

## WASHINGTON—PM—10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Tacoma metropolitan area bounded on the north by Marine View Drive from Commencement Bay east to the 100 foot contour, southeast along the 100 foot contour to 64th Avenue east, south along 64th Avenue east as extended to I-5, I-5 west to the 100 foot contour near Pacific Avenue, and north along the 100 foot contour to Commencement Bay.	May 14, 2001	...	Attainment.	
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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 001120327-1037-02; I.D. 091800H]

RIN 0648-AO58

**American Lobster Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to modify the management measures applicable to the American lobster fishery. This action exempts black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits from the more restrictive gear requirements in the lobster regulations when fishing in Lobster Conservation Management Area 5 (LCMA 5) if they obtain a "Area 5 Trap Waiver" category permit. Under this exemption, such fishers are restricted to the non-trap lobster allowance while targeting black sea bass in LCMA 5. This regulation also clarifies that lobster trap regulations do not affect trap gear requirements for fishermen who do not possess a Federal limited access American lobster permit. The intent of these regulations is to relieve restrictions on fishers that were unintended, without compromising lobster conservation goals.

**DATES:** Effective April 12, 2001.

**ADDRESSES:** Copies of the Final Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Director, State, Federal, and Constituent Programs Office, NMFS,

One Blackburn Drive, Gloucester, MA 01930. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the same address. Comments regarding the collection of information requirements contained in the final rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Robert Ross, NMFS, Northeast Region, 978-281-9234.

**SUPPLEMENTARY INFORMATION:** A proposed rule for this action was published in the **Federal Register** on December 5, 2000 (65 FR 75916). The comment period closed on December 26, 2000.

**Black Sea Bass LCMA 5 Trap Waiver Permit**

The black sea bass LCMA 5 trap waiver permit measures contained in this final rule are unchanged from those in the proposed rule. A complete discussion of background issues that led to the development of these measures is contained in the preamble to the proposed rule and is not repeated here. This final rule establishes an American lobster limited access category permit to allow dual permit status vessels—vessels having limited access eligibility in the black sea bass and lobster fisheries—to elect to participate in a program that exempts them from the lobster gear restrictions while targeting black sea bass in LCMA 5 but which limits them to the non-trap lobster allowance. The non-trap allowance is a landing limit of 100 lobsters per day and up to 500 lobsters per trip for trips 5 days or longer.

To be exempt to lobster gear restrictions while targeting black sea bass in LCMA 5, a vessel will obtain an "Area 5 Trap Waiver" category permit through the normal permitting process. A vessel with an "Area 5 Trap Waiver" category permit will be limited to the

non-trap allowance and may only land lobsters in greater numbers by formally canceling the "Area 5 Trap Waiver" category permit and switching to the commercial lobster category permit, again through the normal Federal permitting process. Cancellations of the "Area 5 Trap Waiver" category permit will be treated administratively as a lobster permit category change and will not result in the loss of limited access eligibility in either the lobster or the black sea bass fisheries. Vessels will be required to comply with the regulations that are appropriate for the target fishery and with the category of permits presently issued.

The creation of this new permit category addresses a common problem in managing overlapping or mixed fisheries. Ideally, conservation restrictions should be tailored as closely as possible to the target fishery; for instance, lobster fishers will be required to comply with the lobster gear restrictions and black sea bass fishers with sea bass restrictions. In mixed fisheries, tailoring becomes more difficult because the least restricted fishery can be used as a loophole for the other; in this case, black sea bass traps can become a loophole in the lobster conservation program. This final rule isolates and prohibits the problematic trips, namely, those that would target lobster with black sea bass traps. Only incidental amounts of lobster could be retained from such trips. These measures preserve the ability to fish in both fisheries in a single year under rules appropriate to the fisher's preferred target and without the loss of limited access status in either fishery. Detection of violations is simplified through the permit mechanism because an agent will need only to compare the observed landings with the rules associated with the permit.

**Comments and Responses**

There were no comments submitted in response to the proposed rule during the comment period.

### Changes From the Proposed Rule

In § 697.26, the word “lobster” is removed and the words “EEZ Nearshore” were added to maintain consistency with existing text describing lobster management areas in § 697.18.

In § 697.26(b), the word “Lobster” in the phrase “Lobster Management Area 5” is removed and the words “EEZ Nearshore” were added to maintain consistency with existing text describing lobster management areas in § 697.18.

No other changes were made from the proposed rule.

### Classification

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Director, State, Federal and Constituent Programs Office (see **ADDRESSES**).

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

This final rule is published under the authority of the ACFCMA. Section 804(b)(1) of the ACFCMA authorizes the Secretary of Commerce (Secretary) to issue regulations in the EEZ that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. This authority has been delegated to the Acting Assistant Administrator for Fisheries, NOAA (AA). The AA has determined that these actions are consistent with the national standards of the Magnuson-Stevens Act and compatible with the effective implementation of the ISFMP for American Lobster.

As a result of these lobster management measures in the final rule, black sea bass traps in the waters of Area 5 could increase, compared to the constraints on the number of traps fished in this area under current regulations (imposed in December 1999 and implemented in January 2000). However, there has been no observed takes of ESA or MMPA listed species in the black sea bass trap fishery, and these measures are expected to affect only a small number of fishers. Therefore, this action would not change the basis of the Biological Opinion made on December 17, 1998 or affect any ongoing consultation for this fishery under Section 7 of the ESA.

The measures for an Area 5 Black Sea Bass Trap Waiver fall within the scope of consultations on previous American lobster and Black Sea Bass FMP actions. Given the number of vessels affected by these measures, the limited presence of protected species most susceptible to trap gear (i.e., right whales, humpback whales) in the addition of adverse impacts which would change the basis for the determinations in those consultations. Should activities under this action change or new information become available that changes the basis for this determination, then consultation will be reinitiated.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic effects of this rule. Accordingly the basis for the certification has not changed.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains collection-of-information requirements subject to the PRA, and modifies (or adds new) collection-of-information requirements previously (approved under OMB control number 0648-0202) (15 minutes per response to initiate a permit category change and select the LCMA 5 Trap Waiver Permit category, 2 minutes per response to return a suspended limited access lobster trap permit, and 15 minutes per response to initiate cancellation of a LCMA 5 Trap Waiver Permit and re-activate a suspended limited access lobster trap permit). The following collection-of-information requirements are being restated and have already been approved by OMB as shown: vessel permit applications approved under OMB control number 0648-0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications, and a lobster trap tag requirement approved under OMB control number 0648-0351 with a response time of 1 minute per tag.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office

of Information and Regulatory Affairs (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: March 5, 2001.

**Clarence G. Pautzke,**

*Acting Assistant Administrator for Fisheries, 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. 5101 *et seq.*

### Subpart A—General Provisions

2. In § 697.2, the definition of “Trap” is removed and a definition for “Lobster trap” is added to read as follows:

#### § 697.2 Definitions.

\* \* \* \* \*

*Lobster trap* means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters. Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), and fishing gear fished by a vessel not issued a limited access lobster permit under § 697.4(a), are gear deemed not to be lobster traps for the purpose of this part, and are not subject to the provisions of this part.

\* \* \* \* \*

3. In § 697.4, paragraph (d)(1) is revised and paragraph (p) is added to read as follows:

#### § 697.4 Vessel permits and trap tags.

\* \* \* \* \*

(d) \* \* \* (1) Beginning fishing year 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member, unless exempt under § 697.26.

\* \* \* \* \*

(p) Permit category change. A vessel permit category change (for individuals who possess a dual Federal limited access permit for American lobster and black sea bass and who restrict fishing operations to Area 5) may be issued by the Regional Administrator when requested in writing by the owner or by an authorized representative of a vessel meeting the eligibility requirements under § 697.26(a).

4. In § 697.7, paragraphs (c)(1)(vii) through (x) are revised to read as follows:

**§ 697.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(vii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19 unless exempted pursuant to § 697.26

(viii) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear that does not satisfy the requirements on gear identification and marking, escape vents, ghost panel and maximum trap size specified in § 697.21, unless such gear has been rendered unfishable, or unless exempted pursuant to § 697.26.

(ix) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not tagged in accordance with the requirements in § 697.19, unless such gear has been rendered unfishable, or unless exempted pursuant to § 697.26.

(x) Fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer, unless exempted pursuant to § 697.26.

\* \* \* \* \*

**Subpart B—Management Measures**

5. In § 697.19, paragraph (e) is added to read as follows:

**§ 697.19 Trap limits and trap tag requirements for vessels fishing with traps.**

\* \* \* \* \*

(e) *Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

6. In § 697.21, paragraph (g) is added to read as follows:

**§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.**

\* \* \* \* \*

(g) *Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

7. A new § 697.26 is added to subpart B to read as follows:

**§ 697.26 EEZ Nearshore Management Area 5 Trap Waiver.**

(a) *Eligibility.* Vessels eligible for limited access lobster permits under § 697.4(a)(1) and limited access black sea

bass permits under § 648.4(a)(7)(i) of this chapter may request an Area 5 Trap Waiver Permit, under the procedures described in § 697.4.

(b) *Restrictions.* A vessel issued an Area 5 Trap Waiver permit under this section may engage in trap fishing for black sea bass in EEZ Nearshore Management Area 5 and is exempt from the provisions of § 697.19 and § 697.21 if such fishing is conducted in accordance with all other provisions of this section and all other Federal and state laws and regulations applicable to lobster and black sea bass fishing.

(1) A vessel issued a permit under this section may retain, land and sell an incidental allowance of lobster equal to the non-trap harvest restrictions specified in § 697.17(a).

(2) A vessel issued a permit under this section may not possess on board or deploy bait or baited traps.

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