



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 240520-0141]

RIN 0648-BM92

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Removal of American Lobster Effort Control Measures

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

ACTION: Final rule.

SUMMARY: Following the Atlantic States Marine Fisheries Commission's (Commission) withdrawal of Lobster Conservation Management Area 2 and 3 ownership caps and Area 3 maximum trap cap reductions from its Interstate Fishery Management Plan for American Lobster (Lobster Plan), this action removes those requirements from Federal regulations and clarifies that all other measures included in the October 2, 2023, interim final rule (IFR) remain in effect. This action is intended to support the Commission's management of the lobster fishery and eliminate the potential for inconsistent State and Federal regulations that risk undermining management of the fishery and is necessary to ensure that fishery regulations for the lobster fishery in Federal waters remain compatible with the Lobster Plan and consistent with the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

DATES: As of [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the revision to § 697.19(c) and (m) in amendatory instruction 6 of the IFR, 88 FR 67667, 67687-67679 (October 2, 2023), is withdrawn.

ADDRESSES: You may request copies of the supplemental information report prepared for this action at: National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276 or by calling (978) 281-9315. The supporting document is also accessible via the internet at: <https://www.fisheries.noaa.gov/about/greater-atlantic-regional-fisheries-office> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281-9122.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

These regulations modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Act. This authority states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate fishery management council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, from 3 to 200 nautical miles offshore. The regulations must be: (1) compatible with the effective implementation of an Interstate Fishery Management Plan developed by the Atlantic States Marine Fisheries Commission; and (2) consistent with the National Standards set forth in section 301 of the Magnuson-Stevens Act. See 16 U.S.C. 5103(b)(1)(A) (establishing Secretary’s authority to issue Federal regulations that are compatible with a coastal management plan and consistent with Magnuson-Stevens Act National Standards), 16 U.S.C. 1502(1) (defining “coastal management plan”).

Purpose and Need for Management

The purpose of this action is to manage the American lobster fishery to maximize

resource sustainability, recognizing that Federal management occurs in concert with State management and compatibility between State and Federal measures is crucial to the overall success of American lobster management and required by the Atlantic Coastal Act. NMFS indicated that the agency could make changes to the IFR measures and requested comment on that possibility in the IFR, see 88 FR at 67669; see also 87 FR 41084 (July 11, 2022) (proposed rule requesting comments on measures ultimately included in the IFR); 82 FR 52871 (November 15, 2017) (advance notice of proposed rulemaking (ANPR) requesting comments on change to control date for trap limits in Areas 2 and 3); 79 FR 4319 (January 27, 2014) (ANPR establishing control date and requesting comments). In light of public comments received and to achieve the purpose of the Atlantic Coastal Act, we are withdrawing the Area 2 and 3 ownership caps and Area 3 maximum trap cap reductions that we implemented in the IFR.

Management Measures

Area 2 and 3 Measures

The IFR implemented ownership caps in Areas 2 and 3 and maximum trap cap reductions in Area 3, effective May 1, 2025. These measures complemented the Commission's Addenda XXI and XXII to Amendment 3 to the Lobster Plan, both of which were approved by the Commission in 2013. The objective of these addenda was to scale the southern New England lobster fishery to the diminished size of the resource by addressing latent effort in the fishery and reducing trap limits in an attempt to control harvest to allow for potential stock rebuilding. A full description of those measures is included in the IFR and not repeated here.

During the proposed rule (87 FR 41084, July 11, 2022) comment period, we received several comments stating that our management partners and industry needed additional time to understand these measures, consider them in the current context of the fishery, and provide adequate comment. We delayed implementation of the measures

until May 1, 2025, while we accepted additional public comments on these measures as provided in the IFR, which indicated that we would consider any additional comments received and would, if necessary and appropriate, publish a subsequent rule to address any changes. See 88 FR at 67669.

On January 23, 2024, the Commission's Lobster Board withdrew its prior recommendation for implementation of Area 2 and 3 ownership caps and Area 3 maximum trap cap reductions, determining that these measures are no longer relevant in the current context of the fishery. On February 12, 2024, the Commission confirmed the decision of the Lobster Board in a letter to NMFS, citing numerous ways in which the fishery in these Areas has changed. The Commission noted that while the Addenda that originally called for the Area 2 and 3 measures attempted to prevent consolidation, the lag time between Commission approval and NMFS implementation has allowed for consolidation to occur, removing the need for these specific measures. In addition, the Commission expressed concern that the implementation of these measures would change how permits and traps will be bought and sold. The Commission also explained the economics of the fishery in these areas and changing operational needs of harvesters to maintain their businesses, citing increased costs, loss of fishing grounds due to other ocean uses, additional management measures on the American lobster fishery to reduce the risk to North Atlantic right whales posed by the fishery, and the evolution of the fishery in these areas from a lobster fishery to a mixed-crustacean fishery targeting both lobsters and Jonah crabs.

The Atlantic Coastal Act provides that the Secretary "may implement regulations" affecting fisheries also regulated by the Commission if no fishery management plan exists pursuant to the Magnuson-Stevens Act and the regulations are "compatible with the effective implementation of a coastal fishery management plan." 16 U.S.C. § 5103(b)(1)(A). Removing the Area 2 and 3 measures ensures that Federal regulations

continue to complement the Commission's Lobster Plan. Further, this action will minimize confusion between State and Federal requirements. If we do not remove these Area 2 and 3 measures, there would be inconsistent State and Federal lobster regulations, potentially undermining management of the fishery.

Other Management Measures

The IFR also implemented mandatory electronic harvester reporting requirements and corrections. This final rule makes no changes to those measures, which have already become effective.

Comments and Responses

As noted above, the IFR delayed implementation of certain measures and solicited public comment on them. The comment period ended on December 1, 2023. We received comments from 10 groups: The Atlantic Offshore Lobstermen's Association (AOLA), the Animal Welfare Institute, a group of environmental organizations, 6 members of the fishing industry, and 1 member of the public. Only comments that were applicable to the proposed measures are addressed below.

Comment 1: AOLA stated that the Area 3 maximum trap reductions are inconsistent with the National Standards and are purely an economic reallocation, which is specifically prohibited; that the analysis in the environmental assessment did not rely on the best available science; and that the economic analysis was insufficient because it did not discuss impacts to crew, communities, shoreside employees, and owners.

Response: The commenter's assertions are the same arguments made in *AOLA v. Raimondo*, an active lawsuit in the Federal Court for the District of New Hampshire. When developed, the IFR measures reflected the best scientific information available and appropriate consideration of economic and social impacts and was supported by the regulated community, including AOLA. However, NOAA is withdrawing the relevant measures because of changed circumstances in the fishery as articulated by the public and

the Commission and because the maintaining the measures would create incompatibility between state and Federal management of the fishery.

Comment 2: AOLA commented against the ownership caps and maximum trap cap reductions, stating that it is unlikely that the level of fishing necessary to harvest optimum yield could be maintained, as these measures seem to encourage the downsizing of offshore vessels.

Response: The 2022 environmental assessment accompanying the IFR noted that it was difficult to predict industry response to these measures, specifically whether traps would be reduced or whether owners would attempt to transfer traps in an attempt to recoup costs. Likewise, it was difficult to assess how fishing practices would have changed. NOAA is withdrawing the Area 2 and 3 IFR measures because of changed circumstances in the fishery and the need for Federal regulations to be compatible with the Commission's Lobster Plan as discussed in the response to comment 1.

Comment 3: AOLA stated that there is no justification for the Area 3 measures, citing multiple reasons. First, the commenter asserted that the majority of fishing effort in Area 3 is on the Gulf of Maine/Georges Bank stock, not the southern New England stock that these measures were intended to conserve. Second, the commenter cited economic impacts, predicting loss in profits and the potential for effort shifts. Third, the commenter discussed how Area 3 permit holders have appropriately scaled their businesses for their trap allocations and lack the ability to consolidate effort. Finally, the commenter stated that they are not aware of any concerns from the fishing industry about the existing level of consolidation in the fishery.

Response: As discussed above, NOAA is withdrawing the Area 3 measures because of changed circumstances in the fishery and the need for Federal regulations to be compatible with the Commission's Lobster Plan. On February 12, 2024, the Commission notified NOAA that the lobster fishery's circumstances had changed and

that it no longer supported certain measures in the IFR. Accordingly, the purpose and need for the involved Federal measures no longer exists and NOAA is withdrawing those measures to avoid incompatibility with the Commission Lobster Plan. See 16 U.S.C. 5103(b)(1)(A).

Comment 4: Environmental organizations indicated general support for measures that reduce risk to protected species. These organizations urged us to implement all possible measures as soon as possible and to continue the development of on-demand (or ropeless) gear to minimize risk from persistent vertical buoy lines.

Response: NOAA takes its responsibilities to protect North Atlantic right whales seriously and has expended great effort and resources in doing so. Recent or ongoing efforts include: (1) continued trial and testing of on-demand gear, as facilitated by the approval of several exempted fishing permits and the Northeast Fisheries Science Center's on-demand gear library; (2) support of and participation on the New England Fishery Management Council's On-Demand Gear Conflict Working Group; (3) hosting various on-demand workshops in late 2023; and (4) the February 7, 2024, final rule (89 FR 8333) to close portions of Federal waters north of Cape Cod Bay to lobster fishing every year from February 1 through April 30 to protect right whales on their way to and from their feeding grounds in Cape Cod Bay. This February 7, 2024 final rule is currently in litigation. Our whale protection efforts are continuous and ongoing.

Comment 5: A group of environmental organizations indicated that the maximum trap cap reductions will reduce trap fishing effort thus benefiting both the lobster stock, by reducing the number of traps fished, and whales, by reducing the number of associated fishing lines in the water.

Response: The maximum trap cap reduction would have been unlikely to reduce the number of traps fished due to the Area 3 trap allocation and trap transfer program and the financial incentive for lobster businesses to maximize profits by transferring (selling)

unused trap allocation. On March 27, 2003, we published a final rule (68 FR 14902) that established a program to set the total number of Area 3 traps per permit. On April 7, 2014, we published a final rule (79 FR 19015) that established a trap transfer program, allowing lobster businesses to transfer (sell) these allocated traps to other lobster businesses. These allocated traps remain an asset of the lobster permit regardless of the permit holder's ability to use any excess allocation created by the lowering of the Area 3 trap cap. In such a trap cap adjustment, there is economic incentive for a permit holder to transfer (sell) this now unusable excess allocation to a lobster business that can use it because their allocation is under the cap. Such a transfer would be subject to a 10-percent conservation tax, which somewhat decreases the overall Area 3 trap allocation with every transfer. Recent public commentary and debate at the Lobster Board, however, suggested that consolidation has already taken place in response to other management measures. Consequently, the actual result of the maximum trap cap reduction would be more of a redistribution than a reduction of trap allocation and, as such, the reduction in traps being fished, and the reduction of lines in the water, would have been expected to be minimal. For more detail on this issue, please see NOAA's Environmental Assessment, section 7.2.2, December 2022, as well as the Supplemental Information Report, section 6.

Comment 6: A group of environmental organizations expressed surprise that comments submitted at the proposed rule stage of this rulemaking that referenced measures to reduce risk to North Atlantic right whales implemented by a September 17, 2021, final rule (86 FR 51970) were described as not relevant to the action.

Response: The purpose and need of the IFR was not to implement whale protection measures but rather to complement lobster management measures outlined in Addenda XXI, XXII, and XXVI to Amendment 3 to the Lobster Plan (see Lobster EA, section 1.0 Executive Summary - Purpose and Need (August 2022)). All of those Addenda pre-date the September 17, 2021, final rule (86 FR 51970), some by as much as

eight years. As such, the IFR did not implement protections for the North Atlantic right whale pursuant to the Marine Mammal Protection Act. Instead, the IFR was promulgated under the Atlantic Coastal Act, which mandates that Federal lobster regulations be compatible with the Commission's Lobster Plan and requires the withdrawal of the IFR that we are announcing today.

Comment 7: Two environmental organizations supported the IFR, requesting whale protection measures to be put into place as soon as possible. One of the organizations indicated that industry has had ample time to understand and come into compliance with these requirements.

Response: Similar to comment 6, this comment conflates NOAA's whale protection efforts and rulemakings with this rulemaking, which implements the agency's responsibilities pursuant to the Atlantic Coastal Act. The purpose of the IFR was to implement lobster management measures outlined in Addenda XXI, XXII and XXVI. The Commission, however, rescinded their request for us to implement these measures by vote on January 23, 2024, and by letter to NOAA on February 12, 2024. We are likewise rescinding the Federal regulations to ensure compatibility with the Commission's Lobster Plan as required by the Atlantic Coastal Act. Management measures for the purposes of reducing the risk from lobster fishing on protected species are implemented through other processes, as described in the response to comment 4. Whether the affected industry had sufficient time to comply with this action is moot, given that, for the reasons stated above, we are removing these requirements.

Comment 8: One member of the fishing industry stated that the Gulf of Maine/Georges Bank stock remains at high levels of abundance and not in need of trap reductions. That industry member also stated that there is no evidence that reducing fishing effort of the Gulf of Maine/Georges Bank lobster stock will address the deterioration of the southern New England lobster stock. Another member of the industry

stated that these measures are unnecessary, as juvenile and egg-bearing female lobster are abundant on Georges Bank.

Response: The best available science from the 2020 benchmark stock assessment indicates that the Gulf of Maine/Georges Bank stock remains in favorable condition based on the reference points. The 2020 assessment concluded that the stock is not depleted and overfishing is not occurring, though more recent information made available since both the assessment and the publication of the interim final rule indicates a decline in recruit abundance, triggering other management actions for those fishing on the Gulf of Maine/Georges Bank stock. The decision whether to apply Area 3 measures to all of Area 3 (*i.e.*, harvesters fishing on both the Gulf of Maine/Georges Bank and southern New England lobster stocks), was debated and decided upon by the Lobster Board. Draft Addendum XXI, released for public comment in May 2013, included options for a southern New England permit designation, which would have allowed for the trap reductions to only apply to harvesters fishing on the southern New England stock. The Lobster Board did not select permit designations as a final management measure, thus applying management measures to the entirety of Area 3, including the portion of Area 3 that fishes on the Gulf of Maine/Georges Bank lobster stock. We proposed and implemented these measures based on the Commission's original request for complementary measures in Federal waters. Given their more recent request to withdraw the measures, we are now acting accordingly.

Comment 9: One member of the fishing industry contends that the declines of the southern New England stock are being driven by climate change, not overfishing or excessive fishing pressure, as supported by the action's environmental assessment. Further, the member of the fishing industry stated that we did not establish an adequate link between fishing effort and stock depletion.

Response: The best available science suggests that environmental factors are a significant factor in the decline of the southern New England stock. The 2020 American Lobster Benchmark Stock Assessment made major advances in considering the impact of changing environmental conditions on lobster population dynamics. Environmental factors contributed to the assessment's analysis of regime shifts and associated thresholds by which stock health is now measured. While this information was not directly discussed in the environmental assessment, it was the foundation for stock status discussed in section 6.2.3 of the environmental assessment. While not available to the Commission during the development of Addenda XXI and XXII, a 2016 American Lobster Technical Committee analysis suggests that, despite overfishing not occurring, stabilization of the southern New England lobster stock was only possible with a reduction in exploitation. This analysis thus links fishing effort and recovery of the southern New England lobster stock.

Comment 10: One member of the fishing industry stated that the analysis included in the environmental assessment was out of date, as it relied on the Atlantic States Marine Fisheries commission's 2009 and 2015 benchmark American lobster stock assessments.

Response: The environmental assessment accompanying the IFR made reference to several recent benchmark American lobster stock assessments. At the time the Commission considered and approved Addenda XXI and XXII, the 2009 stock assessment was considered the best available science. Since that time, the 2015 and 2020 assessments have confirmed the continued downward trend in the southern New England lobster stock. Section 6.2.3 of the environmental assessment accompanying the IFR which discusses stock status, uses the best available scientific information from the 2020 benchmark stock assessment.

Comment 11: Five members of the fishing industry commented in opposition to the Area 3 measures, citing changes to the fishery over the last 10 years and financial issues. Two industry members stated that these regulations will create inefficiencies for current fishery participants, with one arguing that these measures would be detrimental to owners with multiple vessels. A third industry member suggested freezing the number of traps at current levels. Other commenters cited the increased cost of fuel and bait, previous investments made to maintain higher allocations following the 2016-2020 trap reductions, and the difficulty of paying and retaining crew members.

Response: We agree with the commenters that imposing the IFR measures could have had some negative impacts to Area 3 harvesters, although we assessed them as slight in the short term when the IFR was released. See 88 FR at 67674-67675. We acknowledge that each business is different, thus impacts are not uniform, with some businesses potentially being more affected by the measures than others. As discussed in the response to comment 5, the environmental assessment acknowledged that permit holders may respond to these measures differently, by either selling off or redistributing traps. Following requests during the proposed rule comment period, we provided additional time for management partners and industry to understand these measures, consider them in the current context of the fishery, and provide additional comment. Comments by these and other commenters and the recommendation from the Commission confirm that the fishery has changed, and these measures no longer make sense, resulting in the Commission's withdrawal of these measures. We are now withdrawing the Area 3 measures because of changed circumstances in the fishery and the need for Federal regulations to be compatible with the Commission's Lobster Plan. As part of its recommendation to withdraw these measures, the Commission stated that it also intends to evaluate potential replacement measures. We intend to support the Commission during that process.

Comment 12: One industry member and one fishery organization stated that the economic impacts in the environmental assessment were underestimated. In particular, the fishery organization questioned our assumption of a 5-percent profit loss when the Area 3 maximum trap cap reduction may affect up to 18 percent of Area 3 traps.

Response: Based on the input received from comments and the Lobster Board and discussed in greater detail in response to comment 5, consolidation at some level had already taken place. Additional input received indicated that permit holders would be likely to sell traps through the trap transfer program to recoup individual losses. At the fishery level, nearly the same number of traps could be expected to be fished, resulting in similar landings and, therefore, revenue for the fishery overall. That said, as discussed in response to other comments above, given the Commission's more recent request to withdraw the measures, we are now rescinding the Federal regulations to ensure compatibility with the Commission's Plan.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Coastal Fisheries Cooperative Management Act, applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. The agency finds public comment is unnecessary under the Administrative Procedure Act. See 5 U.S.C. 553 (b)(B). The Atlantic Coastal Act requires Federal regulations to be "compatible with the effective implementation of a coastal fishery management plan," 16 U.S.C. 5103(b)(1)(A), and following the Commission's modification of the Lobster Plan, the only regulatory option to ensure the regulations are compatible with the revised plan is to maintain the status quo, *i.e.* to withdraw the relevant provisions of the IFR. If those provisions were to go into effect, the result would be inconsistent management of State and Federal waters, creating confusion for the regulated industry and potential harm to the resource. Moreover, the public has

had multiple opportunities to comment on the relevant measures, see 88 FR at 67669 (IFR), 87 FR 41084 (proposed rule), 82 FR 52871 (ANPR), 79 FR 4319 (ANPR), and has done so.

This final rule has been determined to not be significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action and described in the IFR. The FRFA incorporated the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA and NMFS responses to those comments, and a summary of the analyses completed to support the action. The IRFA and FRFA analyzed the suite of measures considered during this rulemaking, including actions that minimize impacts to small entities. Therefore, the analysis included in the FRFA remains valid. This final rule would remove some of the measures in the IFR, and will, therefore, reduce the overall costs of this action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, letters to permit holders that also serves as this small entity compliance guide were prepared at both the interim final rule and this final rule stage. Copies of these guide and this rule are available upon request from the Greater Atlantic Regional Office (see **ADDRESSES**), and the guide/permit holder bulletin will be sent to all holders of lobster permits.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: May 20, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 1501 *et seq.*

2. Effective [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], NMFS withdraws amendatory instruction 6 of the interim final rule published at 88 FR 67667, on October 2, 2023.

[FR Doc. 2024-11453 Filed: 5/29/2024 8:45 am; Publication Date: 5/30/2024]