Atlantic States Marine Fisheries Commission

American Lobster Management Board

March 14, 2024
2:00 – 2:30 p.m.
Webinar

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1.	Welcome/Call to Order *(P. Keliher)*	2:00 p.m.
2.	Board Consent • Approval of Agenda	2:00 p.m.
3.	Public Comment	2:05 p.m.
4.	Consider Approval of Draft Addendum XXX on the Mitchell Provision for Public Comment *(C. Starks)* **Action**	2:15 p.m.
5.	Other Business/Adjourn	2:30 p.m.

The meeting will be held via webinar; click here for details.

Atlantic States Marine Fisheries Commission

DRAFT ADDENDUM XXX TO AMENDMENT 3 TO THE AMERICAN LOBSTER FISHERY MANAGEMENT PLAN FOR PUBLIC COMMENT

Foreign Import Minimum Size Recommendation

This draft document was developed for Management Board review and discussion. This document is not intended to solicit public comment as part of the Commission/State formal public input process. However, comments on this draft document may be given at the appropriate time on the agenda during the scheduled meeting. Also, if approved, a public comment period will be established to solicit input on the issues contained in the document.

February 2024

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

Public Comment Process and Proposed Timeline

In May 2023, the Board approved Addendum XXVII, which establishes a trigger mechanism to implement management measures – specifically gauge and escape vent sizes – to provide additional protection of the Gulf of Maine/Georges Bank (GOM/GBK) spawning stock biomass (SSB). Under Addendum XXVII, changes to the current gauge and escape vent sizes in Lobster Conservation Management Area (LCMA) 1 (inshore Gulf of Maine) will begin January 1, 2025, starting with an increase to the minimum gauge size in LCMA 1 from 3 ¼" to 3 $^{5}/_{16}$" followed by a second increase January 1, 2025, to 3 $^{3}/_{8}$". With these changes the LCMA 1 minimum gauge size will be the smallest minimum gauge size in effect.

Draft Addendum XXX does not present a range of management alternatives. Rather, it is an administrative document that clarifies how the Commission will recommend to NOAA Fisheries the implementation of the change in the LCMA 1 minimum gauge size and the implication on imports per the Mitchell Provision of the Magnuson Steven Act (see section 2.1).

The public is encouraged to submit comments regarding the administrative intention in this document at any time during the addendum process. The final date comments will be accepted is **Month, Day, 2024 at 11:59 p.m. EST.** Comments may be submitted by mail, email, or fax. If you have any questions or would like to submit comments, please use the contact information below.

Mail: Caitlin Starks
Atlantic States Marine Fisheries Commission
1050 N. Highland St. Suite 200A-N
Arlington, VA 22201

Email: comments@asmfc.org
(Subject line: Lobster Draft Addendum XXX)

Date	Action
January 2024	Board initiated the Draft Addendum XXX
February 2024	Plan Development Team (PDT) developed Draft Addendum document
February 2024	Board review and approval of Draft Addendum XXX for public comment
February-March 2024	Public comment period
March 2024	Board reviews public comment, selects management measures, final approval of Addendum XXX

Table of Contents

1.0 Introduction 1
2.0 Background 1
2.1 Mitchell Provision 1
2.1.1 Enforcement Concerns 2
3.0 Proposed Recommendation to NOAA Fisheries 2
4.0 References 2
5.0 Tables and Figures 3

DRAFT

1.0 Introduction

The Atlantic States Marine Fisheries Commission (ASMFC) has coordinated the interstate management of American lobster (*Homarus americanus)* from 0-3 miles offshore since 1996. American lobster is currently managed under Amendment 3 and Addenda I-XXVI to the Fishery Management Plan (FMP). Management authority in the Exclusive Economic Zone (EEZ) from 3-200 miles from shore lies with NOAA Fisheries. The management unit includes all coastal migratory stocks between Maine and Virginia. Within the management unit there are seven lobster conservation management areas (LCMAs): Inshore and offshore GOM (Area 1), Inshore SNE (Area 2), Offshore Waters (Area 3), Inshore and offshore Northern Mid-Atlantic (Area 4), Inshore and offshore Southern Mid-Atlantic (Area 5), Long Island Sound (Area 6) and Outer Cape Cod) (Figure 1). The Commission implements management measures (gauge sizes, vent size, trap limits, seasons, etc.) specific to each LCMA to (Table 1). The FMP prohibits the minimum gauge size of any LCMA to be lower than 3 ¼ inches carapace length.

The Magnuson-Stevens Act (MSA) prohibits imports of whole live lobster smaller than the minimum possession size in effect at the time under the Commission's American lobster management program. This provision, referred to as the Mitchell Provision, was passed to prevent imports of lobster smaller than those harvested by United States (US) fishermen. The current minimum gauge size for LCMA 1 (inshore Gulf of Maine) is 3 ¼ inch, which is the smallest minimum size in effect for the US lobster fishery.

Under Addendum XXVII, changes to the current minimum size in LCMA 1 will begin January 1, 2025, starting with an increase from 3 ¼" to 3 $^{5}/_{16}$". Thus, starting in January 2025, 3 $^{5}/_{16}$" will be the smallest minimum size in effect.

The purpose of this addendum is to provide detail to the public on what the Commission's recommendation to NOAA fisheries will be regarding the smallest minimum size in effect and how it is interpreted under the Mitchell Provision as the minimum gauge size increases occur in LCMA 1 in 2025 and 2027.

2.0 Background

2.1 Mitchell Provision

The Mitchell Provision prohibits imports of whole live lobster smaller than the minimum possession size in effect at the time under the Commission's American lobster management program in order to prevent imports of lobster smaller than those that can be legally harvested by the US industry. Signed into law in 1989, it states "it is unlawful for any person to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species Homarus americanus, that is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for

American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA)."

In a final rule published December 6, 1999, NOAA Fisheries withdrew the approval for the federal American Lobster FMP because the majority of the lobster fishery takes place in state waters. The final rule transferred regulations for management of the lobster fishery under the MSA (50 CFR part 649) to the ACFCMA (50 CFR part 697). Therefore, the Mitchell Provision language means it is unlawful for any person to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster smaller than the minimum possession size in effect under the Commission's FMP for American lobster.

The current LCMA 1 minimum gauge size of 3 ¼" is the smallest minimum gauge size in effect at this time (February 2024). Therefore, when the LCMA 1 minimum gauge size increases to 3 $^{5}/_{16}$" for January 1, 2025, the smallest minimum gauge size in effect will be 3 $^{5}/_{16}$". On January 1, 2027 the LCMA 1 minimum size will increase to 3 $^{3}/_{8}$", consistent with all other LCMAs except LCMA 3; therefore, the smallest minimum size in effect will be 3 $^{3}/_{8}$".

2.1.1 Enforcement Concerns

The Law Enforcement Committee (LEC) has commented that if imports were allowed to be smaller than the minimum gauge size in effect in the US, it would create additional challenges for enforcement. In particular, it would open up opportunities for the illegal sale of US caught lobster that are below the legal minimum size in the US. The LEC noted that enforcing the size differences when lobsters enter the United States from Canada at the Border is not as much of a challenge; however, once the lobster arrive to a dealer in the US, they are usually comingled for sale, and it would be difficult to maintain separation of US and non-US origin lobster.

3.0 Proposed Recommendation to NOAA Fisheries

It is the intention of the Commission to recommend to NOAA Fisheries that as changes to the minimum gauge size in LCMA 1 are required by Addendum XXVII, the smallest minimum size for foreign imports would match the smallest minimum size in effect for the US industry. Therefore, the scheduled 2025 and 2027 changes in the minimum gauge size for LCMA 1 would impact size restrictions for imported lobster. Imports of whole live lobster smaller than 3 $^{5}/_{16}$" would be prohibited after January 1, 2025, and lobster smaller than 3 $^{3}/_{8}$" would be prohibited after January 1, 2027. This is consistent with the Mitchell Provision of the MSA. This recommendation would be forwarded to NOAA Fisheries after approval of the draft addendum.

4.0 References

Atlantic States Marine Fisheries Commission (ASMFC). 1997. Amendment 3 to the Interstate Fishery Management Plan for American Lobster.

ASMFC. 2020. American Lobster Benchmark Stock Assessment and Peer Review Report.

ASMFC. 2023. Addendum XXVII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster.

5.0 Tables and Figures

Table 1. Existing LCMA specific management measures.

Mgmt. Measure	Area 1	Area 2	Area 3	Area 4	Area 5	Area 6	OCC
Min Gauge Size	3 1/4"	3 3/8"	3 17/32"	3 3/8"	3 3/8"	3 3/8"	3 3/8"
Vent Rect.	1 15/16 x 5 3/4"	2 x 5 3/4"	2 1/16 x 5 3/4"	2 x 5 3/4"	2 x 5 3/4"	2 x 5 3/4"	2 x 5 3/4"
Vent Cir.	2 7/16"	2 5/8"	2 11/16"	2 5/8"	2 5/8"	2 5/8"	2 5/8"
V-notch requirement	Mandatory for all eggers	Mandatory for all legal size eggers	Mandatory for all eggers above 42°30'	Mandatory for all eggers in federal waters. No V-notching in state waters.	Mandatory for all eggers	None	None
V-notch Definition[1] (possession)	Zero Tolerance	1/8" with or w/out setal hairs[1]	1/8" with or w/out setal hairs[1]	1/8" with or w/out setal hairs[1]	1/8" with or w/out setal hairs[1]	1/8" with or w/out setal hairs[1]	State Permitted fisherman in state waters 1/4" without setal hairs Federal Permit holders 1/8" with or w/out setal hairs[1]
Max. Gauge (male & female)	5"	5 ¼"	6 3/4"	5 ¼"	5 ¼"	5 ¼"	State Waters none Federal Waters 6 3/4"
Season Closure				April 30-May 31[2]	February 1-March 31[3]	Sept 8-Nov 28	February 1-April 30

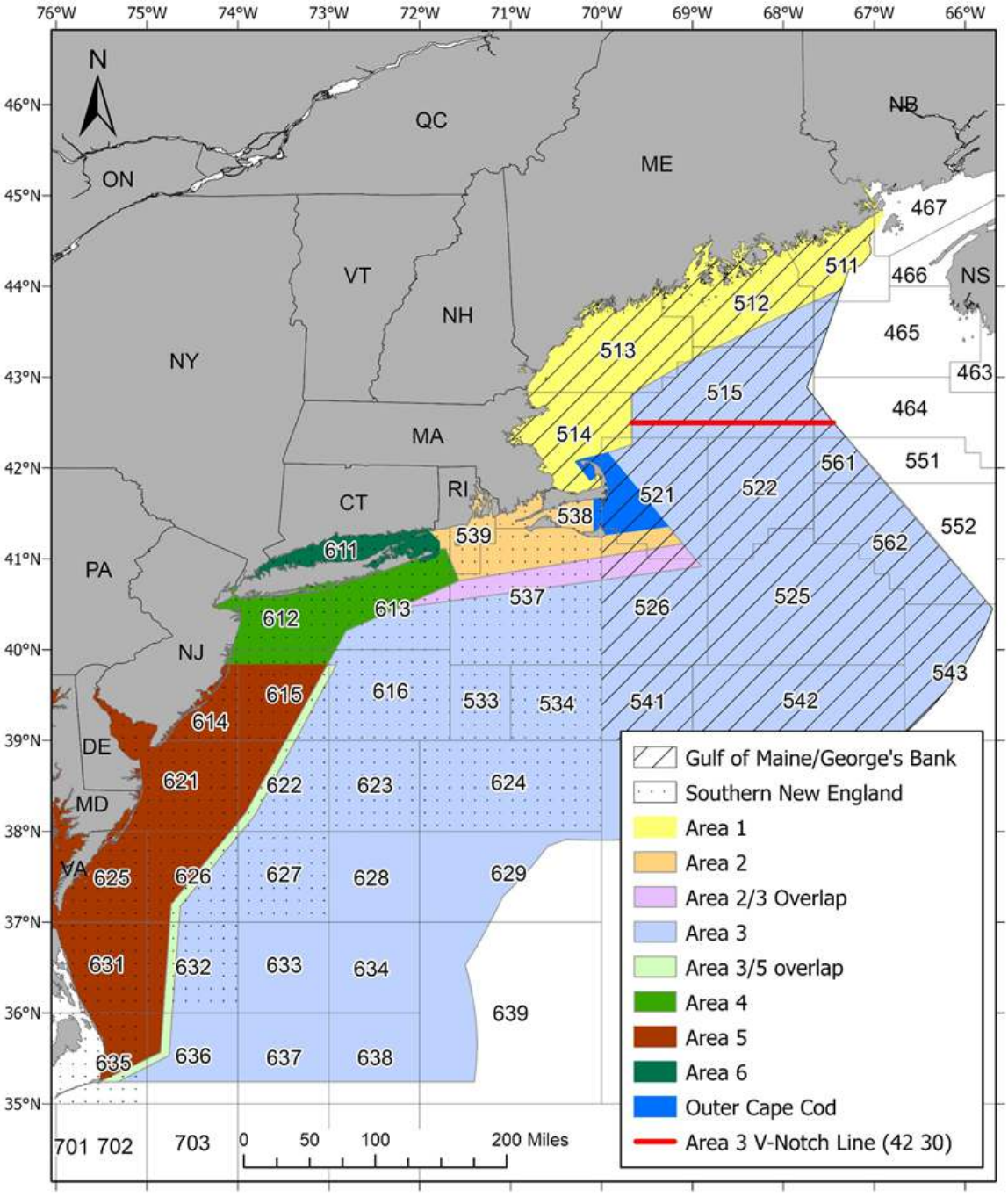

Figure 1. Lobster conservation management areas (LCMAs) in the American lobster fishery. LCMAs 1, 3, and OCC make of the majority of the GOM/GBK stock. The Area 3 V-Notch line is shown in red where v-notching is required north of the 42°30' line.