

Commission has heard from participants in the NVOCC industry that it would be useful if the exemption permitted NSAs to be jointly offered by unaffiliated NVOCCs. At its meeting of August 3, 2005, the Commission determined that it would seek further comment on the issue. The Commission now seeks comment on the following specific questions:

1. In what manner could two or more unaffiliated NVOCCs jointly offer NSAs? Would two or more NVOCCs use a single document to offer their services as carriers to other NVOCCs acting as shippers? Would two or more NVOCCs offer identical services or rates in separately-filed NSAs? Are there other possibilities?

2. How would rates and defined service levels for such jointly offered NSAs be determined?

3. Would unaffiliated NVOCCs jointly offering NSAs keep the terms of such NSAs confidential from non-participating NVOCCs? From other shippers (including NVOCCs)?

4. How would such an exemption meet the statutory requirements of section 16 of the Shipping Act of 1984? Would such an exemption cause a substantial reduction in:

- Competition among NVOCCs;
- Competition between NVOCCs and vessel-operating common carriers (VOCCs);
- Competition among beneficial cargo owners; and
- Other competition?

5. Would such an exemption cause detriment to commerce by any general or specific adverse economic impacts on the carriage of cargo in the U.S.-foreign trade or U.S. commerce generally?

6. What might be the benefits or harm to beneficial cargo owners of jointly-offered NSAs?

7. Do any issues with regard to NVOCC financial responsibility arise stemming from jointly-offered NSAs? For example, should a joint bond or higher individual bond be required for NVOCCs that jointly offer NSAs? If so, how should the amount be determined?

8. Would there likely be any specific benefits or harm to small NVOCCs if jointly offered NSAs were permitted?

9. If jointly offered NSAs are allowed, should there be limits on the number (or combined market share) of the NVOCCs participating in a single joint NSA? If so, how should the relevant market be defined? Should the Commission or the parties determine the market share? Should NVOCCs be required to obtain Department of Justice business review letters prior to offering jointly offered NSAs?

10. What would be the likely impact, if any, of joint NSAs on individual rates offered by the participating NVOCCs in the same trade? In other trades?

11. Should the contract details which must be made publicly available ("essential terms") be more extensive for jointly offered NSAs than for other NSAs? For example, should the Commission require that the identities of each of the NVOCC carrier parties to the jointly offered NSA be made public?

12. Are there any additional procedures (e.g., registration, reporting, monitoring, measuring) that should be considered to ensure that each jointly-offered NSA does not result in a substantial reduction in competition or detriment to commerce?

13. Should the Commission require some type of notification to the VOCC carrying the cargo moving under a jointly offered NSA? If so, describe what form such notification should take and when it should be required.

14. How would bills of lading be issued for cargo moving under a joint NSA?

15. Please describe any other matters that may be relevant to the Commission's consideration of this issue.

In order best to facilitate the Commission's consideration of the issues raised in this Notice of Inquiry, commenters should provide detailed responses, and should supply examples whenever feasible.

By the Commission.

**Bryant L. VanBrakle,**  
*Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 0104130930-5226-03; I.D. 032301C]

RIN 0648-AP18

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes new and revised Federal American lobster

(*Homarus americanus*) regulations in response to recommendations by the Atlantic States Marine Fisheries Commission (Commission) in Addenda II and III to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP). The proposed lobster management measures are intended to increase protection to American lobster broodstock throughout the stock's range, and would apply to lobsters harvested in one or more of seven Lobster Conservation Management Areas (LCMA). In addition, NMFS proposes measures that would clarify existing Federal lobster regulations.

**DATES:** Written comments must be received no later than 5 p.m. Eastern Standard Time on or before October 17, 2005.

**ADDRESSES:** Written comments should be sent to Harold C. Mears, Director, State, Federal, and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "American Lobster Proposed Rule Comments." Comments may be sent via email at [Lob0305@noaa.gov](mailto:Lob0305@noaa.gov). Include in the subject line "American Lobster Proposed Rule Comments." Comments may also be sent via fax (978) 281-9117, or via the Federal e-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

Copies of the American lobster proposed rule, its Draft Environmental Assessment/Initial Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DEA/IRIR/IRFA) are available from Harold Mears, Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Robert Ross, NMFS, Northeast Region, (978) 281-9234, fax (978) 281-9117.

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

These proposed regulations would modify Federal lobster conservation management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, which 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, i.e., from 3 to 200 nautical miles (nm) offshore. These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

#### Purpose and Need for Management

American lobster are managed within the framework of the Commission. The Commission is a deliberative body comprised of representatives both from the Atlantic coastal states and the Federal Government. The Commission serves to develop fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission decides upon a management strategy as a collective, then forwards that strategy to the states and Federal government along with a recommendation that the states and Federal Government take action (e.g., enact regulations) in furtherance of this strategy.

The Commission reports that American lobster (*Homarus americanus*) experience high fishing mortality rates and are growth overfished throughout their range (U.S./Canada border to Cape Hatteras, North Carolina). Overfishing is a rate of removal that is too high and, if continued, the removals would not be sustainable. Growth overfishing, under the Commission ISFMP, means that most lobsters are harvested at or just above the legal minimum size and the maximum yield is not produced because of high fishing mortality on these smaller lobsters. In March 2000, the Commission issued an American lobster stock assessment report that concluded that the resource is growth overfished. That assessment was further evaluated by an external peer review, which took place during May 2000. The stock assessment external peer review concluded that fishing rates are unacceptably high, recruitment overfishing is occurring, and that a precautionary approach in management of the resource is warranted to sustain future viability of the lobster fishery. Recruitment overfishing, under the Commission ISFMP, means that the number of new lobsters available to the fishery each year is reduced by high fishing mortality rates. Since most egg production is from recruits and the first molt group above the minimum legal size, a decline in recruitment would lead to a decline in egg production. The Peer Review Report provided several management recommendations on the

implications of the stock assessment report, including recommendations to address increasing lobster mortality and to rebuild stocks. The Commission is currently updating the American lobster stock assessment, and a peer review of the Commission stock assessment is scheduled for completion in 2005.

The Commission has developed a plan to end the overfishing and has requested assistance from the Federal Government in the form of compatible Federal regulations. The Atlantic Coastal Act directs the Federal Government to support the management efforts of the Commission. Additionally, to the extent the Federal Government seeks to regulate a Commission species, those Federal regulations must be compatible with the Commission plan. The proposed measures in this regulatory action respond to: the biological need to address increasing lobster mortality and to rebuild stocks; the practical need to have uniform state and Federal regulations; and, the legal need to support the Commission plan in complementary fashion.

#### Background

The Commission set forth the foundation of its American lobster fishery management plan in Amendment 3 to the ISFMP (Amendment 3) in December 1997. The Federal Government issued compatible regulations that complemented Amendment 3 in December 1999. The Amendment 3 regulations established assorted measures to directly, even if preliminarily, address overfishing (e.g., trap caps and minimum gauge sizes). Amendment 3 created seven lobster management areas and industry led lobster management teams from which would spring recommendations for future measures to end overfishing. Examples of such more specific measures were set forth in Amendment 3 addenda: measures to limit future access to LCMAs 3, 4, and 5 in Addendum I to Amendment 3 (Addendum I) (Commission approved August 1999 - compatible Federal regulations enacted March 2003); measures to increase protection of the American lobster broodstock described in this proposed rule as recommended in Addendum II to Amendment 3 (Addendum II) (Commission approved February 2001); and Addendum III to Amendment 3 (Addendum III) (Commission approved February 2002); and, measures to control fishing effort being analyzed in a separate rulemaking action recommended in Addendum IV to Amendment 3 (Addendum IV) (Commission approved December 2003), Addendum V to Amendment 3

(Addendum V) (Commission approved March 2004), and Addendum VI to Amendment 3 (Addendum VI) (Commission approved February 2005).

Protection of broodstock lobsters is one of the overarching objectives in the Commission's lobster management plan. Although Addendum II pre-dates Addendum III, both addenda involve protections designed to increase the abundance of broodstock lobsters and thereby increase egg production. The Commission's recommendations to implement the broodstock measures in Addenda II and III form the basis of the measures described in this proposed rule. Broodstock protective measures proposed in this regulatory action, and in Addenda II and III, are the following: increase in the minimum legal gauge size in LCMAs 2, 3, 4, 5, and the Outer Cape; increase in the size of escape vents on lobster traps in LCMAs 2, 3, 4, 5, and the Outer Cape; implementation of a maximum legal gauge size in LCMA 4 and 5; require mandatory V-notching of female lobsters carrying eggs in LCMA 1 and in LCMA 3 above the 42°30' North latitude line; and require a zero tolerance definition of V-notched female lobsters in LCMA 1.

In response to the Commission's Addendum II recommendations, NMFS published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** on May 24, 2001 (66 FR 28726). The agency responded to the Commission's Addendum III by filing in the **Federal Register** an ANPR and a notice of intent (NOI) to prepare an environmental impact statement (EIS) on September 5, 2002 (67 FR 56801). This notice declared NMFS' intention to combine the Addendum II and Addendum III rulemakings because the Addenda involved similar subject matter - namely management measures designed to protect brood lobster stock. Addenda II and III, however, also contain numerous other effort control management measures, such as a trap transferability program for the Outer Cape Management Area and a mandatory so-called "choose and use" program for LCMA 3 fishers that would require qualified permit holders to permanently designate LCMA 3 when renewing Federal lobster permits each year. Because these control measures are so intimately a part of the subsequently developed Commission's Addenda IV, V, and VI, NMFS determined that those effort control programs in Addenda II and III be analyzed contemporaneously with the Addenda IV - VI measures in a forthcoming EIS. Accordingly, NMFS published its ANPR along with an NOI to address these lobster fishing effort control measures in a **Federal Register**

notice dated May 10, 2005 (70 FR 24995). Therefore, measures proposed in this action would implement specified lobster broodstock measures from Addenda II and III, and a separate rulemaking will evaluate the effort control measures specified in Addenda II - VI.

At present, most states have issued their complementary Addenda II and III regulations, but the Federal Government has not. As a result, there is presently a regulatory incongruence with the Commission's American lobster ISFMP, at least insofar as it pertains to the broodstock measures identified in Addenda II and III. Most Federal lobster permit holders also hold a state lobster license, and they must abide by the ISFMP measures by virtue of their state license, even if the same restrictions have not yet been placed on their Federal permit. Measures in this proposed rule would primarily impact Federal lobster permit holders from states that have not implemented all measures in the Commission's ISFMP. Generally, the exception to state coverage of all lobster ISFMP measures, under the Commission's ISFMP, is for states that are classified as *de minimis* states. Certain states located at the southern end of the range can qualify for *de minimis* status under the Commission's lobster ISFMP if a given state's declared annual landings, averaged over a 2-year period, amount to less than 40,000 lbs (18,144 kg) of American lobster. While *de minimis* states are required to promulgate all coastwide measures contained in Amendment 3, many of the area-specific management measures, including the broodstock measures proposed in this action, are not required to be implemented by the *de minimis* states under the Commission's lobster ISFMP. However, Federal lobster regulations apply to all Federal lobster permit holders, including permit holders residing in and landing in *de minimis* states. Four states (North Carolina, Virginia, Delaware, and Maryland) are classified under the Commission's lobster ISFMP as *de minimis* states in 2005. Based on the analysis completed for this action, approximately ten percent of current Federal lobster permit holders are from *de minimis* states or reside in states that may not have fully implemented all Commission ISFMP management measures.

### Comments and Responses

Addenda II and III to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster (ISFMP) include both lobster broodstock conservation measures and lobster trap

effort control measures. This proposed rule considers the management measures in these two addenda that are relevant to broodstock conservation. These are: recommendations for lobster minimum size increases and escape vent size increases in lobster conservation management areas (Areas 2, 3, 4, 5 and the Outer Cape Management Area; implementation of a maximum carapace size in Area 4 and Area 5; mandatory v-notching of egg-bearing female lobster in Area 1 and in the Gulf of Maine portion of Area 3; a zero tolerance definition of v-notching in Area 1; and a 5-mile (8-km) overlap zone along the common boundary of Area 3 and Area 5.

Subsequent to the Commission's approval of Addenda II and III to Amendment 3 of the ISFMP, NMFS solicited comments from the public by three separate actions published in the **Federal Register**: an ANPR on May 24, 2001; a NOI dated September 24, 2001, both relative to Addendum II; and, a combined ANPR/NOI, relative to both Addenda II and III, published on September 5, 2002. As noted previously in this preamble, the effort control recommendations in Addenda II and III will be considered for Federal implementation in a separate rulemaking action. Therefore, this section is specific to the comments received on the broodstock conservation measures included in Addenda II and III, which are relevant to this proposed rule. NMFS notes that the public is encouraged to submit comments on this proposed rule during the comment period as specified in the **DATES** section of this document.

### Overall Summary of All Comments Received in Response to the Three Requests for Comments

To summarize, the majority of commenters to all three requests for comments were in favor of gauge increases up to 3 3/8 inches (8.57 cm) in Areas 3, 4, 5 and the Outer Cape Area, with some favoring additional increases to 3 1/2 inches (8.89 cm) if necessary for conservation in Area 3. Generally, the comments were from Area 3 fishermen and within the context of Area 3 gauge increases. A majority of commenters also favored the escape vent size increases consistent with those approved in Addenda II and III. At least one comment was received stating opposition to the additional gauge increases in Area 3 and the Outer Cape Area beyond 3 3/8 inches (8.57 cm). A commenter expressed concern over the ability to enforce lobster regulations and pointed out the complexities of enforcing differing regulations at the

state and Federal level. The representative of an association of recreational diving clubs opposes maximum sizes for lobster in Areas 4 and 5. Review of the comments revealed support from commenters for v-notching of egg-bearing females in the Gulf of Maine portion of Area 3 and throughout Area 1. One state agency expressed opposition to the Area 1 v-notch requirement. All comments received with regard to the establishment of an overlap zone along the common boundary of Area 3 and Area 5 support this management measure.

### Breakdown of Comments Received for Each Request for Comments

ANPR, published on May 24, 2001

In response to the ANPR, published on May 24, 2001, sixteen comments were received. Fifteen commenters wrote in favor of the minimum gauge size and escape vent size increases with one opposed to these measures. Of those that favored the gauge increases, nine commenters specifically supported the four additional gauge increases up to 3 1/2 inches (8.89 cm), should they be deemed necessary for conservation in Area 3, as set forth in Addenda II and III. One in favor of gauge increases up to 3 3/8 inches (8.57 cm) stated that the four additional gauge increases up to 3 1/2 inches (8.89 cm) should not be implemented in Area 3.

NOI published on September 24, 2001

A total of 23 comments were received in response to the NOI published on September 24, 2001. Seventeen commenters were in favor of the Area 3 minimum gauge size increase to 3 3/8 inches (8.57 cm), the additional gauge increases if necessary to 3 1/2 inches (8.89 cm), and the associated escape vent size increases.

Two individuals were opposed to minimum gauge size increases. One commenter noted an incorrect statement in the September 24, 2001 NOI concerning the escape vent increases. In general the statement reads that traps in all lobster management areas are subject to an escape vent size increase in Addendum II. However, the commenter correctly noted that only those areas with proposed gauge increases are scheduled for escape vent size increases; specifically neither Area 1 nor Area 6 are scheduled for escape vent increases in Addenda II. NMFS notes this oversight and will assess, within the context of this rulemaking, the gauge and escape vent size increases as set forth in the Addenda.

ANPR/NOI published September 5, 2002

Twenty-two comments were received in response to the combined ANPR/NOI published September 5, 2002. Five support the gauge size increases in the addenda while one individual is opposed to the additional minimum size increases in Area 3 and the Outer Cape Area beyond 3 3/8 inches (8.57 cm) and supports consistent management measures in all areas. Thirteen commenters support the escape vent size increases with one opposed. One supports a maximum gauge size and one is opposed. Twelve support v-notch requirements in Area 3 with none opposed. One supports a v-notch requirement in Area 1 with one opposed. Twelve support the establishment of an overlap zone along the common boundary of Area 3 and Area 5 with none opposed. One comment was received in opposition to the Federal prohibition on changes to the lobster management area designations on the Federal permit when Federal permits are sold. One commenter supports a change to the Federal regulations to allow authorization of a substitute vessel to haul gear of an inoperable vessel with a Federal permit. A representative of an association of recreational diving clubs is opposed to maximum size limits that would impact the recreational dive fishery in Areas 4 and 5. One commenter expressed concern about the complexity of enforcing management measures that differ at the state and Federal level.

#### Responses to Comments

*Comment 1:* The great majority of commenters recommend that the gauge increases set forth in Addenda II and III be implemented, along with the associated escape vent size increases. There were a total of four opposing comments, although none detailed the basis of their opposition.

*Response:* NMFS proposes to implement the minimum gauge size increases (up to 3 3/8 inches (8.57 cm)) and the associated escape vent size increases in Areas 2, 3, 4, 5 and the Outer Cape Management Area, to be compatible with the ISFMP. NMFS believes that implementing these measures will facilitate enforcement of lobster regulations and improve egg production consistent with the intent of the ISFMP. NMFS does, however, acknowledge those commenters in opposition to the gauge increases, and has reviewed such an alternative in its draft Environmental Assessment. NMFS invites the commenters to review the

analysis and to comment further on this, or any other issue, in this proposed rule.

*Comment 2:* One state agency, in response to the NOI on September 24, 2001, recommended that if the minimum gauge size does increase, the legal minimum size for lobster should remain consistent in all lobster conservation management areas to facilitate enforcement and minimize marketing problems.

*Response:* NMFS acknowledges the complexities associated with differing management measures amongst management areas. The agency further acknowledges that uniformity and standardization amongst management areas would simplify some of these complexities. The agency, however, has to balance the utility in having a uniform management scheme against its obligation to support a Commission management program that has, as two of its objectives, the maintenance of flexible regional programs and maintenance of existing social and cultural features of the industry wherever possible. Both such objectives form the foundation of the area management scheme established in Amendment 3 to the Commission's ISFMP. This proposed rule seems to achieve balance. It simplifies overall lobster management, thereby facilitating enforcement, by making Federal lobster regulations more consistent with existing state regulations. Yet, the proposed rule remains supportive of the area management construct set forth in the ISFMP by acknowledging that lobster biology and industry practices differ throughout the vast range of this fishery, and thus, a "one-size-fits-all" approach, although potentially easier to enforce (but only if all states endorsed such an approach - if some states made their regulations uniform, but others did not, then enforcement might actually become more complicated) might undermine the objectives of area management.

*Comment 3:* Comments on at least two occasions supported the gauge and vent size increases and cautioned that inconsistent state and Federal regulations create management and enforcement difficulties.

*Response:* NMFS believes that the proposed rule addresses many discrepancies between state and Federal regulation. NMFS notes, however, that although present Federal and state gauge regulations may differ at this time, the regulations do not conflict. Specifically, Federal regulations at 50 CFR 697.3(3) state that "The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state

laws." Accordingly, NMFS expects that states with more restrictive gauge and vent regulations should be able to enforce those regulations because the Federal Government has expressly stated that it has not preempted the field relative to more restrictive gauge and vent sizes. In this particular instance, dual state/Federal permit holders would be able to comply with both state and Federal regulations by complying with the more restrictive state regulation, and indeed a state might so enforce such compliance. The "more restrictive" regulatory concept embodied in 50 CFR 697.3(3) becomes especially germane in situations where the Federal Government is in the process of creating compatible regulations in response to Commission recommendations. Federal rulemaking, with the numerous statutory obligations attendant thereto, can be a far more time consuming process than rulemaking at the state level. Accordingly, states are often able to promulgate regulations in response to Commission regulations quicker than the Federal Government. Thus, the Federal regulation at 50 CFR 697.3(3) provides a degree of regulatory stability during the Federal rulemaking inter period.

*Comment 4:* More than one commenter who favors gauge increases stated that the additional gauge increases up to 3 1/2 inches (8.89 cm) should not be implemented in Area 3.

*Response:* NMFS proposes to implement the minimum size increases to 3 3/8 inches (8.57 cm)) and escape vent size increases (2 inches by 5 3/4 inches (5.08 cm x 14.61 cm)) rectangular, and 2 5/8 inches (6.67 cm) circular, consistent with Addenda II and III in Areas 2, 3, 4 and 5 and the Outer Cape Management Area. The additional gauge increases up to 3 1/2 inches (8.89 cm) were included in the addenda for implementation only if it was determined that they were necessary for conservation. However, the gauge size increase schedule approved by the Commission has already directed states to implement the first of these "additional" minimum carapace size increases, that is 3 13/32 inches (8.66 cm) in Areas 3 and Outer Cape. Regardless, since these additional gauge increases are being evaluated in the current stock assessment, NMFS does not propose to implement the gauge increases above 3 3/8 inches (8.57 cm) at this time until a more thorough analysis of their necessity is completed.

*Comment 5:* One commenter expressed support for amending the current measure in the Federal lobster regulations prohibiting changes during the Federal fishing year to lobster

conservation management area designations after the Federal permit has been issued.

*Response:* The current regulations allow changes to the lobster trap area designations on the Federal permit only during a vessel replacement or at the start of the Federal fishing year. This proposed rule offers a measure to allow the trap area designations to be altered, after the permit has been renewed for the fishing year, in the event of the sale or transfer of a Federal lobster permit, or within 45 days of the effective date of the permit. This change will more clearly set forth NMFS regulatory practices, is consistent with the current practices for other Federal fisheries permits and will give Federal permit holders a chance to make a change if a mistake was made when areas were initially designated.

*Comment 6:* A comment was received in support for Federal authorization of a substitute vessel to haul the lobster trap gear of an inoperable vessel with a Federal lobster permit.

*Response:* NMFS agrees and proposes to allow short-term removal of trap gear from the water with a substitute vessel when a Federally permitted vessel is inoperable. This will facilitate the ability of fishermen to abide by the regulations in 50 CFR 229 that require all set gear to be tended every 30 days to decrease the jeopardy to marine mammals. This measure will also help to prevent gear theft and potential creation of hazardous ghost gear that may occur when traps are left unattended for relatively long periods.

*Comment 7:* The representative of an association of recreational scuba divers in New Jersey questions how the proposed maximum lobster carapace sizes in Areas 4 and 5 will affect the recreational divers who seek to harvest "trophy" lobsters.

*Response:* NMFS believes that regulations to implement maximum carapace size limits in Area 4 and 5 will not substantially impact the recreational dive fishery for lobster. As a preliminary matter, these size limitations will still allow scuba divers to harvest trophy sized lobsters - up to 5 1/2 inches (13.97 cm) in Area 5 and 5 1/4 inches (13.34 cm) in Area 4. The commenter provided no objective information relative to numbers of lobster typically caught above 5 1/2 inches (13.97 cm) in Area 5 and 5 1/4 inches (13.34 cm) in Area 4. Based upon the best available information and location of the involved areas, NMFS does not believe the number of lobster expected to be caught by divers above the proposed maximum size to be significant. NMFS, however, invites the public to further comment on

the agency's analysis in this proposed rule and provide comments by the end of the comment period as specified in the DATES section of this document.

### **Proposed Changes from the Current Regulations**

This Federal lobster management action proposes the following specific management measures, as described here.

#### *Modify Egg Production Schedule*

The American lobster resource is considered overfished when the fishing mortality rate (F) results in a reduction in estimated egg production per harvestable lobster to 10 percent (F10 percent) or less of a non-fished population. In other words, lobsters are considered overfished when harvest so reduces the amount of lobsters remaining in the water that the remaining lobsters can produce no more than 10 percent of the eggs that an unfished population would produce. If lobsters are overfished - i.e., the remaining uncaught lobsters are so few that they can only produce as a group 10 percent of the number of eggs that an unfished population would collectively produce, then the present Commission lobster plan recommends that managers act to restore egg production to 10 percent or greater by a date certain, presently December 31, 2005.

Originally, in Addendum I, the Commission targeted a rough deadline (December 31, 2005) by which they hoped to end overfishing. In so doing, the Commission used the best available stock information, but admittedly dated information, to extrapolate out an egg production schedule - a time line with interim objectives - that would meet the targeted deadline of December 31, 2005. The Commission acknowledged, however, that the Addendum I schedule and target deadline would need to be adjusted in later addenda following the peer reviewed stock assessment conducted in 2000.

The May 2000 the peer-reviewed American lobster stock assessment confirmed that overfishing of American lobster stocks is occurring throughout the species' range. Based upon the year 2000 stock assessment, the Commission revised its target deadline to end overfishing to December 31, 2008. Accordingly, the Commission, in Addendum II and its recommendations to the Federal Government, revised the schedule for increasing egg production to account for updated information on the current status of the stock.

This proposed Federal action would revise and extend the egg production schedule time line by three years, from

December 31, 2005, to December 31, 2008. Accordingly, this action would revise the timeline to restore egg production in each of the management areas to 10 percent or greater of the egg production of an unfished population (i.e., the present overfishing definition) by December 31, 2008. This action is based upon the most recent stock assessment and is recommended by the Commission.

#### *Increased Minimum Harvest Size in LCMA 2, 3, 4, 5, and the Outer Cape*

One key Addendum II broodstock management measure was to increase the minimum legal harvest size of American lobster from 3 1/4 inches to 3 3/8 inches (8.26 cm to 8.57 cm) carapace length in certain LCMA's. The carapace is the unsegmented body shell of the American lobster. Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. Many scientists believe that many lobsters are harvested before they have had an opportunity to reproduce. Hence, increasing the minimum legal size of lobster would force fishers to throw back lobsters at the present legal minimum size, allowing those lobsters an additional season to remain in the water, mature and reproduce. Accordingly, increasing the minimum carapace length or minimum gauge size will protect a larger number of mature female American lobsters, the broodstock, and increase egg production by allowing reproduction in a sector of the population that many believe has heretofore been harvested before reaching maturity.

Addendum II includes a series of minimum gauge size increases in state and Federal waters of LCMA's 2, 3, 4, 5, and the Outer Cape, but not LCMA 1 and LCMA 6 (Long Island Sound). By approving Addendum II, the states agreed to implement annual Area-specific gauge increases beginning December 31, 2001. NMFS received a recommendation from the Commission to implement complementary Federal measures for Federal waters of LCMA's 2, 4, 5, and the Outer Cape, as well as in LCMA 3 (comprised entirely of Federal waters). Specifically, the minimum allowable harvest size of American lobster in state waters of LCMA's 2, 4, 5, and the Outer Cape increased 1/32 inches (0.08 cm) annually until 2004 to an ultimate minimum size of 3 3/8 inches (8.57 cm), except for the de minimis states and the State of Maine. The Commission recommends that the gauge increases in Federal waters of LCMA 2, 4, 5, and the

Outer Cape, as well as in LCMA 3 increase to an ultimate minimum size of 3 3/8 inches (8.57 cm).

This proposed Federal management measure would implement a single 1/8 inch (0.32 cm) increase in the Federal minimum allowable harvest size of American lobster in LCMAs 2, 3, 4, 5, and the Outer Cape. The lobster minimum size increase would result in a change of the current minimum harvest size from 3 1/4 inches to 3 3/8 inches (8.26 cm to 8.57 cm) in LCMAs 2, 3, 4, 5, and the Outer Cape. LCMA 1 and LCMA 6 would retain the current minimum harvest size of 3 1/4 inches (8.26 cm). Although a 4-year phased in Federal implementation of the 3 3/8 inches (8.57 cm) minimum harvest size in LCMAs 2, 3, 4, 5, and the Outer Cape is technically the Commission's recommendation, as specified in a letter dated February 13, 2001, due to the passage of time and compatible state regulations currently at 3 3/8 inches (8.57 cm) minimum harvest size, it likely no longer represents the Commission's preference.

#### *Modify Size of Lobster Trap Escape Vents in LCMAs 2, 3, 4, 5, and the Outer Cape*

Lobster trap escape vents are another management measure designed to increase egg production. Conceptually, escape vents are holes intentionally placed in the trap that are large enough to allow sublegal lobsters caught in a trap to exit, yet be small enough to prevent legal sized lobsters from escaping.

Addendum II called for an increase in the rectangular escape vent minimum size from 1 15/16 inches by 5 3/4 inches (4.92 cm by 14.61 cm) to 2 inches by 5 3/4 inches (5.08 cm by 14.61 cm). These recommendations were made to the Federal Government in a letter dated February 13, 2001, and are consistent with and follow the Commission's recommended increase in the minimum harvest size of American lobster from the current minimum harvest size of 3 1/4 inches to 3 3/8 inches (8.26 cm to 8.57 cm). As with the increased minimum gauge size, the Commission recommended that the increase in the trap escape vent size apply only to lobster trap gear fished in state and Federal waters of LCMAs 2, 3, 4, 5, and the Outer Cape, but not LCMA 1 and LCMA 6. An increase in the size of the escape vent opening by 1/16 inch (0.16 cm), by requiring at least one rectangular escape vent with an unobstructed opening not less than 2 inches by 5 3/4 inches (5.08 cm by 14.61 cm) per trap, or at least two circular escape vents per trap measuring 2 5/8

inches (6.67 cm) in diameter, was evaluated by the Commission's Lobster Technical Committee and determined to provide the maximum escapement of sublegal lobsters under 3 3/8 inches (8.57 cm), which is consistent with 100 percent retention of legal lobsters.

This proposed Federal management measure would implement a single 1/16 inch (0.16 cm) increase in the Federal minimum lobster trap rectangular escape vent opening of lobster traps in LCMAs 2, 3, 4, 5, and the Outer Cape. The increase would require at least one rectangular escape vent with an unobstructed opening not less than 2 inches by 5 3/4 inches (5.08 cm by 14.61 cm) per trap or at least two circular escape vents per trap measuring 2 5/8 inches (6.67 cm) in diameter. At the current time, Federal regulations require that all lobster trap gear must have a rectangular escape vent with an unobstructed opening not less than 1 15/16 inches by 5 3/4 inches (4.92 cm by 14.61 cm) or two circular escape vents with unobstructed openings not less than 2 7/16 inches (6.19 cm) in diameter. LCMA 1 and LCMA 6 would retain the current Federal rectangular and circular lobster trap escape vent requirements.

#### *Require Mandatory V-Notching in LCMA 1 and in LCMA 3 above the 42° 30' North Latitude Line*

Mandatory v-notching is another management measure designed to increase egg production. V-notching is a process wherein a lobster fisher cuts a v-shaped notch into the flipper in the tail of an egg-bearing female lobster. Any subsequent lobster fisher catching that v-notched lobster must return it to the sea. As such, v-notching is a management measure designed to specifically protect the female lobster broodstock. At present, there is no Federal requirement to cut a v-shaped notch into the flipper in the tail of an egg-bearing female lobster, although Federal regulations currently prohibit possession of female lobsters possessing a v-notch. The Commission has recommended that the Federal Government require mandatory v-notching for all Federal vessels fishing in LCMA 1 and in LCMA 3 above the 42° 30' North latitude line.

This proposed Federal management measure would require all Federal lobster fishers with LCMA 1 permits to v-notch all egg bearing lobsters and would mandate all Federal permit holders fishing in LCMA 3 above the 42° 30' North latitude line to v-notch all egg-bearing female lobsters. There would be no requirement to v-notch all egg-bearing female lobsters in LCMAs 2, 4,

5, 6, the Outer Cape or LCMA 3 below the 42° 30' North latitude line.

#### *Implement Zero Tolerance V-Notching in LCMA 1*

Zero tolerance v-notching of female lobsters relates both to the interpretation of what constitutes a v-notch and the limited latitude that the government will grant a violator possessing a v-notched lobster. Commission guidelines, as well as state and Federal regulations, prohibit the harvesting of v-notched lobsters. Prior to Addendum III, however, the ISFMP, and current Federal regulations for all LCMAs, provided only one definition of what constituted a v-notched lobster, i.e., the Commission and current Federal regulations defined "v notch" as being a straight-sided cut, without setal hairs, at least 1/4 inch (0.64 cm) in depth and tapering to a point. In contrast, lobster fishers from Maine had long considered a v-shaped notch to be a cut "of any size" in the flipper next to and to the right of the center flipper, and Maine State regulations prohibited possession based on that more restrictive definition. Possessors of v-notched lobsters outside of Maine State waters in LCMA 1, often argued that a clearly v-notched lobster was legal to possess because the v-notch was less than 1/4 inch (0.64 cm) or that the cut was not obviously straight sided. Maine argued that its definition ensured protection of female lobsters beyond the first molt, since after the first molt, possession was prohibited if there was a notch of any size discernable. The Commission, in Addendum III, supported and approved recommendations throughout LCMA 1 that sought to define "v-notch" as being a v-shaped notch of any size in the flipper next to and to the right of the center flipper as viewed from the rear of the female lobster. The Commission recommended that the Federal regulations be amended consistent therewith.

This proposed Federal management measure would amend the Federal v-notch definition to include a second, so called zero tolerance, definition of a v-notched lobster to mean a v-shaped notch of any size in the flipper next to and to the right of the center flipper as viewed from the rear of the female lobster in all of LCMA 1. Federal regulations would retain the current definition of a v-notched lobster in all other LCMAs (LCMAs 2, 3, 4, 5, 6, and the Outer Cape), as being a straight-sided cut, without setal hairs, at least 1/4 inch (0.64 cm) in depth and tapering to a point.

*Implement a Maximum Harvest Size in LCMA 4 and LCMA 5*

Another management measure designed to protect lobster broodstock is the implementation of a maximum harvest size for lobster. Scientific evidence seems to indicate lobster can be a long-lived species, up to and over 50 years of age, and that bigger lobsters are more successful breeders, produce more eggs, and those eggs are more likely to survive. For that reason, maximum size gauge restrictions on lobster can improve egg production by prohibiting harvest of bigger, and potentially, better breeding lobsters, forcing their return to the sea and allowing further reproduction. In Amendment 3, the Commission set a 5-inch (12.7-cm) maximum gauge size (carapace length) on all male and female lobsters caught in LCMA 1. The Amendment 3 recommendations have already been incorporated into Federal law. The Commission, in Addendum III, called for a 5 1/4-inch (13.34-cm) maximum gauge size on all female lobsters harvested in LCMA 4, and a 5 1/2-inch (13.97-cm) maximum gauge size on all female lobsters harvested in LCMA 5. The Commission requested that the Federal Government implement compatible maximum gauge size regulations in LCMAs 4 and 5.

This proposed Federal management measure would amend Federal lobster regulations to set a maximum size restriction for possession of female lobsters for Federal permit holders fishing in, or electing to fish in LCMA 4 and LCMA 5. This proposed measure would prohibit the possession of a female lobster with a carapace size in excess of 5 1/4 inches (13.34 cm) in LCMA 4 and would prohibit the possession of a female lobster with a carapace size in excess of 5 1/2 inches (13.97cm) in LCMA 5.

*Establish a Overlap Zone Between LCMA 3 and LCMA 5*

Lobster management in the southern end of the range is complicated by a number of factors, including distinct seasonality, limited abundance of lobsters, reliance on multiple mixed fisheries, and the similarity between finfish traps and fishing methods used to harvest American lobster. With the approval of Addendum I and the establishment of a historical participation based limited entry program for continued access to LCMA 3, those lobster fishers in LCMA 5 fishing near the boundary with LCMA 3 were disadvantaged. Specifically, a requirement to document annual lobster landings in excess of 25,000 lbs to qualify for continued access to LCMA 3

was deemed problematic for LCMA 5 lobster fishers, because resource availability is variable at the southern end of the range. The Commission, in Addendum III, proposed a 5-mile (8-km) overlapping boundary zone between LCMAs 3 and 5, extending in to LCMA 3 along the length of the eastern most border of LCMA 5 for 5 miles (8 km), and recommended that the Federal Government implement regulations consistent therewith.

This proposed Federal management action would establish a 5-mile (8-km) overlapping boundary zone between LCMAs 3 and 5, extending along the length of the eastern most border of LCMA 5 for 5 miles (8 km) in to LCMA 3. Federal lobster vessels in possession of an LCMA 5 lobster permit, but not an LCMA 3 permit, would not be bound by LCMA 3 regulations within the proposed overlap zone. Federal lobster vessels in possession of an LCMA 3 permit, but not an LCMA 5 permit, would not be bound by LCMA 5 regulations within the proposed overlap zone. Federal lobster vessels in possession of an LCMA 3 and LCMA 5 permit would be required to comply with the most restrictive regulations applicable within the proposed overlap zone.

The Proposed LCMA 3/LCMA 5 coordinates are as follows:

Current Coordinates			Proposed Overlap Coordinates	
Point	Latitude (°N)	Longitude (°W)	Latitude (°N)	Longitude (°W)
V	39°50' .....	73°01' .....	39°50' .....	72°55'.
X	38°39.5' .....	73° 40' .....	38°38.2' .....	73°33.8'.
Y	38° 12' .....	73°55' .....	38°10.4' .....	73°49'.
Z	37°12' .....	74°44' .....	37°10.6' .....	74°38'.
ZA	35°34' .....	74°51' .....	35°31.9' .....	74°45.5'.
ZB	35°14.5' .....	75°31' .....	35°14.5' .....	75°19.3'.

From point V, current coordinates extending out to new overlap coordinates, back to point ZB.

*Clarify Existing Regulations*

These measures attempt to clarify existing Federal lobster regulations and propose to: allow a change in the LCMA designations upon sale or transfer of a fishing vessel with a Federal lobster permit, or within 45 days of the permit's effective date; clearly reference other laws and regulations applicable to Federal lobster permit holders; clearly prohibit hauling or possession of lobster trap gear belonging to another vessel; and, exempt lobster trap gear retrieval from provisions of the exempted fishing regulations by a substitute vessel if a Federally permitted vessel is inoperable or mechanically impaired.

*Allow a Change in the LCMA Designations*

Current Federal regulations at 50 CFR 697.4(a)(7)(iv) prohibit a Federal lobster permit owner from changing the permit's lobster management area designations during the fishing year. In other words, lobster fishers have yearly flexibility to designate new or different LCMAs when they renew their annual permit, but upon making that designation, fishers are bound by that choice for the remainder of the fishing year. This measure was designed in large part to close a potential regulatory loophole. That is, Federal regulations at § 697.4(a)(7)(v) mandate that permits with multiple LCMA designations must abide by "...the most restrictive

management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year." Individuals, however, could circumvent this most restrictive provision if they were allowed to drop or add LCMA permit designations based on the seasonal availability of the resource, or if management measures within a certain management area became more or less restrictive during the year.

Although the restriction on changing LCMA designations was designed to prevent speculative add/drop fishing practices, it was not intended to apply to vessel sales and transfers or unintended errors in the permit category selection noted upon issuance or

renewal of a vessel permit. The regulation specifically allows a change in permit LCMA designation for a replacement vessel. The term "replacement vessel," however, could be interpreted narrowly as pertaining to a vessel that replaces a former vessel for reasons other than the sale of that former vessel (e.g., the former vessel being permanently or temporarily decommissioned due to damage or engine trouble, etc.). Accordingly, the present regulatory text has confused some lobster fishers as to their ability to re-designate LCMA's upon the sale and receipt of a new vessel and permit. Furthermore, the existing regulatory text could be interpreted narrowly to prevent a correction to either a new vessel application or permit renewal, if an error occurs in the permitting process. This change would allow a re-designation of the vessel permit LCMA category upon sale or transfer of a vessel with a lobster permit. This change would allow permit holders, upon initial receipt of a new or renewed permit, one opportunity to request a change in the permit LCMA category if requested within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days of the effective date of the vessel's permit, the vessel owner may not request a change in the permit category for the duration of the fishing year. Provision for one opportunity to change categories, if requested within 45 days, will bring lobster permitting procedures in line with existing procedures currently in place for other Northeast vessel permit practices.

This proposed Federal action would clarify the existing regulations to specifically allow a lobster fisher to re-designate LCMA's on a newly purchased permit, a transferred permit, or within 45 days of the effective date of the vessel permit.

#### *Clearly Reference Other Pertinent Federal Laws*

Presently, lobster regulations are issued under the Atlantic Coastal Act in Title 50 of the Code of Federal Regulations, Part 697--Atlantic Coastal Fisheries Cooperative Management. Federal lobster permits, however, are also held subject to conditions contained in acts other than the Atlantic Coastal Act and regulatory parts other than part 697. Although there are clear links in part 697 to these other conditions, the pathway could be stated more plainly. For example, lobster permit conditions are stated in and through the regulation at 50 CFR 697.4(b) - Vessel Permits and Trap Tags: Conditions. According to § 697.4(b), a

Federal lobster permit is held conditionally, subject to the permit holder abiding by all state and local laws, as well as "... the requirements of this part," which itself is regulatory parlance for "subject to the requirements of Title 50 of the Code of Federal Regulations, Part 697--Atlantic Coastal Fisheries Cooperative Management. Included in "this part" (i.e., part 697) is § 697.3 - Relation to Other Federal and State Laws. Within Section § 697.3 is reference to and incorporation of §§ 307 through 311 of the Magnuson-Stevens Act, which generally relate to enforcement. Also within § 697.3 is a statement incorporating by reference 50 CFR 600.705--Relation to Other Laws, which sets forth other pertinent Federal laws that Federal lobster permit holders must abide by, including those regulations in Part 229 - Authorization For Commercial Fisheries Under the Marine Mammal Protection Act of 1972. Still further, within part 229 are lobster restrictions pertaining to gear, time and area that are designed to benefit marine mammals. Thus, gear, time and area restrictions specified within part 229 are conditions of a Federal lobster permit held under § 697.4(b), although it requires multiple steps to make the connection and could be written in more direct fashion.

This proposed Federal action would clarify the existing regulations to more directly reference lobster permit conditions that exist outside of part 697. The agency would amend § 697.4(b)-Conditions to include a direct statement that lobster permit holders are subject to the laws and regulations administered by NOAA, including the Endangered Species Act, the Marine Mammal Protection Act and the gear, time and area restrictions thereunder, as well as the enforcement provisions of the Magnuson Stevens Act. The agency would also amend Section 697.7--Prohibitions to track the newly added text in Section 697.4(b)-Conditions.

#### *Prohibit the Hauling or Possession of Another's Gear*

Current Federal regulations at 50 CFR 697.7(c)(1)(viii) generally prohibit permit holders from possessing or hauling improperly identified lobster trap gear. According to Federal regulations at 50 CFR 697.21, lobster trap gear is improperly identified if the trap is not properly tagged to identify the vessel possessing or hauling it. To put it more directly, which is what this proposed Federal action seeks to do, a vessel may only possess or haul its own gear and not gear tagged to another. Other lobster regulations also address

this gear possession/hauling prohibition but again do so in similarly circuitous, even if clear, fashion. For example, 50 CFR 697.7(1)(c)(vii) prohibits hauling and possession of traps above a permit holder's trap limit, and 50 CFR 697.7(c)(xii) prohibits possession of a lobster trap tag issued to another vessel. Accordingly, hauling and possession of another vessel's lobster gear is presently prohibited but stating that prohibition more directly might reduce the perception of confusion on the issue. This Federal action would clarify the existing regulations to more directly state the present prohibition against the hauling and possession of another's lobster trap gear.

#### *Exempt Gear Retrieval from Exempted Fishing Regulations*

Federal lobster regulations, specified at 50 CFR 697.22 - Exempted fishing, allow the Regional Administrator to exempt any person or vessel from Federal lobster regulations for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resources or fisheries, pursuant to the provisions of § 600.745. However, since administrative compliance the exempted fishing procedures may require up to sixty days to complete, a narrow interpretation of the exempted fishing regulations could significantly delay the ability of a Federal permit holder to retrieve lobster trap gear if a Federal vessel is inoperable or mechanically-impaired.

NMFS proposes a modification to 50 CFR 697.22 to allow the Regional Administrator for the Northeast Region, or the Director of the Office of Sustainable Fisheries, as appropriate, to authorize a substitute vessel to haul ashore the lobster trap gear of an inoperable or mechanically-impaired federally permitted lobster vessel without having to engage in the exempted fishing process outlined at 50 CFR 600.745 - Exempted fishing. This revision would allow NMFS to more expeditiously address pressing needs than is currently provided in the regulations.

#### **Corrections**

In addition to the proposed measures described here, the following change is proposed to correct an inaccurate reference in the regulations. NMFS proposes a modification to § 697.21 - Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements. Specifically, § 697.21(f) references enforcement action and seizure and disposition



authority by reference to “part 219 of this title”. Part 219 of this title has been superceded, and the authority for enforcement action now resides at 15 CFR 904. NMFS proposes § 697.21(f) be revised to reference the correct authority to enforce seizure and disposition as follows: Enforcement action. Unidentified, unmarked, unvented, improperly vented American lobster traps, or, beginning May 1, 2000, any untagged American lobster traps, or any lobster traps subject to the requirements and specifications of § 697.21, which fail to meet such requirements and specifications may be seized and disposed of in accordance with the provisions of 15 CFR 904.

#### **Management Actions Considered but Rejected At this Time**

NMFS is not proposing to adopt certain management actions recommended by the Commission for Federal lobster permit holders at this time, including: implementation of a limited entry and trap transferability program for the Outer Cape LCMA; a mandatory requirement to elect LCMA 3 if qualified; a mandatory vessel logbook reporting requirement; and, imposition of restrictions on vessel upgrades. These topics are discussed in greater detail below.

#### *Outer Cape Limited Entry / Trap Transferability*

In Addendum III to the ISFMP, the Commission proposed limiting fishing access to the Outer Cape LCMA, allocating traps to qualifiers and then reducing the numbers allocated, and finally allowing traps to be transferred among those individuals who qualify for access. Many of the details necessary to implement the plan measures by diverse regulatory agencies may allow for latitude in interpretation. The majority of lobstermen fishing in the Outer Cape LCMA reside in Massachusetts, the Outer Cape LCMA is the only LCMA in which a single state (Massachusetts) does not share its nearshore jurisdiction with any other state. The Massachusetts Division of Marine Fisheries held multiple public hearings on effort control proposals and presented alternatives for Massachusetts license holders electing to fish in LCMAs 1 and 2, in addition to the Outer Cape LCMA. Ultimately, Massachusetts submitted and received Commission concurrence to implement a conservation equivalent effort control program for the state waters of the Outer Cape LCMA.

Central to the Outer Cape LCMA plan is the transferability of allocated traps. Trap transferability relates to fishers being allocated a specific number of

traps, but then being able to transfer and reapportion that allocation among themselves. Trap transferability is born out of the concept of Individual Fishing Quotas and would be categorized as a Dedicated Access Program as the U. S. Commission on Ocean Policy has recently defined the term in its report to Congress. The U.S. Commission on Ocean Policy’s report identified the potential value of Dedicated Access Programs, but acknowledged that many issues still needed resolution. The Ocean Policy Commission recommended development of national guidelines for dedicated access privileges that allow for regional flexibility in implementation” and further identified issues that such guidelines should address.

The Outer Cape LCMA plan does not address many of the Dedicated Access Program issues identified by the U.S. Commission on Ocean Policy for at least one obvious reason namely, that the LCMA plan predates the Ocean Policy Commission’s report by over two years. Nevertheless, the Commission did subsequently approve a more detailed Dedicated Access or Trap Transferability Program for LCMA 3 in Addenda IV and V. LCMA 3 is further along in the potential Dedicated Access Program process by virtue of already limiting access and establishing maximum trap allocations in Addendum I, for which compatible Federal regulations were promulgated in March 2003 (68 FR 14902). Additionally, Addendum IV included effort control measures for LCMA 2, including a potential Dedicated Access Program. Following approval of Addendum IV, the Commission established a Trap Transferability Subcommittee in 2004 to bring the involved regulatory agencies together to establish an effective multi-jurisdictional implementation protocol and to help resolve transferability coordination issues. The work of the sub-committee is ongoing, but at present, no consensus has been reached on how to address Dedicated Access (Trap Transferability) Program issues nor have any final recommendations been made to the Commission’s Lobster Board.

After an initial review, the Trap Transferability Subcommittee concluded that key components of the Addendum IV effort control plan for LCMA 2 prevented its implementation by all regulatory agencies. In May 2004, the subcommittee recommended to the Lobster Board that the LCMA 2 effort control measures be delayed until all regulatory agencies are able to implement the effort control measures

specified in Addendum IV. After further analysis of the impacts of the effort control measures, the subcommittee concluded the measures, as specified in Addendum IV, would not effectively achieve the objectives to cap fishing effort in LCMA 2. Therefore, in February 2005, the Lobster Board approved Addendum VI which retracted the LCMA 2 effort control plan contained in Addendum IV. Discussions within the LCMA 2 industry participants are ongoing at this time to develop a modified effort control plan for LCMA 2 to more effectively cap effort at or near current levels.

Accordingly, NMFS is presented with the following: an Outer Cape LCMA plan that is lacking, albeit understandably, in detail relative to the analysis on some issues on Dedicated Access Programs; work by the Commission’s Lobster Board Transferability Subcommittee for which there is as yet no uniform Commission policy; and finally, more detailed (and subsequently developed) LCMA 2 and 3 Dedicated Access Programs that require analyses along with the Outer Cape LCMA Dedicated Access Program. As a result, NMFS announced its intention to act upon the Commission’s recommendations for fishing effort control programs for LCMAs 2 and 3, and the Outer Cape, and the potential for similar programs in other LCMAs in a **Federal Register** document dated May 10, 2005 (70 FR 24495).

#### *LCMA 3 “Choose and Use”*

The Commission in Addendum III set forth a management measure specific to LCMA 3 entitled “Choose and Use.” Under current Federal lobster regulations, permit holders have considerable freedom of choice in designating fishing areas when they renew their permit each year. Although a person cannot choose LCMAs 3, 4, or 5 without having first qualified into those areas, presently most of the LCMAs are open access to any person with a Federal lobster permit, subject to more restrictive state regulations. However, there are no LCMAs that a permit holder must choose when renewing a Federal lobster permit. The Commission’s recommended Choose and Use plan, however, would require changes in the present Federal regulations.

Choose and Use would obligate LCMA 3 permit holders to designate (i.e., “choose”) LCMA 3 on their Federal permits when renewing Federal permits each year. To the extent a qualified permit holder did not choose LCMA 3, then that permit holder would be barred from designating LCMA 3 on his or her

permit in future years, although the permit would still retain its LCMA 3 qualification and if sold, the subsequent owner would then be able restart the LCMA 3 Choose and Use process. As with all Federal permit holders, those fishers designating multiple LCMAs on their permit must abide by the most restrictive regulations among the LCMAs.

The juxtaposition of the Federal "Most Restrictive" regulation and the proposed Choose and Use plan could present a significant conundrum for some lobster fishers. For example, permit holders who fish a limited number of traps seasonally in LCMA 3 but who fish predominantly in other LCMAs may have qualified for access to LCMA 3 with a modest trap allocation. Such a permit holder, however, might not seek to designate LCMA 3 on his or her permit lest they be bound to fish the more restrictive trap cap allocated to LCMA 3. Yet if that person did not choose to designate LCMA 3 on the permit, then the Choose and Use plan would preclude their designation of LCMA 3 at any time in the future.

The Commission sought to resolve this dilemma by approving a measure in Addendum IV that would waive application of the Most Restrictive rule insofar as it related to the number of lobster traps allocated below a maximum cap. Accordingly, NMFS has determined it prudent to reserve analysis and decision on the proposed LCMA 3 Choose and Use plan and to consider it contemporaneously with the Most Restrictive rule waiver for trap allocations that has been approved and recommended in Addendum IV. Thus, this measure will not be considered at this time, but, as noted in a **Federal Register** document dated May 10, 2005 (70 FR 24495), will be analyzed in future rulemaking.

#### *Mandatory Reporting*

Mandatory reporting relates to the requirement of fishers to report catch data to the government. Presently, all Federal Northeast Multispecies permit holders must report their entire catch to the Federal Government, including species covered under other permits, such as a Federal lobster permit. In Addendum II, the Commission called for all Federal LCMA 3 permit holders to report their catch to the Federal Government in a manner similar to that required of Northeast Multispecies permit holders (and several other Federal limited access permits). The Commission recommended that the Federal Government implement regulations consistent therewith. The current mandatory reporting

requirements for Federal limited access permit holders were developed to accommodate traditional finfish harvest from mobile gear vessels and is burdensome for traditional trap gear fishermen. At this time, several state and Federal pilot programs are underway, or have been completed with the intent to develop a reporting platform tailored for lobstermen and potentially to report their catch data from multiple fishing trips at one time rather than on a daily trip by trip basis. This measure will be considered and analyzed at such time that a recommended reporting platform becomes available for implementation.

#### *Vessel Upgrade Limits*

The Commission in Addendum III set forth management measures specific to LCMA 5 that would limit a permit holder's ability to upgrade his or her vessel. Specifically, Addendum III limits a permit holder's ability to upgrade an LCMA 5 vessel to a 10-percent increase in length and a 20-percent increase in horsepower. Addendum III provided no further detail on the measure. The Commission ultimately included the LCMA 5 vessel upgrade limitations as a recommended management measure to the Federal Government. However, the vessel upgrade limitations have not been implemented by state jurisdictions. Specifically, New Jersey requested, and the Commission Lobster Board approved, an exemption for New Jersey state license holders from this LCMA 5 requirement. Also, state lobster license holders residing in the Commission de minimis states adjacent to and south of New Jersey, including Maryland, Delaware, Virginia, and North Carolina are exempt from the ISFMP requirement to implement the vessel upgrade restriction. In Technical Addendum 1, dated July 18, 2002, the Commission withdrew section 2.1.1.3 Vessel Upgrade Limit from the requirements for LCMA 5. The LCMA 2 effort control plan in Addendum IV (that was withdrawn in Addendum VI), included measures that would limit a permit holder's ability to upgrade his or her vessel. Addendum IV had proposed limits to a permit holder's ability to upgrade an LCMA 2 vessel to a 15 percent increase in length. Addendum IV provides no further detail on the measure.

NMFS has previously considered vessel upgrade restrictions in the lobster fishery. Most recently, in its rulemaking based upon Addendum I, NMFS considered but rejected vessel upgrade limitations in LCMA 3. At that time, NMFS concluded that the upgrade

restrictions would be unnecessarily costly and burdensome to fishers because existing baseline vessel characteristics on many vessels are likely undocumented. The analysis further stated that vessel upgrade limitations may pose safety constraints and offered no obvious conservation benefits to the resource. In addition, the implementation of trap limits, either fixed or based on a historical level of participation, has the potential to effectively limit fishing effort in the offshore lobster fishery without an additional requirement for vessel upgrade restrictions. The analysis concluded that there were no obvious benefits to vessel upgrade limitations.

NMFS' reasoning in its Addendum I rulemaking analysis is equally relevant to this present rulemaking. Lobster trap vessels are generally small e.g., the average length is 39 ft (11.9 m) -- and as such, the specifications of many vessels are not documented with the U.S. Coast Guard. Therefore, information on length and horsepower may not be readily available, thereby necessitating a marine survey to establish legal vessel specifications, which would add a financial burden on vessel owners. The potential cost to hire a marine surveyor or naval architect to verify existing baseline vessel characteristics can range from \$150 to \$600, with associated costs increasing with vessel size, and would result in added delays for vessel replacement and transfers, if implemented. NMFS does not consider the burden justified given that vessel upgrade limitations offer no obvious conservation benefit to the resource, and certainly the Commission's recommendation indicates no nexus between the restriction and the egg production measures that constitute Addenda II and III or a connection to overall Fishery Management Plan goals. Accordingly, NMFS has determined it prudent to reject vessel upgrade restrictions at this time.

#### **Classification**

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism implications as defined in E.O. 13132.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and

the legal basis for this action are contained in the SUMMARY section of the preamble and in the preamble to this proposed rule.

As described above, the proposed action would: revise the Egg Per Recruit overfishing target timeline from the year 2005 to the year 2008; increase the current Federal lobster minimum legal carapace size limit from 3 1/4 inches (8.26 cm) to 3 3/8 inches (8.57 cm) in LCMAs 2, 3, 4, 5, and the Outer Cape; increase the current Federal rectangular lobster trap escape vent size from 1 15/16 inches x 5 3/4 inches (4.92 cm x 14.61 cm) to 2 inches x 5 3/4 inches (5.08 cm x 14.61 cm) in LCMAs 2, 3, 4, 5, and the Outer Cape; increase the current Federal circular lobster trap escape vent size from 2 7/16 inches (6.19 cm) to 2 5/8 inches (6.67 cm) in LCMAs 2, 3, 4, 5, and the Outer Cape; implement a new 5 1/4 inch (13.34 cm) maximum legal carapace size on possession of female lobsters in LCMA 4, and a new 5 1/2 inch (13.97 cm) maximum legal carapace size on possession of female lobsters in LCMA 5; require mandatory V-notching of female lobsters carrying eggs in LCMA 1 and in LCMA 3 above the 42° 30' North latitude line; require a zero tolerance definition of V-notched female lobsters in LCMA 1; and implement a new 5-mile (8-km) overlap boundary area between LCMAs 3 and 5. These actions were recommended to the Federal government by the Commission to assure a unified consistent state-Federal approach to lobster management as required under the Atlantic Coastal Act.

The proposed action was compared to the No Action alternative and three other non-selected alternatives. In this analysis, the baseline (the Modified No Action alternative) is the set of measures currently in place for state and Federal lobster permit holders throughout the range of the resource. All measures analyzed in the Modified No Action alternative are identical to those analyzed in the No Action alternative, except the Egg Per Recruit overfishing target timeline is revised from the year 2005 to the year 2008. As described in the draft EA completed for this action, the No Action alternative would retain December 31, 2005, as the operative deadline for the egg production schedule and restoration time line in each of the management areas. Accordingly, egg production in each management area would need to meet or exceed 10 percent of the egg production of an unfished population, which is the overfishing definition for American lobster, by a targeted deadline of December 31, 2005. The scheduled

overfishing time line in the No Action alternative does not incorporate the most recent (year 2000) stock assessment information. Since landings from the EEZ account for approximately 20 percent of all American lobster landed in U.S. waters, under the No Action alternative a complete ban on fishing for lobster in Federal waters might need to be considered to achieve the targets specified in the existing egg production schedule by the end of 2005. Relative to the involved management issues and measures, the No Action alternative, unlike the Modified No Action alternative, might require a complete closure of Federal waters to fishing for, possession of, or landing of American lobster, and would not represent a realistic baseline comparison of state and Federal lobster management measures currently in place to those proposed in this action. The Modified No Action alternative does propose changing the deadline for the egg production schedule from 2005 to 2008, but proposes no additional changes to current regulations, thereby providing a realistic baseline comparison of current state and Federal lobster management measures to those proposed in this action. Therefore, the Modified No Action alternative was used as the baseline for comparison rather than the No Action alternative.

#### **Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply**

The proposed action would potentially affect any vessel in the Northeast region that holds a Federal limited access lobster permit. During fishing year 2003, a total of 3,217 limited access lobster permits were issued to Northeast region permitted vessels. Based on the Small Business Administration's (SBA) size standard of \$3.5 million in gross sales, all of these vessels would be considered small entities as the maximum earnings for any given vessel was less than half of this standard.

While the number of permitted vessels represents the universe of vessels that may be affected, an assessment of impacts needs to distinguish between this universe and the number of vessels that are actually participating in the lobster fishery. Unfortunately the precise number of participating vessels is not known with certainty since lobster permit holders are not subject to mandatory reporting. Specifically, less than half of all vessels using trap gear (the primary gear used on the fishery) were subject to mandatory reporting. Based on 2003 dealer records, while 62 percent of these

vessels subject to mandatory reporting reported landings, only 18 percent (361 vessels) reported landing lobster.

Applying this proportion to the total number of permit holders would result in an estimate of 582 participating vessels. Alternatively, where it was possible to identify Federal permit holders, comparing the number of vessels eligible to purchase trap tags to the number of vessels that actually did purchase trap tags in 2003 indicates that about 46 percent of Federal permit holders using trap gear participate in the EEZ fishery. Applying this number to the total number of permit holders results in an estimate of almost 1,500 participating vessels; an estimate that seems more likely than that based on activity reports but is still subject to uncertainty.

#### **Economic Impacts of the Proposed Action**

The proposed action would implement changes to the rebuilding target, minimum and maximum sizes, escape vent size, and v-notch requirements in certain LCMA's. The proposed action would implement a 3 3/8 inch (8.57 cm) minimum legal carapace size in LCMA 2, 3, 4, 5 and the Outer Cape; an escape vent increase to 2 inches by 5 3/4 inches (5.08 cm x 14.61 cm) for rectangular vents and to 2 5/8 inches (6.67 cm) for circular vents. The preferred alternative would also implement mandatory v-notch in LCMA 1 and in LCMA 3 above 42° 30' North latitude, a zero tolerance v-notch definition in LCMA 1, as well as a maximum legal carapace size of 5 1/4 inches (13.34 cm) in LCMA 4 and 5 1/2 inches (13.97 cm) in LCMA 5. Based on the analysis of these proposed measures, approximately 10 percent of Federal lobster permit holders (approximately 251 vessels) could be affected by these changes. That is, due to the Federal requirement to abide by the more restrictive state or Federal measures, about 90 percent of Federal lobster vessels would already be required to fish in a manner consistent with the proposed measures due to action already taken by the states. Further, the economic analysis also suggests that the majority of the 251 affected vessels - i.e., the remaining 10 percent - likely fish in areas unaffected by the proposed Federal action. That is, the majority of vessels potentially affected by the minimum legal carapace size change are likely to fish predominantly in LCMA 1 where neither minimum size nor escape vent size changes would be made. Similarly, the majority of vessels fishing in LCMA 3 would not be affected by the change

to a mandatory v-notch regulation because they do not fish in the affected area (i.e. they fish south of 42° 30' North latitude). In effect, the proposed measures would have negligible impacts on a large majority of Federal lobster vessels since the proposed action would not impose any added economic burden beyond what states have already implemented or would have no impact on existing fishing practices.

For those vessels that would be affected, an estimate of realized impact cannot be quantified. At an estimate \$1.40 in materials in labor, replacement of escape vents for a vessel with the maximum of 800 traps (most vessels fish less than 800 traps) would be \$1,000. The foregone revenue associated with a change in the minimum legal gauge size will depend on the relative proportion of lobsters between 3 1/4 inches (8.26 cm) and 3 3/8 inches (8.57 cm) in an individual's catch. In the absence of reliable data on the size composition of the trap or non-trap commercial catch, this proportion cannot be reasonably estimated. Similarly, the impact of a change in the maximum legal gauge size in LCMA 4 and 5 is not known although the proportion of lobster at or above these sizes is small so the impact on landings to an individual lobster business is likely to be very low. Last, the foregone revenue associated with a change in v-notch requirements will depend on the proportion of berried female lobsters and lobsters with a v-shaped notch in an individual's catch. As noted previously, this impact would only affect a vessel fishing above 42° 30' North latitude in LCMA 3. Any such vessel would be able to move traps below this line and would not be subject to the mandatory v-notch requirement. In general, the overall impact on non-trap vessels is likely to be less than that for trap vessels since lobster is predominantly a bycatch in non-trap fisheries. On average, lobster represented less than 4 percent of total fishing income for non-trap vessels in calendar year 2003.

The previous discussion suggests that while the impact on a particular small Federal lobster fishing entity cannot be readily determined, this impact is likely to affect only a portion of total fishing income. The majority of lobster vessels would be largely unaffected under the proposed measures. Therefore, while the proposed measures could have an impact on some number of small entities, the proposed measures would not affect a substantial number of small entities.

### **Economic Impacts of Alternatives to the Proposed Measures**

In addition to the proposed measures, four other alternatives were considered. Among these, Alternative 2, the Modified No Action alternative, and Alternative 3, the Commission alternative, may have less economic impact on small entities. Alternative 1, the No Action alternative, and Alternative 5, the Environmental alternative, would have much greater economic impact on small lobster businesses. Alternative 2 would implement the Commission rebuilding schedule but would make no changes to existing Federal management regulations. That is, the minimum gauge and escape vent sizes would remain unchanged; the v-notch regulations would not be implemented; there would be no maximum gauge in LCMA 4 and 5, and no overlap boundary between LCMA 3 and 5. As noted above, at least 90 percent of Federal lobster vessels would still be required to fish under more restrictive measures due to actions already taken by the states, but the remaining 10 percent of vessels would be able to fish under the less restrictive Federal regulations. As a practical matter, even vessels that would be able to fish under less restrictive measures are unlikely to do so since current fishing practices are likely to be consistent with requirements appropriate to the area in which they fish. This means that for the vast majority of trap and non-trap vessels, the realized impact of Alternative 2 is likely to be no different than that of the proposed measures. Nevertheless, under Alternative 2 vessels from two different states could fish under different conditions even though they may set traps or otherwise fish for lobster in the same area. Such a discrepancy creates regulatory inequities, confusions related to enforcement of regulations, potential equity issues, and is counter to the spirit and intent of the Atlantic Coastal Act. For these reasons, and the fact that the anticipated impacts between Alternative 2 and the measures identified in this proposed rule would be virtually indistinguishable, Alternative 2 was rejected.

Alternative 3 would implement the Commission recommended regulations in certain LCMA's but would do so according to the original Addendum II and III schedule. In effect, this would involve a phase-in of the minimum gauge size increase measure over a 4-year period. In fact, had complementary Federal measures been implemented at the time these Addenda were approved by the Commission, present Federal

regulations would be consistent with current State regulations. Alternative 3 would perpetuate the current problem of having a gap between state and Federal regulations for another 4 years. Further, as a practical reality, the Commission is likely to take additional action (Addendum IV through VI have already been approved) within this time frame. This means that other complementary regulations would end up being promulgated or superseding those of Alternative 3 before they have been fully implemented. In terms of economic impacts on small entities, Alternative 3 would likely have less impact on small fishing businesses than the proposed measures since small fishing businesses would be allowed to phase-in changes to their fishing practices over time. However, as noted previously, action taken by States has brought the vast majority of vessels under the more restrictive measures contemplated by Alternative 3 so the realized difference between the measures in this proposed rule and Alternative 3 would be negligible. For this reason as well as the practical problems of a phased in implementation of the Commission recommendations under Alternative 3, this alternative was rejected.

Alternative 1 would require a complete closure of the EEZ to lobster fishing. The key element to Alternative 1 would be that no change would be made to the current rebuilding schedule and time frame. Specifically, this time frame would require that the rebuilding target be accomplished by the end of calendar year 2005. The maximum that the NMFS could do to achieve this biological objective would be a closure of the EEZ to all lobster fishing. Based on NMFS dealer data, which include state summary data, the EEZ has been estimated to account for about 20-percent of all domestic landings of American Lobster. Total landings were 71.7 million pounds (32,523 mt) valued at \$284.8 million in calendar year 2003. This means that the EEZ would have accounted for approximately 14.3 million pounds (6,486 mt) valued at nearly \$57 million. This value may be underestimated since EEZ landings tends to be comprised of larger, more valuable lobsters. The removal of 20 percent of the domestic lobster supply at a time when landings from Long Island Sound, Southern New England and the Mid-Atlantic have been declining would cause significant disruptions in lobster markets from wholesalers to final consumers. At a minimum, lobster prices may be expected to increase, which could result

in reduced profit margins (i.e. only a portion of a price increase is likely to be able to be passed on to consumers) for lobster distributors and retailers (restaurants, fish markets, grocery stores, etc.) and a loss in consumers surplus. This supply reduction may also make U.S. lobsters less price competitive in international markets for U.S. exporters. These impacts could affect approximately \$57 million in lobster revenues. The estimated average loss in fishing revenues was about \$27,000 per vessel, but could be as high or much higher than \$80,000 per vessel. In addition, the Atlantic Coastal Act directs the Federal Government to support the management efforts of the Commission and, to the extent the Federal Government seeks to regulate a Commission species, those Federal regulations must be compatible with the Commission plan. This Alternative 1 is not compatible with the Commission plan because it would require the closure of the EEZ to lobster fishing, which was not recommended by the Commission. Therefore, Alternative 1 was rejected because it may led to a large economic impact to lobster fishermen, and because it would not support the Commission's management efforts, nor result in compatible Federal regulations, as required under the Atlantic Coastal Act.

Alternative 5 would provide the highest assurance that the biological objectives for the lobster resource are met by implementing the most restrictive of the management measures proposed in this action throughout the range of the resource. Such action would implement mandatory v-notch, zero tolerance, a 3 3/8 inches (8.57 cm) minimum legal gauge size, a larger escape vent size, and maximum legal gauge size in all LCMA's. The impacts of these measures are difficult to quantitatively assess. However, Alternative 5 would have at least some impact on 95 percent of all Federal lobster permit holders. At least in the short term, these impacts would be likely to be greatest on vessels fishing in LCMA 1 as a substantial portion of the lobster catch is at the current 3 1/4 inch (8.26 cm) minimum legal carapace size limit. Over time, these losses would be recovered as lobsters molt into the 3 3/8 inch (8.57 cm) legal carapace size class. Nevertheless, the immediate impact would likely be significant for a substantial number of small lobster fishing entities. Alternative 5 was rejected because of its impact on small lobster business entities. In addition, it would be inconsistent with the spirit and intent of the Atlantic Coastal Act

since it would neither support the Commission's management efforts, nor result in compatible Federal regulations.

**List of Subjects in 50 CFR Part 697**

Fisheries, Fishing.

Dated: August 29, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is proposed to be 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.*

2. In § 697.2, the definition of "V-shaped notch" is removed. The definition of "Standard v-shaped notch" and "zero tolerance v-shaped notch" are added in alphabetical order to read as follows:

**§ 697.2 Definitions.**

\* \* \* \* \*

*Standard V-shaped notch* means a straight-sided triangular cut, without setal hairs, at least 1/4 inch (0.64 cm) in depth and tapering to a point.

\* \* \* \* \*

*Zero tolerance V-shaped notch* means a v-shaped notch of any size, with or without straight sides, with or without setal hairs.

3. In § 697.3, paragraph (b) is revised to read as follows:

**§ 697.3 Relation to other Federal and state laws.**

\* \* \* \* \*

(b) Federal limited access American lobster permit holders are required to comply with all regulations and statues administered by the National Oceanic and Atmospheric Administration (NOAA), including, but not limited to the regulations in this part issued pursuant to the ACFCMA, the regulations at part 229 issued pursuant to the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), and the regulations at part 648 issued pursuant to the Magnuson-Stevens Act. The relation of this part to other laws is further set forth in § 600.705 of this chapter.

\* \* \* \* \*

4. In § 697.4, paragraph (a)(7)(iv) is added and paragraph (b) is revised to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(iv) Once a vessel has been issued a lobster management area designation certificate or limited access American lobster permit specifying the lobster EEZ management areas in which the vessel may fish, no changes to the EEZ management areas specified may be made for such vessel for the remainder of the fishing year. There are two exceptions to this re-designation restriction:

(A) Vessels that have been bought, transferred, or become a replacement vessel for another qualified vessel may request re-designation of the EEZ management areas; and

(B) All vessels will have one opportunity to request a correction in permit category, if such request is made in writing to the Regional Administrator within 45 days of the effective date of the vessel's permit.

\* \* \* \* \*

(b) *Condition.* Vessel owners who apply for a Federal limited access American lobster permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, as well as gear, time, and area restrictions issued or set forth in other parts, including, but not limited to, part 229 and part 648. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

5. In § 697.7, paragraphs (c)(1)(i) and (c)(1)(v) are revised and paragraphs (c)(1)(xxvii) through (c)(1)(xxix) are added to read as follows:

**§ 697.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Retain on board, land, or possess at or after landing, whole American lobsters that fail to meet the minimum carapace length standard specified in § 697.20(a). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

\* \* \* \* \*

(v) *V-notch*. (A) Retain on board, land, or possess any zero tolerance v-notched female American lobster when fishing in or electing to fish in EEZ Nearshore Lobster Management Area 1. (B) Retain on board, land, or possess any standard v-notched female American lobster when fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, 6, and the Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3.

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

(xxvii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear issued to another vessel.

(xxviii) Fail to comply with any gear, time, or area restriction in this part or, as is explained in § 697.3 and § 697.4(b), fail to comply with any gear, time, or area regulation set forth in any other regulatory part, including part 229 and part 648.

(xxix) Retain on board, land, or possess at or after landing, whole American lobsters that exceed the maximum carapace length standard specified in § 697.20(b). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

\* \* \* \* \*

6. In § 697.18, paragraph (f) is revised to read as follows:

**§ 697.18 Lobster management areas.**

\* \* \* \* \*

(f) EEZ Nearshore Management Area 5. EEZ Nearshore Management Area 5 is defined by the area, including state and Federal waters that are near-shore in the southern Mid-Atlantic, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
W	39°50' N.	74° 09' W.
V	39° 50' N.	72° 55' W.
X	38°38.2' N.	73° 33.8' W.
Y	38°10.4' N.	73° 49' W.
Z	37°10.6' N.	74°38' W.
ZA	35°31.9' N.	74° 45.5' W.
ZB	35° 14.5' N.	75° 19.3' W.

From Point "ZB" along the coasts of North Carolina, Virginia, Maryland, Delaware, New Jersey back to Point "W".

\* \* \* \* \*

7. Section 697.20 is revised to read as follows:

**§ 697.20 Size, harvesting and landing requirements.**

(a) *Minimum Carapace length*. (1) The minimum carapace length for all

American lobsters harvested in or from the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3 1/4 inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3 1/4 inches (8.26 cm).

(3) The minimum carapace length for all American lobsters harvested in or from the Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area or the Offshore Management Area 3 is 3 3/8 inches (8.57 cm).

(4) The minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3 is 3 3/8 inches (8.57 cm).

(5) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (a) in this section.

(b) *Maximum carapace length*. (1) The maximum carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(2) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(3) The maximum carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 4 is 5 1/4 inches (13.34 cm).

(4) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 4 is 5 1/4 inches (13.34 cm).

(5) The maximum carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 5 is 5 1/2 inches (13.97 cm).

(6) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ

Nearshore Management Area 5 is 5 1/2 inches (13.97 cm).

(c) *Mutilation*. (1) Subject to the rebuttable presumption in § 697.7(c)(3), no person may remove meat or any body appendage from any American lobster harvested in or from the EEZ before, or at the time of landing, or have in possession any American lobster part other than whole lobsters, up to the time when a dealer first receives or possesses American lobster.

(2) Subject to the rebuttable presumption in § 697.7(c)(3), no owner, operator or person aboard a vessel issued a Federal American lobster permit may remove meat or any body appendage from any American lobster before or at the time of landing, or have in possession any American lobster part other than whole lobsters, up to the time when a dealer first receives or possesses American lobster.

(d) *Berried females*. (1) Any berried female harvested in or from the EEZ must be returned to the sea immediately. If any berried female is harvested in or from the EEZ Nearshore Management Area 1, or in or from the EEZ Offshore Management Area 3 above 42 30', it must be v-notched before being returned to the sea immediately.

(2) Any berried female harvested or possessed by a vessel issued a Federal limited access American lobster permit must be returned to the sea immediately. If any berried female is harvested in or from the EEZ Nearshore Management Area 1, or in or from the EEZ Offshore Management Area 3 above 42 30', it must be v-notched before being returned to the sea immediately.

(3) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female as specified in paragraph (d) of this section.

(e) *Removal of eggs*. (1) No person may remove, including, but not limited to, the forcible removal and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female American lobster.

(2) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove, including but not limited to, the forcible removal, and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female American lobster.

(3) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that bears evidence of the removal of extruded eggs from its abdominal appendages as specified in paragraph (e) of this section.

(f) *Spearing.* (1) No person may spear any American lobster in the EEZ.

(2) No person on a vessel issued a Federal lobster license may spear a lobster.

(3) No person may harvest or possess any American lobster which has been speared in the EEZ.

(4) No person on a vessel issued a Federal lobster license may harvest or possess any American lobster which has been speared.

(5) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any American lobster which has been speared.

(g) *V-notched females.* (1) No person may possess any female lobster possessing a zero tolerance v-shaped notch harvested in or from the EEZ Nearshore Management Area 1.

(2) No vessel, owner, or operator issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Nearshore Management Area 1 may land, harvest, or possess any female lobster possessing a zero tolerance v-shaped notch.

(3) No person may possess any female lobster possessing a standard v-shaped notch harvested in or from the EEZ Nearshore Management Area 2, 4, 5, 6, and the Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3 may possess.

(4) No vessel, owner, or operator issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Nearshore Management Area 2, 4, 5, 6, and the

Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3 may land, harvest, or possess any female lobster possessing a standard v-shaped notch.

8. In § 697.21, paragraphs (c) and (f) are revised to read as follows:

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

\* \* \* \* \*

(c) *Escape vents.* (1) All American lobster traps deployed or possessed in the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 1 15/16 inches (4.92 cm) by 5 3/4 inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 7/16 inches (6.19 cm) in diameter.

(2) All American lobster traps deployed or possessed in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3, must include either of the following escape vents in

the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2 inches (5.08 cm) x 5 3/4 inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 5/8 inches (6.67 cm) in diameter.

(3) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this final rule, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraph (c) of this section.

\* \* \* \* \*

(f) *Enforcement action.* Unidentified, unmarked, unvented, improperly vented American lobster traps, or, beginning May 1, 2000, any untagged American lobster traps, or any lobster traps subject to the requirements and specifications of § 697.21, which fail to meet such requirements and specifications may be seized and disposed of in accordance with the provisions of 15 CFR part 904.

\* \* \* \* \*

9. In § 697.22, paragraph (c) is added as follows:

**§ 697.22 Exempted fishing.**

\* \* \* \* \*

(c) The Regional Administrator, or the Director of the Office of Sustainable Fisheries, as appropriate, may authorize a substitute vessel to haul ashore the lobster trap gear of an inoperable or mechanically-impaired federally permitted lobster vessel without having to engage in the exempted fishing process as specified in this section.

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