruitment failure, due to changing environmental conditions and continued fishing mortality. The Commission then focused its efforts on a new addendum to the ISFMP, Addendum XXV, to address the deteriorating condition of the SNE stock.

NMFS deferred action on Addenda XXI and XXII while the Commission developed draft Addendum XXV during 2016 and 2017, because elements of Addendum XXV could have rendered the measures in the prior addenda unnecessary. In August 2017, the Commission decided to take no further action on Addendum XXV and requested that we advance the measures in Addenda XXI and XXII for Federal rulemaking. In response, we set this advance notice of proposed rulemaking to reconsider the use of a control date in consideration of the measures in the two addenda.

This document informs the public that NMFS may select January 27, 2014, or another date, as the control date, depending on public comments and input from the Commission. It also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery. Participation in the fishery after the control date may not be treated the same as participation before the control date. Establishing a control date does not commit NMFS to develop any particular management regime or criteria for participation in these fisheries. Additionally, we may also choose to take no further action to control effort or consolidation in the American lobster fishery. NMFS is seeking specific comments on the appropriateness of using the existing January 27, 2014, control date. The public may also comment on whether another date is better suited as a control date for the lobster fishery.

NMFS is also considering several clarifications to existing regulations:

- Due to enforcement concerns, we are considering modifications to the gear

marking requirement for lobster trap trawls with more than three traps to be more consistent with industry practices;

- The Trap Transfer Program currently requires that trap transfers occur in increments of 10. We intend to remove this restriction to allow permit holders to transfer traps in any increment up to the permit cap for the fishing year to allow permit holders to take full advantage of the program;

- NMFS is also considering adding a provision to allow a substitute vessel to haul and fish the traps of a federally-permitted lobster vessel that is inoperable or mechanically impaired. The intent is to allow a Federal permit holder to maintain his or her revenue from lobster fishing while the vessel is repaired or replaced. Currently, the regulations only allow a substitute vessel to bring the trap gear ashore; however, some states already permit the use of a substitute vessel to haul and fish traps under specific circumstances.

Any future action taken by NMFS will be pursuant to the Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Act.

This notification and control date do not impose any legal obligations, requirements, or expectation.

Authority: 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5101 *et seq.*

Dated: November 8, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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