

**PROPOSED RULE
IMPLEMENTING MANAGEMENT MEASURES
FOR COMPLIANCE WITH THE
ASMFC INTERSTATE
FISHERY MANAGEMENT PLAN
FOR
AMERICAN LOBSTER**

JUNE 6, 2008

I. ISSUE

Rule change necessary for compliance with Addendum IV and Addendum XI to Amendment 3 to the ASMFC Interstate Fishery Management Plan for American Lobster (FMP).

II. ORIGINATION

Amendment 3 to the FMP established a framework for area management, which consisted of industry participation through seven Lobster Conservation Management Teams (LCMTs). The LCMTs were encouraged to develop a management program, which suits the needs of seven Lobster Conservation Management Areas (LCMA) while meeting targets established in the FMP. North Carolina is included in the Inshore Southern Mid-Atlantic Lobster Management Area (LCMA 5). Addendum IV to Amendment 3 of the FMP requires that all lobster traps have one rectangular escape vent or two circular escape vents. Addendum XI to Amendment 3 revised the definition of a V-notch. The addendum also requires a reduction from 5 ½ inches to 5 ¼ inches in the maximum carapace length for both male and female American lobster in LCMA 5. Carapace length is the straight-line measurement from the rear of the eye socket parallel to the centerline of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

III. BACKGROUND

Section 3.5.1 of Amendment 3 to the FMP allows a state to apply for *de minimis* status if their lobster management program contributes insignificantly to a coastwide conservation program. The intent of *de minimis* is to allow states to be relieved of some regulatory and reporting requirements of the FMP. Section 4.1 of Addendum I to Amendment 3 establishes the criteria for *de minimis* consideration. Section 4.1 specifies that for a state to be eligible for *de minimis* considerations it must prove that its commercial landings in the most recent two years for which data are available did not exceed an average of 40,000 pounds. North Carolina was granted *de minimis* status each year from 2000 through 2007 on the basis of low landings of American lobster. There have been no reported landings of American lobster in North Carolina since 2001.

This section further specifies that if *de minimis* status is granted, the state is required to implement, at a minimum, the coastwide requirements contained in Section 3.1 of Amendment 3 to the FMP. All Coastwide Management Requirements and Prohibited Actions of Section 3.1, with the exception of the escape vent requirements, the revised definition for a v-notch and the 5¼ inch maximum carapace length, are currently addressed in Fisheries Rule 3L .0301. Amendments to the current rule are necessary to address the requirements of Addendum IV and XI for North Carolina's compliance with the American Lobster FMP and continuation of *de minimis* status.

IV. AUTHORITY

The authority for this action is North Carolina General Statute 143B-289.52. Marine Fisheries Commission – powers and duties.

V. DISCUSSION

The first North Carolina Fisheries Rules that pertained to American lobster were effective April 28, 1976. The rules specified a minimum carapace length of $3 \frac{3}{16}$ inches, prohibited possession of egg bearing or scrubbed lobster, shucked lobster meat and detached lobster parts. The rules also required lobster traps to have escape vents of a size adequate to minimize retention of undersize lobster.

The rules were amended effective January 1, 1991 giving the Fisheries Director proclamation authority to establish the minimum carapace length for American lobster. The proclamation authority allowed the Director to specify the minimum carapace length as recommended by an ASMFC FMP or adopted as a federal rule by the National Marine Fisheries Service as a result of an adopted Fishery Management Council FMP. Portions of the 1976 rule that pertained to possession of egg bearing or scrubbed lobster and detached parts and the requirement for escape vents in traps remained essentially unchanged.

The rules were amended effective March 1, 1996 deleting the proclamation authority for carapace length and specifying a minimum carapace length of $3 \frac{1}{4}$ inches. The prohibition of possession of egg bearing or scrubbed lobster remained in the rule. The portion of the rule that required traps to have escape vents of a size that would allow minimum retention of undersize lobster was deleted and replaced with a new requirement that traps have escape vents and panels as described in 50 CFR 649.21 (d) of federal regulations.

The rules, last amended effective August 1, 2000, now specify that it is unlawful to possess American lobster: with a carapace less than $3 \frac{3}{8}$ inches or greater than $5 \frac{1}{2}$ inches, which has eggs or eggs artificially removed, meats or detached parts or an outer shell which has been speared. The rule prohibits the possession of a V-notched female lobster and specifies daily and five day or longer possession limits for methods other than traps. The rule also provides detailed specifications for trap ghost panels (biodegradable escape panels). Although the rule makes reference to escape vents in the ghost panel specifications, the current rule fails to require escape vents in traps. Since escape vents were required in lobster traps from adoption of the 1976 rule to the August 2000 amendment, it is assumed that this requirement was inadvertently omitted in the August 2000 amendment of the rule. Amendments to the American lobster rules that decrease the maximum carapace length, establish a minimum depth of a V-notch and require escape vents in lobster traps are necessary for North Carolina to comply with the ASMFC Interstate Fisheries Management Plan for American Lobster and applicable amendments and addenda.

VI. PROPOSED RULE

3L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

(a) It is unlawful to possess American lobster:

- (1) with a carapace length less than $3 \frac{3}{8}$ inches or greater than ~~$5 \frac{1}{2}$ inches~~; $5 \frac{1}{4}$ inches;
- (2) which has eggs or from which eggs have been artificially removed by any method;
- (3) meats, detached meats, detached tails or claws or any other part of a lobster that has been separated from the lobster;
- (4) which has an outer shell which has been speared;
- (5) ~~that is a V-notched female lobster as described in Amendment 3 to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Lobster, copies of which are available through the Division of Marine Fisheries; or that is a V-notched female lobster. A V-notched female lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as $\frac{1}{8}$ inch, with or without setal hairs. A V-notched female lobster is also any female lobster which is mutilated in a manner which would hide, obscure or obliterate such a mark; or~~
- (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.

(b) American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:

- (1) the opening to be covered by the ghost panel shall be not less than $3 \frac{3}{4}$ inches (9.53 cm) by $3 \frac{3}{4}$ inches (9.53 cm);

- (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
- (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section; ~~and~~
- (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the ~~trap.~~ trap; and
- (5) all lobster traps must contain at least one rectangular escape vent per trap, 2 inches by 5 3/4 inches minimum size, or two circular escape vents per trap, with a minimum inside diameter of 2 5/8 inches.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996.
Temporary Amendment Eff. August 1, 2000
Amended Eff. September 1, 2005; April 1, 2001.*

VII. RECOMMENDATION

It is recommended that Fisheries Rule 15A NCAC 3L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER) be amended to specify that a V-notch marking in a female American lobster be at least $\frac{1}{8}$ inch deep and to implement a maximum carapace length of $5\frac{1}{4}$ inches as required by Addendum XI to Amendment 3 to the FMP. It is further recommended that the Fisheries Rule be amended to require one rectangular or two circular escape vents per lobster trap as required by Addendum IV to Amendment 3.

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