

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Parts 649 and 697**

[Docket No. 990105002-9285-03; I.D. 110598D]

RIN 0648-AH41

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to manage the American lobster fishery in the Exclusive Economic Zone (EEZ) from Maine through North Carolina. These final regulations remove existing management measures issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and replaces them with the same and a variety of new management measures issued under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). New measures include designation of lobster management areas, restrictions on fishing gear and tagging requirements for lobster traps. In addition, these regulations establish an annual regulatory adjustment process for implementation of additional measures in consultation with the Atlantic States Marine Fisheries Commission (Commission). The intent of these regulations, in combination with state regulations governing the American lobster fishery in non-Federal waters, is to end overfishing and rebuild stocks of American lobsters.

DATES: Effective January 5, 2000.

ADDRESSES: Copies of supporting documents, including a Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) are available from Harold C. Mears, State, Federal and Constituent Programs Office, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Comments regarding burden estimates should be sent to: The Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

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

SUPPLEMENTARY INFORMATION: These final regulations remove existing regulations issued under the authority of the Magnuson-Stevens Act. NMFS has withdrawn the approval for the American Lobster Fishery Management Plan (FMP) because the majority of the lobster fishery (approximately 80 percent) takes place in state waters. Regulatory action in the EEZ (3 nautical miles [nm] (5.56 kilometers [km]) to 200 nm (370.4 km) from shore) alone, even a total moratorium on harvesting lobsters, would not end overfishing of the resource. Adequate state lobster conservation measures, therefore, are essential to end overfishing of American lobster. It is clear to NMFS that it is not possible to meet the rebuilding requirements of the Magnuson-Stevens Act without full cooperation of the Atlantic coast states. Accordingly, NMFS is implementing Federal lobster conservation measures in the EEZ under the authority of the ACFCMA as part of Federal/state cooperative management.

Section 804(b) of ACFCMA authorizes the Federal government to issue regulations governing fishing in the EEZ that are compatible with the effective implementation of the Commission's American Lobster Interstate Fishery Management Plan (ISFMP) and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. Given limitations on NMFS to manage the lobster resource throughout its range, NMFS has determined that regulations under ACFCMA in conjunction with the ISFMP, constitute the best option for management of the American lobster resource.

The Commission approved Amendment 3 to the American Lobster ISFMP in December 1997. The goal of Amendment 3 is to have a healthy lobster resource and a management regime that provides for a sustained harvest of lobsters, maintains appropriate opportunities for participation, and provides for cooperative development of conservation measures by all stakeholders. Amendment 3 includes recommended measures in Federal waters as well as in state waters (specific measures are described later in this preamble), and it establishes a procedure whereby fishermen, including some who fish exclusively in Federal waters, may make recommendations for further management measures to meet predefined targets designed to end

overfishing and facilitate stock rebuilding.

The Magnuson-Stevens Act requires NMFS to develop plans to end overfishing and rebuild overfished stocks. NMFS has identified lobster as overfished throughout its range. This finding has been confirmed by an independent review panel convened by NMFS and the Commission. Therefore, NMFS is required by the Magnuson-Stevens Act to develop a plan to end overfishing of lobsters and rebuild the lobster fishery. These regulations, together with a process for working with the Commission to devise future measures, constitute a plan to meet this mandate.

On March 27, 1996, NMFS first proposed to withdraw approval of the FMP and issue complementary regulations under the ACFCMA (61 FR 13478). NMFS proposed that the final withdrawal of the approval of the FMP, and the removal of its implementing regulations, would occur upon completion of an effective state management program developed by the Commission.

Amendment 3 is a comprehensive plan for managing the lobster fishery in state and Federal waters. While it does not specify future steps that are needed to rebuild egg production and end overfishing of lobster, it does provide a framework for the development of those measures to rebuild the resource.

Status of Stock

The most recent NMFS assessment of the lobster stock concluded that it is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96-13, dated September, 1996). Background information on the status of lobster stocks and the lobster fishery was presented in the preamble to the proposed rule (64 FR 2708) and is not repeated here. Additional background is available and contained in a FEIS/RIR prepared by NMFS for this rule (see **ADDRESSES**). Lobster Conservation Measures Currently in Place

Most current management measures and prohibitions for Federal waters were promulgated under the authority of the Magnuson-Stevens Act and are codified at 50 CFR part 649. These include:

1. A moratorium on new entrants into the fishery through December 31, 1999,
2. A prohibition on the possession of lobsters bearing eggs or from which eggs have been removed by any means,
3. A prohibition on the possession of lobster meat and detached tails, claws or other parts of lobster,

4. A prohibition on the possession of V-notched lobsters (*i.e.*, female lobsters that have carried eggs and are marked with a V-shaped cut in the tail),

5. A requirement to install a biodegradable "ghost" panel in each trap (to allow lobsters to escape from a lost trap),

6. A minimum carapace size of 3¹/₄ inches (8.26 cm),

7. A requirement to install escape vents on traps,

8. A prohibition on the possession at any time of more than six lobsters per person when aboard a head, charter, or commercial dive vessel,

9. A requirement that gear be marked in order to identify the permit holder,

10. A prohibition on the interstate or international trade of live whole lobsters smaller than the Federal minimum size, and

11. A landing limit of 100 lobsters (or parts thereof) per day, up to a maximum of 500 lobsters (or parts thereof) per trip of 5 or more days for fishermen using non-trap methods (this limit is imposed by regulations issued under the authority of the ACFCMA and is codified at 50 CFR 697.7).

This final regulation continues all of these measures, as well as imposes new measures described herein, but implements them under authority of the ACFCMA instead of the Magnuson-Stevens Act. Accordingly, this rule removes the lobster regulations currently codified at 50 CFR part 649 and replaces them with regulations codified at 50 CFR part 697.

Measures Adopted by the Commission

The states, through adoption of Amendment 3 to the Commission's American lobster ISFMP, recognized the need to end overfishing and rebuild stocks of American lobster. Approved in December 1997, this amendment established an 8 year stock rebuilding schedule to restore egg production which would be 10 percent or more of the level produced by an unfished lobster population. The associated management measures are discussed in the proposed rule (64 FR 2708), and are not repeated here. The Commission approved Addendum 1 to that amendment on August 3, 1999. That action approved additional area-based measures identified by the lobster conservation management teams for the seven lobster conservation management areas, comprised of industry representatives and established by the Commission. Except for Area 6 (Long Island Sound), each of the seven areas includes waters under Federal jurisdiction. The Commission recommended to the Secretary that he implement compatible regulations in

Federal waters. The final regulations being issued by this rulemaking implement the Commission's recommendations contained in Amendment 3 of the American Lobster ISFMP. The Commission's recommendations contained in the more recent Addendum 1, including imposing limitations on fishing for lobster based on historical participation and fishing practices in selected management areas, will be evaluated in accordance with Federal rulemaking and public review procedures. Toward this end, an advance notice of proposed rulemaking was published on September 1, 1999 (64 FR 47756) to promote awareness of potential eligibility criteria for future access to lobster management areas and to discourage shifts in the type of gear used to harvest lobster by Federal permit holders.

The Commission area-specific management measures currently include:

Area 1, Inshore Gulf of Maine

(1) A 1000 limit on the number of traps a vessel may set in fishing year 1999, and a 800 trap limit per vessel in fishing year 2000.

(2) A prohibition on the possession of lobsters with a carapace length greater than 5 inches (12.7 cm).

Area 2, Inshore Southern New England

A plan to cap, and then reduce, the maximum number of traps a vessel may set.

Area 3, Offshore Waters (Entirely in Federal Waters)

The Commission, in Amendment 3, recommended that NMFS implement a limit of 2000 traps per vessel. The Commission in Addendum 1 to the American Lobster ISFMP recommends trap limits based upon historical participation.

Areas 4, 5 and 6, Long Island and South

Trap reductions based upon historical participation in these management areas.

Outer Cape Cod Lobster Management Area

The same trap limits as for Area 1, but no maximum carapace size.

The Commission also adopted several measures for state waters which are not directly related to the trap fishery. For example, under Amendment 3, it adopted a prohibition on spearing lobsters, and also established limitations on harvesting lobsters by non-trap gear.

The NMFS Plan

The NMFS Plan retains all current Federal measures for the management of

the lobster fishery, but implements them by regulations issued under the authority of the ACFCMA. In addition, the following new measures are implemented to make the Federal plan compatible with the Commission's American Lobster ISFMP. Note that some measures apply to all Federal permit holders while others apply only in specific areas.

1. *Moratorium on new entrants into the fishery.* There are currently approximately 3000 vessels with permits to fish for lobster in Federal waters. Under the current moratorium scheduled to end on December 31, 1999, no new permits are being issued. Persons may enter the fishery only by purchasing an existing vessel that already has a limited access permit and then contacting NMFS to request a permit transfer. The moratorium is continued. This will prevent any increase in the number of vessels permitted to take lobsters in Federal waters. An increase could undermine the conservation benefits of other measures.

2. *Designation of Lobster Management Areas.* In order to be compatible with the Amendment 3, the boundaries of the lobster management areas specified by the Commission are adopted. The coordinates marking the perimeter of the areas are found in the regulations at § 697.18.

3. *Lobster management area designation for vessels fishing for American lobsters with traps.* Owners of vessels that elect to harvest American lobsters with traps are required to inform NMFS each year of the lobster management areas they intend to set trap gear in. Beginning May 1, 2000, vessels issued a limited access American lobster permit and fishing with traps, in any of the lobster conservation management areas (specified in § 697.18), must have on board the vessel a management area designation certificate or valid limited access American lobster permit specifying the management area(s) the vessel is allowed to fish in.

For fishing years 2000 and beyond, a vessel owner fishing with traps capable of catching American lobster must inform NMFS in which lobster management areas the vessel intends to fish when the vessel owner applies for or renews his/her limited access American lobster permit. 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 the vessel for the remainder of the fishing year unless the vessel becomes a replacement vessel for another qualified vessel.

A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area 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.

4. *Near-shore area trap limits.* In order to cap effort in the near-shore areas, Federal permit holders fishing in or electing to fish in Areas 1, 2, 4, 5, 6, the Outer Cape Lobster Management Area and/or only the Area 2/3 Overlap, are limited to setting a maximum of 1000 traps in fishing year 1999 and to setting a maximum of 800 traps in fishing year 2000. Further trap limits or alternative conservation equivalent measures may be required in the future to meet stock rebuilding objectives. The purpose of this approach is to ensure that the conservation benefits that might be achieved by other measures are not lost by further expansion of fishing effort in the near-shore areas. Alternative and/or additional management measures other than those pertaining to trap limits will be considered in Federal waters in accordance with Commission recommendations and the adaptive management procedures identified in § 697.25 of the regulations.

5. *Near-shore area maximum trap size.* One way to increase fishing effort without increasing the number of traps in the water is to increase the size of those traps. The larger the trap, the more lobsters it can hold. To minimize this, the size of lobster traps in the near-shore areas is restricted. To allow Federal permit holders a phase-in period to replace traps currently being fished that are larger than those allowed in Amendment 3, a two-step process restricting the size of traps fished in any nearshore area(s) is implemented.

Beginning January 5, 2000, vessels cannot possess or deploy traps larger than 25,245 cubic inches (413,690 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners, in any nearshore area (Area 1, 2, 4, 5, 6, the Outer Cape Lobster Management Area, and/or only in the Area 2/3 Overlap). Beginning May 1, 2003, vessels cannot possess or deploy traps larger than 22,950 cubic inches (376,081 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners, in any nearshore management area.

6. *Escape vents.* Lobster trap gear must have a rectangular escape vent of at least 5³/₄ inches by 1¹⁵/₁₆ inches (14.6 cm by 4.92 cm), or two circular portals of at least 2⁷/₁₆ inches (6.19 cm) in diameter.

7. *Area 1 maximum carapace size.* In order to be compatible with the Commission's American Lobster ISFMP recommendations, the maximum carapace size is 5 inches (12.7 cm) in all areas, for Federal permit holders fishing in or electing to fish in Area 1. The 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 (the unsegmented shell of the lobster). The purpose of this measure is to protect large females that are capable of producing many eggs. This measure will provide increasing conservation benefits as the number of larger individuals increases in the American lobster population.

8. *Off-shore area trap limits and maximum trap size.* Federal permit holders fishing in, or, electing to fish in Area 3, or only Area 3 and the Area 2/3 overlap, are limited to setting no more than 2000 traps from the permitted vessel in fishing year 1999 and no more than 1800 traps from the permitted vessel in fishing year 2000. Further reductions of this trap limit may be required to meet lobster stock rebuilding objectives. The size of lobster traps in Area 3 and in the Area 2/3 overlap also is restricted. To allow Federal permit holders a phase-in period to replace traps currently being fished that are larger than those allowed in Amendment 3, a two-step process restricting the size of traps fished only in Area 3, or only in Area 3 and the Area 2/3 Overlap is implemented.

Beginning January 5, 2000, vessels fishing with traps only in Area 3 or only in Area 3 and the Area 2/3 Overlap cannot possess or deploy a trap larger than 33,110 cubic inches (542,573 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners.

Beginning May 1, 2003, vessels fishing with traps only in Area 3 or only in Area 3 and the Area 2/3 Overlap cannot possess or deploy a trap larger than 30,100 cubic inches (493,249 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners. Vessels fishing only in Area 3 or only in Area 3 and the Area 2/3 Overlap are allowed a higher maximum number of traps and a larger maximum trap size in order to offset the additional costs and time required for fishing offshore. Federal permit holders who fish or elect to fish in Area 3 and any

of the near-shore areas (Areas 1, 2, 4, 5, 6, and/or the Outer Cape Lobster Management Area), except the Area 2/3 Overlap, are limited to setting a maximum of 1000 traps from the permitted vessel in fishing year 1999 and to setting a maximum of 800 traps from the permitted vessel in fishing year 2000. Federal permit holders who elect to fish in Area 3 and any of the near-shore areas (Areas 1, 2, 4, 5, 6 and/or the Outer Cape Lobster Management Area) except the Area 2/3 Overlap, are prohibited from setting traps that are larger than the near-shore maximum size limit. Alternative and/or additional management measures will be considered in Federal waters in accordance with Commission recommendations and procedures identified in § 697.25.

9. *Trap tag allocations.* As a way to enforce the trap limits for each lobster management area, effective May 1, 2000, each trap set by a Federal permit holder must have a trap tag attached to the trap bridge or central cross-member. Lobster fishermen are required to purchase tags from NMFS or a NMFS-authorized distributor. On or after January 1, 2000, a permit holder letter will be sent to all eligible Federal limited access American lobster vessels informing them of the costs associated with the tagging requirement and directions for obtaining tags. Each permit holder will be allowed to purchase tags, up to the maximum number of traps allowed in his or her area(s), plus 10 percent to cover in-season losses. Those persons fishing in near-shore areas will be allowed to purchase up to 880 tags in fishing year 2000. Those persons fishing only in Area 3 or only in Area 3 and the Area 2/3 Overlap will be allowed to purchase up to 1980 tags in fishing year 2000. Tags will only be valid for one year and must be replaced each year. Tags may not be sold, transferred or given away. The requirement to affix a tag to each trap, beginning May 1, 2000, will be in lieu of the current requirement that gear be marked with a vessel's official number, Federal permit or tag number, or other specified form of identification.

10. *State/Federal coordination.* NMFS may consider alternative tagging programs with cooperating states through appropriate formal agreements to allow American lobster permit holders to use trap tags issued by those agencies to fish for lobster in the EEZ in lieu of trap tags issued by NMFS. NMFS will provide notice, as appropriate, to American lobster permit holders concerning procedures for procuring trap tags.

11. *Non-trap harvest restrictions.* The regulations pertaining to non-trap

landing limits that are currently in place are continued. It is unlawful for a vessel that takes lobster by a method other than traps to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea, or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted.

12. *Modifications to the plan.* On or before February 15, 2001, and at least annually on or before February 15, thereafter, NMFS may publish a proposed rule for evaluation of additional or different management measures for Federal waters to meet ISFMP and/or lobster stock rebuilding objectives. Some of the measures that might be considered are (1) continued reductions in fishing effort (e.g., number of traps fished) and (2) increases in the minimum harvestable size. NMFS will consult with the Commission in the identification of measures.

NMFS endorses an area management approach which allows industry-tailored management measures to meet industry needs on an area-by-area basis. Under this process, NMFS will work in partnership with the Commission and the states, under the provisions of the American Lobster ISFMP, in continuing efforts to develop a unified "seamless" approach to bridge state and Federal jurisdictions on an area-by-area basis.

Comments and Responses

NMFS received hundreds of written comments on the American Lobster proposed rule during the public comment period, which ran from January 11—February 26, 1999. Written comments were received from four members of the Senate of the United States, three members of the U.S. Congress, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, the U.S. Department of Interior, eight state fishery and environmental protection agencies, one state senator, nine fishing industry associations, two environmental groups, and 748 individuals. One environmental group and two individuals supported implementation of the management measures as identified in the proposed Federal rule for American lobster. Conversely, 642 individuals submitted letters and postcards that expressed general opposition to the implementation of management measures in the proposed federal rule for American lobster. All of the comments were carefully considered. Concerns or opposition to specific aspects of the proposed Federal rule are identified and responded to here.

Comment 1: Four hundred and seventy-eight commenters requested that NMFS delay implementation of management measures until the Commission approves the LCMT area management plans identified in the American Lobster ISFMP Amendment 3, addenda 1 and 2, scheduled for public hearings during 1999.

Response: Selected aspects of the LCMT plans, e.g., management measures to control fishing effort in some areas based upon historical fishing practices, were recently approved by the Commission through an addendum to the American Lobster ISFMP. Approval of other measures proposed by the LCMTs to end lobster overfishing has been further postponed until a date uncertain, pending the results of an updated stock assessment. NMFS believes that continued delay for full consideration of the LCMT plans until a date yet to be determined by the Commission jeopardizes needed management measures to protect the lobster resource. On the basis of the recent ISFMP addendum, an advance notice of proposed rulemaking was published on September 1, 1999, in the **Federal Register**, to seek public comment on the potential for compatible action to limit fishing effort in the EEZ on the basis of historical participation. Additional area-specific management measures in the EEZ, as may be recommended by the Commission under future revisions to the ISFMP, will be considered under separate rulemaking. Also, supplemental measures to achieve the ISFMP's objective to end overfishing of American lobster will be implemented as described in the preamble to this final rule during subsequent years of the stock rebuilding period.

All management measures in the final rule, with the exception of trap tag requirements and the requirement for possession of a certificate or a permit relating to area management designations, become effective January 5, 2000. A fishing area certificate or a permit relating to area management designations and the lobster trap tag program becomes effective May 1, 2000, coincident with the 2000/2001 Federal fishing year. The delay of the certificate or a permit requirement relating to area management designations affords the time required for notification to Federal lobster permit holders and the subsequent response and mailing of the certificates or permits. The delay of the trap tag requirements allows additional time for coordination of trap tag regulations with the Commission and state fishery agencies, and will also allow additional time for the selection

of a trap tag vendor and subsequent purchase and deployment of tags by Federal lobster permit holders coincident with the beginning of the next fishing year.

Comment 2: Fourteen commenters opposed implementation of uniform trap limits as described in the proposed rule, and provided recommendations for alternative methods to determine trap allocations, especially allocations based on historic trap levels.

Response: The capping and reduction of fishing effort, through uniform trap limits, is an important first step in reducing lobster fishing mortality that, when combined with other management measures, will increase the effectiveness of those measures in achieving ISFMP objectives to end overfishing and rebuild stocks of American lobster. The LCMTs have submitted area management proposals to the Commission, including management measures to control effort (some of which involve historic participation considerations) and increase egg production. The Commission adopted a two-phase approach to incorporate the LCMT recommendations, which will involve two addenda to Amendment 3 to the ISFMP. Addendum 1 incorporates measures from the LCMT proposals directed at controlling fishing effort, while other management measures to rebuild lobster stocks will be addressed in Addendum 2. The Commission held public hearings during April-May 1999 on Addendum 1, and will hold additional hearings on Addendum 2 in the future to receive public comments on egg production objectives and other facets of lobster management on an area by area basis. Since lobstermen throughout the range of the resource often fish in more than one management area, and since the plans vary with respect to proposed regulatory measures (including trap allocation strategies), these hearings provide an essential mechanism to enable an integrated public and policy evaluation of a unified approach for lobster area management. On August 3, 1999, the Commission approved guidelines as part of Addendum 1 to Amendment 3 of the ISFMP for the determination of trap limits based upon historical participation in certain lobster management areas. As a result of that action, an advance notice of proposed rulemaking was published on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need to restrict access of Federal permit holders to the lobster EEZ fishery on the basis of historical participation. Continued Federal rulemaking, along with the associated biological and

economic analyses, may be initiated in the near future.

Comment 3: Forty-eight commenters felt that NMFS should adopt a plan and regulations that more specifically complement the Commission plan, especially with regard to implementation dates for default measures, including trap limits and trap tags.

Response: NMFS is attempting to the extent practicable to implement EEZ regulations compatible with those in state waters identified in the ISFMP. One of the ISFMP goals is to minimize inconsistencies between state and Federal management regimes. The successful implementation of needed measures to achieve lobster management objectives is contingent not only on the resolve of state agencies to achieve those objectives, but also by the Commission's timeframe for the technical, public and policy review of area management proposals. The successful attainment of management goals is also influenced by the ISFMP's specifications of mandatory regulations in state waters, the establishment of a compliance schedule for implementation of those measures, and the inclusion of recommendations in the ISFMP for actions in the EEZ. Area management is further challenged by the time required to implement regulatory measures in state waters on a state by state basis, which can vary from several days to several months. Similarly, timing of lobster management measures in the EEZ is subject to Federal legislative requirements and rulemaking.

With regard to the establishment of a resource-wide trap tagging program, the Commission recommends an implementation date of January 1, 2000, rather than the May 1, 1999, implementation date for Federal waters referenced in the proposed rule. Accordingly, NMFS is delaying the implementation of a trap tag program for Federal lobster permit holders until the beginning (May 1) of the Federal lobster fishing year in the year 2000.

In response to public comments, NMFS has decided, beyond fishing year 2000, not to identify, at this time, continued trap reductions as a "default" management measure. Instead, NMFS will evaluate forthcoming Commission recommendations for resource-wide management of American lobster, based upon the Commission's review and approval of conservation-equivalent proposals submitted by the LCMTs. Thus, NMFS is attempting to be as compatible as possible with ISFMP implementation dates, yet retaining the commitment to implement additional

management measures during the stock rebuilding period necessary to end overfishing and rebuild stocks of American lobster.

Comment 4: Twenty-seven commenters objected to the mutual exclusion provisions of the proposed rule which would prohibit vessels from fishing in the offshore area if any nearshore management area was elected, and would prohibit vessels from fishing in any of the nearshore management areas if the vessel elected the offshore management area.

Response: This "mutual exclusion" provision has been deleted from the Federal regulations to be compatible with the Commission's ISFMP management measures. Accordingly, the final rule allows Federal lobster permit holders access to both inshore and offshore waters. A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area 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.

Comment 5: Several commenters stressed the need for the regulations to be adaptable for each lobster management area, preferably through the use of industry LCMTs, to fit the needs and fishing patterns of the industry in each area.

Response: The regulations were developed to accommodate consideration of unique management strategies for each of the lobster management areas. Proposals submitted by the respective LCMTs have been evaluated and approved by the Commission during the approval procedures for Addendum 1 to Amendment 3 of the ISFMP. See response to Comment 2. At such time when the Commission may adopt future modifications to LCMT proposals, NMFS will consider these changes, along with biological and socio-economic analyses, through rule-making procedures.

Comment 6: One commenter does not believe that American lobsters are overfished and, therefore, no additional management measures are necessary.

Response: NMFS disagrees. The most recent NMFS assessment of the lobster stock concluded that the resource is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96-13, dated September 1996).

Comment 7: Eight commenters stated that the measures identified in the proposed rule do not adequately demonstrate that the proposed

management measures will end overfishing, increase egg production, or protect the lobster resource.

Response: Management measures in Federal waters alone cannot end overfishing or rebuild American lobster stocks. Since most of the lobster fishery takes place in state waters, a joint management approach in cooperation with the states and Commission is the best way to protect the lobster resource. NMFS intends to work closely with the Commission and its LCMTs to implement whatever further compatible regulations are necessary to end overfishing and rebuild the lobster resource.

Comment 8: Fifty-six commenters stated that NMFS should revise the proposed gear marking requirements and allow vessels to continue to use buoys instead of radar reflectors on lobster trawls containing more than three traps when fishing within 12 nm (22.2 km) of shore. A requirement to use radar reflectors would be cost prohibitive, unnecessary, and could become a hazard to navigation in heavily fished areas where dense concentrations of reflectors could appear as a solid land mass on ship radar.

Response: NMFS agrees, and will maintain "status quo" gear marking requirements.

Comment 9: One commenter felt NMFS should not mandate the compass direction of gear marking trap trawls consisting of more than three traps, but should allow fishermen to determine the appropriate direction.

Response: NMFS disagrees. This requirement, contained in current regulations, is necessary to facilitate the enforcement and standardization of gear marking practices throughout the range of the resource.

Comment 10: Several commenters stated that there is no accurate up-to-date stock assessment or industry information (e.g., landings data, fishing effort) upon which to base management decisions.

Response: NMFS disagrees. See response to Comment 6. The next stock assessment, as well as a peer review of that assessment, has been scheduled by the Commission to take place during the Fall 1999. The conclusion that American lobster is overfished is based upon the best available scientific information, as required by the ACFCMA. NMFS agrees, however, that statistics on landings and fishing effort should be improved to better characterize the resource and the lobster fishery, for example, through increased sea sampling and mandatory reporting at the vessel and dealer level on a trip-

by-trip basis. The associated requirements for such a program to monitor the eventual success of fishery management measures are being developed under the auspices of the State/Federal Atlantic Coastal Cooperative Statistics Program (ACCSP).

Comment 11: Two commenters felt NMFS should increase the sea sampling program for vessels using trap gear.

Response: NMFS agrees that there is a need to increase sea sampling. However, increasing sea sampling is restricted by budgetary constraints. NMFS has consulted with the Maine Department of Marine Resources to enhance sea sampling of American lobsters in Maine state waters during 1999.

Comment 12: Five commenters supported continuation of the current moratorium on new entrants in the Federal lobster fishery until lobster is no longer overfished.

Response: The current moratorium has been extended.

Comment 13: Twenty-two commenters felt that license holders with Federal limited access lobster licenses who have not harvested lobsters within a predetermined time period should lose their ability to renew their permits.

Response: Current Federal regulations for Federal American lobster (limited access) permit holders require annual renewals, but do not require that the permit be used in order for it to be renewed. The potential and rationale for requiring participation in the lobster fishery as a requirement to renewal is currently being evaluated through an advance notice of proposed rulemaking (64 FR 47756).

Comment 14: Fifteen commenters supported the use of historic participation and historic trap allocations when determining where a lobsterman is allowed to fish and how much trap gear an individual may have in the water at any one time.

Response: Industry-wide evaluation of lobster management area plans and management alternatives, including historic participation, is being coordinated through the Commission's adaptive management procedures. See Response for Comment 2.

Comment 15: Two hundred and three commenters supported implementation of a management plan for the offshore area proposed by the Atlantic Offshore Lobstermen's Association (AOLA).

Response: A primary component of the AOLA plan involves a capping of fishing effort based upon historic participation in the Area 3 fishery. See response to Comment 2.

Comment 16: Five commenters stated that the expansion of the offshore lobster fishery in the past 10 to 15 years represents a shift in traditional fishing practices of the industry and should not be the basis for higher trap allocations.

Response: A higher trap limit in the offshore EEZ (Area 3) is based upon the Commission's recommendations and the historical character and economics of that fishery sector. Although not always the case, vessels in excess of 50 feet (15.24 meters) are required to prosecute the offshore fishery. Operating expenses are generally higher for these larger boats. Generally, it has also been necessary for these vessels to fish a greater number of lobster traps in efforts to increase and maintain harvest levels to offset the higher operational costs, as well as to adequately ensure effective fishing operations offshore. Therefore, in an attempt to achieve parity with inshore vessels in terms of impacts from reduction in trap limits, a higher trap limit is justified.

Comment 17: Sixty-two commenters supported the coast-wide implementation of a maximum carapace size limit, varying from 4¼ (11.43 cm) to 5½ inches (13.97 cm), for American lobster. Several of the commenters identified the benefit of maintaining a broodstock of large, prolific, female egg-bearing lobsters, which also have more viable and healthier eggs than lobsters at the current minimum legal size of 3¼ inches (8.26 cm).

Response: This rule implements a 5-inch (12.7 cm) maximum size, as recommended in Amendment 3 of the Commission's American Lobster ISFMP for the Area 1 (Gulf of Maine) lobster management area, in part, to maintain a long standing management measure in this fishing region. NMFS agrees that the implementation of a maximum size limit has benefit to the rebuilding of lobster stocks, but this benefit at the current time is limited, due to the paucity of larger lobsters since most lobsters are harvested before they become sexually mature. NMFS has determined that the uncertain benefits of the maximum size limit in areas other than Area 1 are outweighed by the costs of fishermen adjusting to such a measure. Nevertheless, the measure has strong support in the Gulf of Maine fishery as an area-specific regulation, and has been in place in Maine state waters for a number of years. On balance, therefore, since the maximum size limit is not a new measure for many fishermen, continuing the status quo provides some conservation benefit without introducing new management measures.

Comment 18: Four commenters opposed the coast-wide implementation of a maximum carapace size limit of 5 inches (12.7cm) for American lobster. One commenter objected, identifying the high percentage of larger lobsters its members harvest and the adverse economic impact of a maximum gauge size would have on its members. Another commenter identified the need for "trophy lobsters" by its members and objected to implementation of a maximum carapace size limit restriction on the dive industry.

Response: A maximum size requirement is being implemented only in Area 1 (Gulf of Maine), as recommended in the ISFMP.

Comment 19: Three commenters expressed general concern about the continuing buildup in the number of traps fished by individual fishermen and the resulting increase in fishing effort on the lobster resource. Commenters stated that the practice of setting traps to stake out or claim productive fishing areas is becoming more common, and this, in turn, forces all other lobstermen to increase their traps to hold on to their existing fishing grounds.

Response: Concern regarding increasing fishing effort in the American lobster fishery was noted in the Commission's American lobster ISFMP and the Federal Draft Environmental Impact Statement and Regulatory Impact Review (DEIS/RIR). Measures under this final rule cap fishing effort in both the nearshore and offshore EEZ. Further restrictions on fishing effort may be evaluated under the ISFMP provisions in future years in order to achieve stock rebuilding objectives for the American lobster resource.

Comment 20: Fifty-two commenters supported a ban on the harvest of American lobster by non-trap fishing gear (otter trawls, dredges, gillnets, diving).

Response: EEZ management measures continue a newly implemented (March 1998) landing limit of 100 lobsters (or parts thereof) per day, up to a maximum of 500 lobsters (or parts thereof) per trip of 5 or more days using non-trap methods. This possession limit allows for a legitimate bycatch of lobsters by non-trap gear, but creates a disincentive to target lobsters, thereby eliminating the potential for an unpredictable increase in effort by fishing vessels that are being severely restricted in other fisheries. Under this measure, historical levels of harvest by the non-trap fishery are not anticipated to be substantively impacted, resulting in a no-net decrease in revenues for approximately 76 percent of participants in this fishery.

On the basis of information available to NMFS, additional restrictions on the non-trap fishing sector, which accounts for approximately 2.2 percent of total annual lobster landings, are not warranted at this time.

Comment 21: One commenter stated that the proposed Federal regulations have failed to define a recreational dive vessel, one that is not a charter boat.

Response: The definition for "recreational fishing vessel" has been clarified in the regulations to exclude "commercial" dive vessels. A commercial dive vessel means any vessel carrying divers for a per capita fee, a charter fee, or any other type of fee.

Comment 22: One commenter sought clarification on whether the restricted gear areas apply to the sport diving community.

Response: Restricted gear areas (50 CFR § 697.23) apply only to lobster traps and mobile gear.

Comment 23: One commenter supported continuation of Federal landing limits of 100 lobsters (or parts thereof) per day up to a maximum of 500 lobsters (or parts thereof) per trip of 5 days or more on the non-trap gear sector (otter trawl, dredge, gillnet, divers).

Response: This restriction will be continued in the current regulations.

Comment 24: One commenter sought clarification on whether Federal landing limits of 100 lobsters per day up to a maximum of 500 lobsters per trip of 5 days or more would apply to commercial dive vessels or if commercial dive vessels would be limited to six lobsters per person on board.

Response: The possession limits for commercial dive vessels is six or fewer American lobsters per person on board the vessel. See § 697.7(c)(2)(i)(C).

Comment 25: Twenty-four commenters opposed any management measure that would result in an increase in the minimum carapace size of 3¼ inches (8.26 cm).

Response: An increase in the minimum carapace size as a fishery management measure is not currently included in the Federal regulations.

Comment 26: Forty-one commenters supported an increase in the minimum legal size for American lobster. Several proposals recommended gradual incremental carapace increases spread out over multiple years with the most support centered on four ¼ of an inch (0.159 cm) increases over a 5-year period. Several commenters felt the gauge increase provided the single most effective conservation benefit to the

lobster resource of any identified management measure.

Response: Proposals to increase the minimum size of American lobster have been controversial due to potential and/or perceived economic impacts of marketing a slightly larger and marginally more expensive lobster. In addition, there has been concern over the financial impacts of a minimum size increase on those overseas markets that prefer a smaller-sized lobster. However, NMFS agrees that an increase in the minimum legal size has the potential to be an effective management measure in achieving ISFMP stock-rebuilding objectives. The potential for achieving this benefit is being evaluated for several lobster management areas by peer review and deliberations among the respective LCMTs through the Commission's adaptive management procedures. In response to recommendations contained in the ISFMP, NMFS has initiated consultations with the Canadian government concerning coordination of any future gauge size increases in both U.S. and Canadian waters.

Comment 27: Sixty commenters supported a Federal requirement to v-notch the tail section of egg-bearing female lobsters throughout the range of the resource. Several commenters wanted the definition of what constitutes a v-notched lobster to match the more restrictive Maine regulations.

Response: A requirement to v-notch lobsters in Federal waters alone would not be compatible with the ISFMP, and benefits associated with the mandatory v-notching of lobsters have been disputed. However, NMFS has accepted the ISFMP recommendation to continue the prohibition on the possession of V-notched female lobsters in the EEZ. The current definition of a v-notched lobster conforms with the Commission's definition. NMFS is open to further refinement of this definition in consultation with the Commission.

Comment 28: One commenter opposed v-notching the tail section of egg-bearing female lobsters, expressing concerns about an increased likelihood of bacterial infections to the cut tail flipper of v-notched lobsters and questionable conservation benefits of the practice.

Response: See response for Comment 27.

Comment 29: Eight commenters supported a regulation requiring the owner-operator to be present on board whenever the vessel is fishing.

Response: Such a regulation at this time has not been considered for management of American lobster because it has not been proposed under

the ISFMP. However, it is open for future consideration through the ISFMP's adaptive management procedures, and as may be appropriate, through subsequent Federal rulemaking procedures.

Comment 30: Several commenters supported the need for a per vessel trap limit of 800 traps in the nearshore area by fishing year 2000.

Response: For fishing year 1999, the trap limit is 1000 per vessel, and for fishing year 2000, the trap limit is 800 per vessel.

Comment 31: Six commenters did not support the use of trap limits as a means to end overfishing of lobsters. Commenters indicated that trap limits would be too difficult to enforce and felt that trap reductions would force fishermen to fish more frequently due to economic necessity, which would increase the risk to personal health and safety.

Response: Enforcement of a trap tag program has been a topic of concern and discussion throughout the development of the ISFMP. The Commission's Law Enforcement Committee, comprised of state and Federal law enforcement representatives, is addressing how best to enforce trap tag programs, given the importance of this management measure in reducing lobster fishing mortality and achieving ISFMP stock rebuilding objectives for American lobster. The impacts of management measures on fishing practices and the behavior of fishermen are difficult to predict. However, NMFS believes that most lobster fishermen will abide by the trap limits, notwithstanding enforceability concerns of the measures.

Comment 32: Several commenters wrote in support of implementing maximum size limits on lobster traps as specified in the Commission's ISFMP and allowing for an exemption process for individuals with traps that exceed the specified maximum size.

Response: To phase-in the implementation of a maximum size for American lobster trap gear in the EEZ, the regulations allow a 10-percent overage to the maximum trap size recommended by the ISFMP until May 1, 2003, at which time the maximum trap size will be compatible with the recommendations in the Commissions ISFMP. This phase-in will help minimize economic burdens on lobstermen who currently use larger traps.

Comment 33: Two commenters objected to the implementation of a trap tag program for Federal permit holders, and identified the measure as an unfunded Federal requirement that will be expensive to comply with.

Response: NMFS believes that a trap tag program is an essential component of the American Lobster ISFMP to help ensure enforceability of trap limits in both state and Federal waters throughout the range of the American lobster.

Comment 34: Fifteen commenters supported the implementation of a trap tag program to enforce proposed trap limits on Federal permit holders, but stressed the need to implement the requirement in coordination with the Commission. Commenters also stated that NMFS should recognize state tagging programs and require only one tag per trap to avoid duplication.

Response: Implementation of some area management measures, such as trap limits, may initially result in duplication and/or differences between state and Federal regulations on a lobster management area by area basis. NMFS, working with the Commission, will consider ways to streamline and jointly administer such regulations with cooperating states through appropriate formal agreements.

Comment 35: One commenter felt the current moratorium on the issuance of new permits in Federal waters should be eased by allowing a limited number of new permits for young people in the fishery.

Response: NMFS believes that this would be counter to the objectives of the moratorium and the ISFMP goals during the American lobster stock rebuilding period.

Comment 36: Thirty commenters supported increasing the minimum size of required rectangular escape vents from 1 $\frac{3}{4}$ inches (4.45 cm) by 5 $\frac{3}{4}$ inches (14.61 cm) up to 1 $\frac{13}{16}$ inches (4.92 cm) by 5 $\frac{3}{4}$ inches (14.61 cm). A complementary circular vent size increase providing equivalent conservation was also supported.

Response: Federal regulations will implement increased sizes of escape vents for all lobster traps deployed or possessed in the EEZ, or deployed, or possessed on or from a vessel issued a Federal limited access lobster permit. The specifications for escape vents are: a rectangular portal with an unobstructed opening not less than 1 $\frac{13}{16}$ inches (4.92 cm) by 5 $\frac{3}{4}$ inches (14.61 cm) or two circular portals with unobstructed openings not less than 2 $\frac{7}{16}$ inches (6.19 cm) in diameter.

Comment 37: Twenty-six commenters objected to an increase in the minimum size of required rectangular escape vents, arguing that the increased vent size would allow legal lobsters to escape from the trap.

Response: The implementation of an increased vent size, as recommended in

the ISFMP, is a necessary component of measures to rebuild stocks of American lobster, *i.e.*, to help ensure the escapement of sub-legal size lobsters.

Comment 38: Fourteen commenters stated that NMFS should implement measures, including a control date, which would maintain the current structure of the industry and prevent vessels from shifting from non-trap gear to trap gear.

Response: The potential for a shift in effort from non-trap gear to trap gear is difficult to predict based on information before the agency at this time. The design and rationale of measures to address this potential, given this lack of information, is not possible without a more comprehensive evaluation of this concern. NMFS will consider public comments on potential limited access through the Advance Notice of Proposed Rulemaking that was published on September 1, 1999 (64 FR 47756).

Comment 39: One commenter supported the implementation of a prohibition on spearing lobsters.

Response: This prohibition is included in the final rule.

Comment 40: Several commenters objected to the boundary line between the Area 1 and Area 3 lobster management areas that occurs farther offshore from the line approved under the American Lobster FMP.

Response: Designation of the boundary line as currently defined reflects the current consensus, in collaboration with the lobster industry, as referenced in Amendment 3 to the American Lobster ISFMP.

Comment 41: Two individuals supported the use of seasonal closures to all lobster fishing as a management measure to end overfishing of lobster and allow for better enforcement of proposed Federal trap limits.

Response: Seasonal closures as a management approach have not been evaluated under the ISFMP. Such closures may be, however, appropriate for public review and consideration through deliberations of the LCMTs.

Comment 42: Six commenters proposed that the entire Gulf of Maine north of 42° should be one management area, primarily to ensure enforcement of the 5 inch (12.7 cm) maximum carapace size prohibition in the offshore areas of the Gulf of Maine.

Response: This suggestion would not be compatible with the lobster area designations, and associated boundary lines, recommended by the Commission and its member states under Amendment 3 to the ISFMP. The waters north of 42° encompass separated portions of Lobster Management Area 1,

the Outer Cape Management Area, and Lobster Management Area 3.

Comment 43: Six commenters expressed concern that restrictive trap limits and trap reductions in Federal waters would result in a shift of effort to state waters with less restrictive regulations.

Response: The trap limits in Federal waters for fishing years 1999 and 2000 are similar to the trap limits for state waters in the Gulf of Maine and southern New England, as recommended in the ISFMP. There will be an annual adjustment of additional or different management measures for Federal waters which may include, but not be limited to, continued reductions in fishing effort and/or other management area-specific measures as may be recommended by the Commission to end overfishing and rebuild stock of American lobster. The behavior of fishermen and associated fishing practices, which may occur due to differing management measures in state and Federal waters, are difficult to predict. The potential impacts if they occur can be addressed through the ISFMP's adaptive management provisions, and adjustments to EEZ regulations for American lobster can be accomplished through Federal rulemaking procedures.

Comment 44: One commenter felt that the entire offshore management area 3 should be closed to the harvest of American lobster to protect the population of large lobsters which may replenish the nearshore areas with larval and juvenile lobsters.

Response: NMFS is aware of no compelling information which would justify closure of the Area 3 fishery to attain ISFMP objectives. In the absence of this information, such an action would not be based on the best scientific information available and would not be fair and equitable to the offshore EEZ industry sector. Geographical and seasonal closures of management areas or portions thereof, are a possible regulatory measure which may be potentially considered under the adaptive management provisions of the ISFMP.

Comment 45: One commenter identified the need to prevent or reduce mortality on softshell lobsters, lobsters which have just molted or shed their shell.

Response: Although NMFS agrees that it is important to protect softshell lobster, specific regulations for their protection have not been proposed under the ISFMP. Appropriate management measures, in consultation with the LCMTs, can be addressed during future years of the American

lobster stock rebuilding period through the ISFMP adaptive management provisions.

Comment 46: One commenter supported implementation of lobster management area lines in Federal waters, as specified in the Commission's lobster ISFMP Amendment 3.

Response: The final rule implements the lobster management areas as specified in Amendment 3 of the ISFMP.

Comment 47: Twenty-five commenters expressed concern that the trap limits specified in this final rule could actually result in an increase in the number of traps fished. Commenters identified concerns over allowing permit holders currently fishing less than the proposed limits to increase their traps up to the proposed limit. In addition, a larger trap limit in Management Area 3 may attract nearshore vessels into Area 3, thereby increasing effort in the offshore fishery.

Response: The behavior of fishermen and associated changes in fishing practices may or may not occur, and are difficult to predict. See response to Comment 45. NMFS questions whether new trap limits in nearshore and offshore EEZ waters would actually attract vessels to Area 3, since Federal permit holders fishing only in nearshore waters have always had this option. Those who have historically fished nearshore, and now opt to fish both nearshore and offshore, would have to abide by the stricter nearshore trap limits, regardless of where the fishing for lobster occurs.

Comment 48: Seven commenters stated that proposed trap limits and escape vent regulations would create economic hardship for Federal permit holders who have historically fished primarily for black sea bass and also hold a Federal lobster permit. Commenters recommended an exemption or waiver for vessels legally fishing for black sea bass so the traps could be fitted with nonconforming escape vents and still retain American lobster.

Response: A previous evaluation of this suggestion in 1986 (51 FR 19210) under the New England Fishery Management Council's FMP concluded that such a measure is not justified or appropriate for management of the lobster resource. Such a measure could have the unintended effect of creating a loophole for Federal permit holders intending to fish primarily for black sea bass and yet would allow the retention of a significant harvest of lobsters, and would compromise the enforceability of the vent size requirement in the lobster fishery. NMFS concludes that, on

balance, the need to maintain the integrity of the vent size requirement, and its benefits as a lobster management measure, outweigh the loss resulting from a possible but unquantified escapement of black sea bass through the required size vents of trap fishing gear. The final rule minimizes hardship on Federal permit holders, while initiating necessary additional management measures to end overfishing and rebuild stocks of American lobster. The rule requires vessels with a Federal limited access lobster permit fishing with traps to comply with lobster escape vent requirements specified in § 697.21(c).

Comment 49: Five commenters stated the need to allow vessels to fish under their particular area regulations for Area 2 or Area 3 when fishing in the area defined as the Area 2/3 Overlap.

Response: NMFS has made this change to the regulations.

Comment 50: One commenter asked why replacement tags will be limited to only 10 percent of the annual trap tag allocation.

Response: The 10-percent initial limitation for replacement tags is based upon the successful implementation of an identical limitation in a trap tag program which has been in existence in Maine waters for a number of years, and upon Commission recommendations for future implementation of trap tag programs in state and Federal waters. These recommendations were developed jointly among state, NMFS, industry, and law enforcement representatives to provide uniformity between state and Federal programs. The 10-percent initial limitation also serves to streamline the administrative logistics of a trap tag program in Federal waters and minimizes potential abuse of trap tag allocations. The regulations provide for reissuance of lobster tags above the 10-percent annual tag allocation to accommodate catastrophic loss of tags. A request for the reissuance of tags above the 10-percent limit must be submitted in writing to the Regional Administrator and a decision will be reached in the number of replacement tags, if any, to be issued, on a case-by-case basis.

Comment 51: One commenter requested that NMFS recognize and respect the Commission's management tool of conservation equivalency which allows states to develop management measures which are equal to, or more restrictive than, what is called for in the ISFMP.

Response: NMFS agrees and acknowledges the provisions for conservation equivalency in the ISFMP. As conservation equivalent measures

are proposed and approved by the Commission, NMFS will evaluate such measures and, as appropriate, consider them for implementation in the EEZ through Federal rulemaking procedures.

Comment 52: One commenter stated that lobstermen fishing exclusively in state waters should not be limited to Federal trap limits, even if they hold a Federal lobster permit.

Response: NMFS disagrees. Federal lobster permit holders must abide by stricter Federal regulations, when such regulations exist, even when fishing in state waters. This promotes enforceability and consistency between state and Federal jurisdictions. A vessel fishing exclusively in state waters has the option of turning in the Federal permit.

Comment 53: One commenter asked for clarification on whether federally permitted lobster fishermen could sell their lobsters to federally permitted dealers only or to other dealers, as well.

Response: Current and continuing regulations prohibit the sale of American lobster by federally permitted vessels to any dealer, unless the dealer has a valid Federal dealer's permit to purchase, possess, or receive for a commercial purpose, American lobster.

Comment 54: Several commenters stated that NMFS should implement horsepower and vessel length restrictions that have been implemented in other Federal fisheries to curb an increase in fishing effort in the offshore fishery.

Response: Although such restrictions could provide a disincentive for inshore vessels to participate in the offshore EEZ fishery, the lobster fishery has historically, and continues to be, primarily an inshore fishery. Horsepower and vessel length restrictions however, have recently been recommended by the ASMFC for the offshore fishery, and may be evaluated through future Federal rulemaking procedures.

Comment 55: One commenter asked for clarification on several aspects of the Federal regulations (§ 697.12) concerning at-sea sea sampler/observer coverage; specifically, can a lobster vessel continue to fish once notified that the vessel has been selected to take a sea sampler/observer; does the sea sampler/observer provide his/her own liability insurance; and does the sea sampler/observer provide his/her safety equipment such as the survival suit?

Response: Once a vessel is requested to carry a NMFS-approved area sea sampler/observer, that vessel may not engage in any lobster fishing operations unless a sea sampler/observer is on board, or until NMFS waives the

requirement. It would be the responsibility of the vessel owner to arrange for and facilitate sea sampler/observer placement. In similar situations for other fisheries, NMFS has helped arrange or provided guidance regarding liability coverage and access to survival gear. See the regulations at 50 CFR 600.746.

Comment 56: Several commenters asked NMFS to specify more clearly the ghost panel requirement, since no trap is made entirely of wood.

Response: The requirements relating to a ghost panel for lobster traps not constructed entirely of wood have been clarified and are specified in § 697.21(d).

Comment 57: One commenter noted that the approved Area 1 line heading west does not hit land at the northernmost part of Cape Cod, MA and requested NMFS look closely at this line and work with the Commission to correct this error.

Response: This oversight was acknowledged during public hearings relating to proposed addendum 1 to the ISFMP. Accordingly, this final rule changes the Area 1 line to reflect the correction proposed by the Commission.

Comment 58: One commenter opposed the proposed Federal requirement to display lobster traps for an on-shore count, upon request by an authorized officer, to verify the number of lobster traps being fished in compliance with limits on lobster trap allocations.

Response: NMFS agrees, and concludes that the proposed regulation is burdensome and ineffective for the intended purpose of ensuring compliance with the trap limit requirement, and, therefore, has deleted the provision.

Comment 59: Several commenters opposed the wording requiring notification of lost trap tags as not practical, and stated that NMFS should reconsider this provision.

Response: NMFS has reconsidered the logistics requiring notification of lost tags, and has increased the notification from 24 hours to "as soon as feasible, but not more than 7 days after tags have been discovered lost." This notification may be made by letter or fax to the Regional Administrator.

Comment 60: Seven commenters requested that NMFS extend the comment period to allow adequate time to review and respond to measures described in the proposed Federal rule.

Response: NMFS extended the public comment period from February 10, 1999, to February 26, 1999. A second request to further extend this period through March 15, 1999, was not

approved, since the February 26 extension was determined to afford adequate time for the public to provide comments on the proposed rule.

Comment 61: One commenter requested NMFS review the coordinates identifying points Q and R which delineate the boundary for Area 6 in § 697.31, which describe the lobster management areas. The commenter stated that these coordinates have been transposed by the Commission and in the proposed Federal rule.

Response: NMFS has made this correction for both Area 2 and Area 6.

Changes From the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the measures, respond to public comments, and to ensure consistency with other fishery regulations. Changes were made as follows:

In § 697.2, the definition of "dealer" was added.

In § 697.2, the definition of "Dive boat" was modified to add the word "commercial" and the word "boat" was changed to "vessel". The intent of this modification is to clarify and differentiate any vessel carrying divers for a per capita fee, a charter fee, or any other fee, from other recreational fishing vessels where any lobsters taken are not intended to be, or are not, traded, bartered, or sold.

In § 697.2, the definition of "recreational fishing" was added.

In § 697.2, the definition of "recreational fishing vessel" was added.

In § 697.2, the definition of "scrubbing" was removed. The reference to the definition occurred in § 697.20 "Size, harvesting and landing requirements" in paragraph (e) which has been more clearly described as "Removal of eggs", eliminating the need to define the word "scrubbing".

In § 697.2, the definition of "trap" was revised to include the sentence "Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), is gear deemed not to be a trap for the purposes of this part, and is not subject to the provisions of this part." The exemption from lobster regulations for red crab fishing gear is in existing regulations and was added because it was inadvertently omitted in the proposed rule.

In § 697.4, paragraph (a)(1), the text was revised to more clearly indicate that vessels currently holding a limited access American lobster permit issued under § 649.4 do not need to renew their existing permit upon transfer of management authority from the Magnuson-Stevens Act to the ACFCMA.

In § 697.4, paragraph (a)(3), the text regarding change of ownership was revised by adding the phrase "and management area designation, when required" to clearly indicate that lobster management area designations are presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for the purposes of replacing the vessel.

In § 697.4, paragraph (a)(7), was redesignated as (a)(7) and the text was simplified. Paragraph (a)(7) was expanded to more clearly indicate the date of implementation for the management area designation requirement is specified as May 1, 2000, and now includes text on the management area designation requirements previously located at § 697.32(a). See the text describing additional § 697.32 revisions located further along in this section.

In § 697.4, paragraph (c), the phrase "lobster management area designation, as specified in § 697.18, the vessel will fish if fishing with traps capable of catching American lobster" was added to the vessel permit requirements, to incorporate the requirement to declare the lobster management area(s) the vessel will specify, as part of the annual permit renewal process.

In § 697.4, paragraph (d) was added to consolidate and clarify the trap tag information requirements for vessels fishing with traps, previously located at § 697.34(a).

In § 697.5, paragraphs (d), (e), (f), and (k) were revised to eliminate a referral to see similar text found in § 697.4 and, in place of the referral, text was added to specifically apply to requirements for operator permits.

In § 697.6, paragraphs (b), (c), (r), (i), (j), (k), and (m) were revised to eliminate a referral to see similar text found in § 697.4 and § 697.5 and, in place of the referral, text was added to specifically apply to requirements for dealer permits.

In § 697.7, paragraphs (c), (d), and (e) containing all lobster prohibitions and presumptions were revised and consolidated under paragraph (c) for clarity. Paragraph (c)(1) now contains prohibitions previously identified as (c), paragraph (c)(2) now contains prohibitions previously identified as (e), and paragraph (c)(3) now contains prohibitions previously identified as (d) in the proposed rule. Paragraph (d) now

contains prohibitions for Atlantic sturgeon.

In § 697.7, paragraph (c), redesignated as (c)(1), the phrase “or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to do any of the following:” is a continuation of existing regulations inadvertently omitted from the proposed rule text and was added back to the prohibitions. On October 11, 1996, the Sustainable Fisheries Act (SFA) was signed into law and amended, among other statutes, the ACFCMA (16 U.S.C. 5101 *et seq.*) to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These areas are often referred to as Maine pocket waters. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and state regulations. These pocket waters are small areas of the EEZ that lie between two areas of State waters, created by islands near the coast of Maine.

In § 697.7, paragraph (c)(1)(vii) was added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19. This management requirement was identified under management measures in the Proposed Rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1) (xix) and (xx) were added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to refuse or fail to carry a sea sampler/observer if requested to do so by the Regional Administrator, or to fail to provide a sea sampler/observer with required food, accommodations, access, and assistance, as specified in § 697.12. This management requirement was identified under management measures in the proposed rule, but was inadvertently

omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxi) was added to the prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxii) was added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps. This management requirement was identified under management measures in the Proposed Rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxiii) was added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxiv) was added to the prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxv) was added to the prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to transfer or attempt to transfer American lobster from one vessel to another vessel. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxvi) was added to the prohibitions section to make it unlawful, beginning May 1, 2000, for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s) as required under § 697.4(a)(7). This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2), redesignated as (c)(1)(ii), the phrase “up to the time when a dealer receives or possesses American lobster for a commercial purpose,” was added to clarify that the prohibition against possession of lobster parts in violation of the mutilation standards applies up to the point of possession by a licensed dealer.

In § 697.7, paragraph (c)(2)(vi) was added to the prohibitions section to make it unlawful for any person to assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved sea sampler/observer aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(vii) was added to the prohibitions section to make it unlawful for any person to refuse to carry a sea sampler/observer if requested to do so by the Regional Administrator. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(viii) was added to the prohibitions section to make it unlawful for any person to refuse reasonable assistance to either a NMFS-approved sea sampler/observer conducting his or her duties aboard a vessel. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xvi) was added to the prohibitions section to make it unlawful for any person to violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xvii) was added to the prohibitions section to make it unlawful for any person to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ

from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xviii) was added to the prohibitions section to make it unlawful for any person to fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xix) was added to the prohibitions section to make it unlawful for any person to possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xx) was added to the prohibitions section to make it unlawful for any person to transfer or attempt to transfer American lobster from one vessel to another vessel. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(7), redesignated as (c)(1)(viii), the word “trap” was added to clarify NMFS’ intent to exclude non-trap gear from the trap gear requirements to mark, vent, tag, panel, and limit the maximum trap size.

In § 697.7, paragraphs (c)(1)(ix) through (c)(1)(xiii) were added to address the lag in implementation of the lobster trap tag requirements, which will also replace the existing gear marking requirements, effective May 1, 2000.

In § 697.7, paragraph (e)(1), redesignated as (c)(2)(i), paragraph (E) was added. This text, which addresses the regulations relating to the areas often referred to as Maine pocket waters, was inadvertently omitted from the proposed rule text, and is a continuation of existing regulations.

In § 697.7, paragraph (e)(2), redesignated as (c)(2)(ii), the phrase “or unless the vessel or person holds a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 697.24.” was added. This text, which addresses the regulations relating to the areas often referred to as Maine pocket waters, was inadvertently omitted from the proposed rule text, and is a continuation of existing regulations.

In § 697.7, paragraph (e)(5), redesignated as (c)(2)(v), the phrase “or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 697.24,” was added. This text, which addresses the regulations relating to the areas often referred to as Maine pocket waters, was inadvertently omitted from the proposed rule text, and is a continuation of existing regulations.

In § 697.7, paragraph (d)(1), redesignated as (c)(3)(i), the phrase “or parts thereof” was added to the first sentence to clarify the intent to include lobster parts as well as whole lobsters taken in violation of Federal regulations. The word “whole” was added to the first sentence to clarify dealer possession requirements. The words “or foreign” was added to the second sentence to clarify that lobsters harvested by non-U.S. vessels in a foreign country are exempted from the identified Federal regulations.

In § 697.7, paragraph (d)(2), redesignated as (c)(3)(ii), in the first sentence, the phrase “or parts thereof possessed at or prior to the time when the parts are received by a dealer” was added to clarify that possession of parts prior to possession by a dealer is prohibited. In the same sentence, the phrase “or parts thereof” was added to clarify that possession of parts prior to possession by a dealer is prohibited.

In § 697.8, paragraph (d) was revised by adding the phrase “over 25 ft (7.6 m) in registered length, fishing in the EEZ and” to make the non-permanent marking requirements applicable to vessels carrying recreational fishing parties on a per capita basis or by charter, compatible with the vessel marking requirements for each vessel

issued a limited access American lobster permit.

In § 697.9, paragraph (b) was added to notify permit holders, as applicable, to be alert for communication conveying enforcement instructions.

In § 697.20 paragraphs (c)(1) and (c)(2), the phrase “Subject to the rebuttable presumption in § 697.7(d),” was added to clarify exemptions to the mutilation requirements if it can be shown the American lobsters were harvested by a vessel without a Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel, and the lobsters are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

In § 697.20 paragraphs (c)(1) and (c)(2), the phrase “prior to offloading from a vessel” was removed, and the phrase “before, or at the time of landing” and the phrase “up to the time when a dealer first receives or possesses American lobster” were added to clarify the prohibition against mutilation applies on board the vessel and up to the point of purchase by a dealer.

In § 697.20, paragraph (e), the title was revised by removing the word “scrubbing” and inserting the phrase “Removal of eggs” to more clearly describe the contents of the paragraph. In addition, the text in paragraph (e) was revised and clarified by adding the text “including, but not limited to the forcible removal, or removal by chemicals, or other substances or liquids”.

In § 697.21, paragraphs (a) and (c) were combined and redesignated as § 697.21(a), to allow the continuation of the current Federal gear marking requirements until the trap tag marking requirement is implemented on May, 1, 2000.

In § 697.21, paragraph (b), the text was re-labeled from “Gear configuration” to “Deployment and gear configuration” and the text was rewritten to refer to the gear areas identified in paragraph (b)(4). Paragraph (b)(4) of this section was rewritten to identify and continue the existing gear marking requirements currently in place, which were inadvertently omitted in the proposed rule.

In § 697.21, paragraphs (d) through (g) were redesignated as § 697.21, paragraph (c) through (f), because, as described previously, paragraphs (a) and (c) are combined and redesignated as § 697.21(a).

In § 697.21, paragraph (e), redesignated as paragraph (d), the

phrase “excluding heading or parlor twine and the escape vent” was added to the introductory sentence to clarify the fact that no lobster trap is made entirely of wood.

In § 697.21, paragraph (f), redesignated as paragraph (e), the paragraph was revised to allow for and to describe an exemption period, extending until April 30, 2003, to the maximum trap size restriction for vessels currently fishing with traps in excess of the identified maximum trap size.

In § 697.21(f)(1), redesignated as paragraph (e)(2), the text was modified to clarify that the larger offshore maximum trap size applies to vessels who elect to fish only in EEZ Offshore Management Area 3 or EEZ Offshore Management Area 3 and the Area 2/3 Overlap.

In § 697.21, paragraph (g), redesignated as paragraph (f), the paragraph was revised to specify that the trap tag requirement will be implemented beginning on May 1, 2000.

As described previously, § 697.34 was removed and the regulatory text was redesignated as § 697.7, containing prohibitions and § 697.19, containing the trap tag measures. The following text provides specific information on the removal or redesignation of § 697.34.

Subpart C and section § 697.30 of Subpart C, containing the Egg Production Rebuilding Schedule and Adaptive Management Adjustments—Purpose and Scope text, was deleted. Subpart C represented a continuation of general provisions and lobster management measures which were more appropriately contained in Subpart A—General Provisions, and Subpart B—Management Measures. The following text addresses other sections of Subpart C which were either redesignated as other sections, or removed in whole or in part to provide the reader with clearer information on the regulatory text of the lobster management measures in this final rule.

Section § 697.31, describing the coordinates for the lobster management areas, was redesignated as § 697.18 to enhance the readability of the document. In addition, § 697.31 (a)(1) through (a)(9) was redesignated as § 697.18 (a) through (i) and § 697.31(b) is removed.

In § 697.31, paragraph (a)(1), redesignated as § 697.18(a), the narrative at the end of the EEZ Nearshore Management Area 1 was modified to clarify the description of the boundary line from the Maine coast along the seaward EEZ boundary back to point A.

In § 697.31, paragraphs (a)(2) and (a)(7), redesignated as § 697.18 (b) and

(g), the point coordinates designated as Q and R, which help define the EEZ Nearshore Area 2 and Nearshore Area 6 were revised to correct an error. Point Q was relabeled as point R and point R was relabeled as point Q.

In § 697.31, paragraph (a)(4), redesignated as § 697.18(d), the EEZ Offshore Management Area 3 boundary coordinate designated as point C was modified to be consistent with the EEZ Nearshore Area 1 boundary coordinate designated as point C which follows the Loran C navigation frequency coordinate 9960–X–25600.

In § 697.31, paragraph (a)(7), redesignated as § 697.18(g), the title and introductory text were modified by removing the word “EEZ”. Nearshore Management Area 6 is entirely within state waters and, as noted during the public comment period, a more accurate description of Area 6 would not include a reference to the EEZ for this management area.

In § 697.31, paragraph (a)(1) and (a)(8), redesignated as § 697.18 (a) and (h), the point coordinates “G1” identified as 42°04.25’ N. lat. and 70°17.22’ W. long., “G2” identified as 42°02.84’ N. lat. and 70°16.1’ W. long., and “G3” identified as 42°03.35’ N. lat. and 70°14.2’ W. long. were added. The boundary line separating EEZ Nearshore Management Area 1 and EEZ Nearshore Outer Cape Lobster Management Area does not come to land at point G; therefore, the EEZ Nearshore Management Area 1 and EEZ Nearshore Outer Cape Lobster Management Area are not effectively separated as intended. This discrepancy was identified during the public comment period on the proposed rule and was discussed and addressed by the Commission during development of Addendum 1 to the ISFMP. To facilitate enforcement of area based management measures, the three new point coordinates, which are compatible with those proposed by the Commission in Addendum 1, were added to EEZ Nearshore Management Area 1 and EEZ Nearshore Outer Cape Lobster Management Area to clearly delineate and separate these management areas.

In § 697.32, paragraphs (a)(1) through (a)(4) and (a)(9), were redesignated as § 697.4, paragraph (a)(7)(i) through (a)(7)(v). The text describes the election of lobster management areas which will become part of the annual vessel permit renewal process and is more appropriately included in the vessel permit renewal section, § 697.4(a)(7).

In § 697.32, paragraphs (a)(5) through (a)(8), were removed because similar language is more appropriately located in § 697.19, the section containing

regulations on trap limits and trap tag requirements for vessels fishing with traps.

In § 697.32, paragraph (a)(1)(i), redesignated as § 697.4 (a)(7)(i), May 1, 2000, was specified as the date of implementation of the requirement to have a lobster management area designation certificate or valid limited access American lobster permit containing the elected management area designation(s) on board all vessels with a limited access lobster permit fishing with traps to allow adequate time for notification, mailing and return of permit holder area designation election forms prior to implementation of the requirement.

In § 697.33, paragraphs (a) through (d), redesignated as § 697.19 paragraphs (a) and (b), were extensively rewritten to remove the mutual exclusion requirement which prohibited vessels electing any of the nearshore management areas from also electing to fish in the Offshore Management Area 3. Vessels may elect to fish in any or all of the lobster management areas, but must fish by the most restrictive regulations that apply to any of the management areas elected, regardless of which management area the vessel may currently be fishing in.

In § 697.33, paragraphs (a) through (d), redesignated as § 697.19 paragraphs (a) and (b), were rewritten to clarify the management measure requirements for the Area 2/3 Overlap. All vessels electing the Area 2/3 Overlap alone, or in addition to any of the nearshore management areas must abide by the most restrictive management measures in effect for any of the elected nearshore management areas while fishing in the Area 2/3 Overlap. All vessels electing the Area 2/3 Overlap and only the offshore management Area 3 must abide by the management measures in effect for the offshore management Area 3 while fishing in the Area 2/3 Overlap. All vessels electing to fish only in the Area 2/3 Overlap must abide by trap and trap tag allocations requirements applicable to the nearshore management areas as specified in § 697.19.

The trap limits and other trap management measures contained in § 697.33 and the trap tag management measures contained in § 697.34 were combined for reader clarity and are redesignated § 697.19. Section 697.33, paragraphs (a) through (d), were consolidated and redesignated as § 697.19, paragraphs (a) and (b), and describe the trap limits for the EEZ nearshore and offshore lobster fishery for fishing years 1999 and 2000 and § 697.34, paragraph (b) was redesignated as § 697.19, paragraph (d)(1), and

describes trap tag administrative procedures.

In § 697.33, paragraphs (a) through (d), were combined and redesignated as § 697.19, paragraphs (a) and (b), text was added to specify that the date of implementation of the requirement to have a lobster management area designation certificate or a permit relating to area management designations on board all vessels with a limited access lobster permit fishing with traps is May 1, 2000, to allow adequate time for notification, mailing and return of permit holder area designation election forms prior to implementation of the requirement.

In § 697.33, paragraphs (a) through (d), consolidated and redesignated as § 697.19, paragraphs (a) and (b), were rewritten to postpone the trap tag requirement until May 1, 2000, following recommendations received by the Commission, several state agencies and numerous individuals.

In § 697.33, paragraph (e), requiring an on-shore trap count if requested by an authorized officer, was deleted as burdensome and ineffective for the intended purpose of ensuring compliance with the trap limit requirement.

In § 697.34, redesignated as § 697.19, paragraph (a) was removed because paragraph (a) described administrative procedures for a trap tag program as well as possible alternative state tagging programs. Administrative procedures are not appropriate for inclusion in the regulatory text describing management measures.

In § 697.34, paragraph (b) was redesignated as § 697.19(d) to consolidate and clarify both the trap limits and trap tag aspects of the management measures.

In § 697.34, paragraph (b)(2), redesignated as § 697.19(d)(2), the phrase "within 24 hours" was replaced by the phrase "as soon as feasible within 7 days" and the phrase "on an official lobster trap tag replacement order form signed by the permit holder or authorized representative" was replaced by "by letter or fax to the Regional Administrator". The notification requirement was modified and extended to allow a reasonable time period for lobstermen to notify NMFS concerning requests for replacement of lost tags.

In § 697.34, paragraph (c)(1) was redesignated as § 697.19(c) to consolidate the trap tag requirement to permanently attach a trap tag to any lobster trap in Federal waters beginning May 1, 2000, with other trap tag management measures.

In § 697.34, paragraphs (c)(2) through (c)(5) were redesignated as § 697.7, paragraphs (c)(1)(ix)(B) through (c)(1)(xiii)(E) to consolidate trap tag prohibitions for reader clarity.

Section 697.35 was redesignated as § 697.17 to consolidate non-trap lobster management measures under Subpart B—Management Measures rather than have management measures under both Subpart B and Subpart C.

In § 697.35, paragraph (a), redesignated § 697.17, paragraph (a), the paragraph was modified to include the non-trap landing restriction found in § 697.7(d)(1)(iii) to add the more restrictive regulations which apply to the charter and head boats and commercial dive vessels which are restricted to six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be, or are not, traded, bartered, or sold.

Section 697.24 "Exempted waters for Maine State American lobster permits." was added. On October 11, 1996, the SFA was signed into law and amended, among other statutes, the ACFCMA (16 U.S.C. 5101 *et seq.*) to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These areas are often referred to as Maine pocket waters. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and State regulations. The SFA specifications for these areas apparently included an unintentional line across land which is repeated in these regulations until further clarification is received from Congress. These pocket waters are small areas of the EEZ that lie between two areas of state waters, created by islands near the coast of Maine, and are described in § 697.24. This section, which contains existing lobster regulations currently in place was inadvertently omitted in the proposed rule.

Section 697.36 was redesignated § 697.25 in its entirety. As previously discussed, this change was made to consolidate lobster management measures under Subpart B—Management Measures, rather than have management measures under both Subpart B and Subpart C.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648-0202 for §§ 697.4 through 697.6

and § 697.12, OMB control number 0648-0309 for § 697.22, OMB control number 0648-0350 for § 697.8, and OMB control number 0648-0351 for § 697.21.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

Atlantic Coastal Fisheries Cooperative Management Act

Paragraphs (A) and (B) of section 804(b)(1) of the ACFCMA authorize the Secretary of Commerce to issue regulations in the EEZ that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. This authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has determined that these actions are compatible with the Commission's American Lobster Interstate Management Plan and consistent with the national standards of the Magnuson-Stevens Act. Federal action alone in the EEZ is not likely to stop overfishing, to rebuild lobster egg production, or to meet Federal management requirements to do so. Only cooperative state and Federal action will rebuild American lobster stocks.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866. Industry revenues were projected to increase \$2.13 million annually. Projected over a 10 year period at a discount rate of 7.0 percent, the management measures in this rule would exceed the status quo (current management measures) by \$16.09 million in present value. If states do not implement any fishing mortality rate reduction initiatives, the expected benefit of implementing the management measures in this rule in the EEZ only will be greatly diminished but is still positive. Specifically, an EEZ-only effort reduction program would result in an annual net gain of \$0.18 million. Projected over 10 years at 7.0 percent, the present value of an EEZ-only effort reduction program would be \$1.22 million. The cost for trap tags and tag replacement to the inshore and offshore sectors for complying with the final rule is estimated at \$332,900 for the first year.

Executive Order 13132

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

Paperwork Reduction Act

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

This rule contains collection-of-information requirements subject to the PRA. The following new collection-of-information requirements have been approved by OMB. The estimated time per individual response is shown.

1. Revision of existing gear (trap) marking requirements (1 minute) has been approved by OMB under control number 0648-0351;
2. Lobster management area designation, request for trap tags, and preparing payment for trap tags (5 minutes) has been approved by OMB under control number 0648-0202;
3. Reporting lost trap tags and requesting replacement trap tags (3 minutes) has been approved by OMB under control number 0648-0202;
4. Requests for additional trap tags (2 minutes) has been approved by OMB under control number 0648-0202; and
5. Extend sea sampler/observer coverage to include the American lobster fishery (2 minutes) has been approved by OMB under control number 0648-0202.

The following collection-of-information requirements are being restated and have been approved by OMB control number 0648-0202 with the response times per application as shown: vessel permit applications (30 minutes for a new application, 15 minutes for renewal applications), confirmations of permit history (30 minutes); operator permit applications (1 hour); and dealer permit applications (5 minutes).

The following collection-of-information requirement is being restated and has been approved by OMB under control number 0648-0350: vessel identification requirements, estimated at 45 minutes per vessel.

The following collection-of-information requirement is referred to and has been approved by OMB under control number 0648-0309: exempted fishing, estimated at one hour per vessel.

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

Endangered Species Act and Marine Mammal Protection Act

A formal section 7 consultation under the Endangered Species Act was initiated for this rule in a biological opinion by NMFS dated December 17, 1998. After reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects, it is NMFS' Biological Opinion that the continued operation of the Federal lobster fishery, with modifications to reduce impacts of entanglement through the Atlantic Large Whale Take Reduction Plan, is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle. In addition, the changes are not likely to destroy or adversely modify right whale critical habitat.

Essential Fish Habitat

An Essential Fish Habitat (EFH) consultation was performed on this action. The management measures for the trap sector that could impact EFH for species managed under the MSA include: declaration of fishing area; trap limits; and the maximum trap size. The implementation of limits on the number and size of traps and areas fished by Federal permit holders should serve to reduce the effects of fishing on EFH. No new conservation recommendations were provided, since this action already minimizes impacts to EFH, to the extent practicable.

For the non-trap sector, the implementation of a landing limit of 100 lobsters (or parts thereof) per day, up to a maximum of 500 lobsters (or parts thereof) per trip of 5 days or longer, effectively limits landings by the non-trap sector to a bycatch fishery. A significant portion of lobster landed by non-trap lobster permit holders is landed by fishermen also holding permits for multispecies; sea scallop; squid, mackerel, butterfish; scup; black sea bass, and summer flounder fisheries. Impacts to habitat from each of these fisheries is managed according to the Magnuson-Stevens Act under the FMP for each fishery. The appropriate vehicle for fully analyzing these impacts is

through the FMPs for the directed fishery rather than the regulations for the lobster non-trap bycatch fishery, although it can be determined that these regulations may reduce the amount of time draggers will have contact with the benthic environment while fishing for lobsters.

National Environmental Policy Act

NMFS prepared a Draft Environmental Impact Statement and Regulatory Impact Review (DEIS/RIR) for this action; a notice of availability was published in the **Federal Register** on March 27, 1998 (63 FR 14922). Public comments on the DEIS/RIR were addressed, and NMFS prepared a Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) following publication of a proposed rule on lobster management in Federal waters on January 15, 1999 (64 FR 2708). A notice of availability for the FEIS/RIR was published in the **Federal Register** on May 28, 1999 (64 FR 29026). NMFS determined that implementation of this action is environmentally preferable to the status quo. The FEIS/RIR demonstrates that, notwithstanding potential, yet unknown, changes in fishing practices and behavior, this action contains management measures able to end overfishing and rebuild stocks of American lobster; protect marine mammals and sea turtles; and provide economic and social benefits to the lobster industry in the long term. The FEIS/RIR further emphasizes the importance of concurrent action by the states during the stock rebuilding period to the realization of these benefits.

Final Regulatory Flexibility Analysis

In compliance with the Regulatory Flexibility Act, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), supplemented by the preamble to the proposed rule (64 FR 2708), as well as by further analysis contained in the FEIS/RIR (64 FR 29026), that describes the impact this action may have on small entities. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses thereto, and the preamble to the proposed rule, the analysis of impacts and alternatives to this action, and the summary that follows.

Objectives

The objective of lobster management is to prevent overfishing of American lobster throughout the species' range and to rebuild lobster stocks to a level that will produce optimum yield. To accomplish this, NMFS must ensure that existing lobster conservation measures in federal waters are

maintained and take further action in concert with actions by the States in coastal waters under their jurisdiction. As documented in Amendment 5 of the New England Fishery Management Council's American Lobster FMP (May 1994), the American lobster resource is considered recruitment overfished when, throughout its range, the fishing mortality rate (F), given the regulations in place at that time under the suite of regulatory management measures, results in a reduction in estimated egg production per recruit to 10 percent or less of a non-fished population.

Public Comment

Sixty-one public comments and responses are presented under Comments and Responses.

Estimate of Small Entities

Virtually all participants in the lobster fishery are considered to be small entities. Consequently, management measures, including all measures to mitigate impacts, affect small entities only, and all analyses of such effects are necessarily analyses of effects on small entities.

As of December, 1997, 3,153 vessel owners held Federal lobster permits. The majority of these are associated with smaller vessels and the bulk are identified with Maine or Massachusetts as the primary port of landing, followed distantly by Rhode Island, and then New Jersey, New York and New Hampshire. Of these 3,153 vessels, 1,962 also hold at least one other federal permit. As of December, 1997, there were a total of 2785 Federal permit holders fishing with traps to harvest lobsters. Although not always the case, it is generally recognized that vessels in excess of 50 feet are required to prosecute the offshore fishery. Based on this distinction, there were 297 trap vessels that may be involved in the offshore fishery and 2,488 trap vessels that may fish predominantly in the nearshore zones. An additional 802 non-trap vessels possessed American lobster permits.

Based on dealer reports, the total value of American lobster landed by Federal permit holders in 1997 was \$23.97 million. This value represented 10.7 percent of the total value of American lobster (\$223.7 million) landed in the Northeast region in 1997. Note that landings by Federal permit holders can come from a mixture of state waters, and nearshore/offshore EEZ areas. Revenues by Federal permit holders were divided among trap and trawl vessels, with trap vessels accounting for 90 percent of the revenues (\$21.5 million). Among trap

vessels in excess of 50 feet in overall length, American lobster landings were valued at \$13.95 million in 1997.

A detailed description of the small businesses which may be impacted by Federal lobster management actions is available and contained in a FEIS/RIR prepared by NMFS for this rule (see **ADDRESSES**).

Recordkeeping and Reporting Requirements

Collection-of-information requirements are presented in this final rule in the Classification section under Paperwork Reduction Act. According to the data provided, there are a total of 2,785 Federal permit holders that use traps to harvest American lobster and will have to comply with both the trap tag and the area designation requirements of these regulations. The average number of traps fished by these vessels was 667 and 1,321 by nearshore and offshore vessels, respectively.

Since management alternatives differ between the non-trap (mobile gear) and trap (fixed gear) groups, the analysis was performed separately for each gear group.

The Trap Sector

The action for the trap sector initially cap and then will reduce fishing effort (gear in the water), in addition to other management measures. These measures apply to all participants in the trap sector.

Trap Caps, Trap Tags, and Maximum Carapace Size

Two measures that could directly affect revenues are the trap cap for both the nearshore and offshore EEZ and the maximum carapace in Area 1. There are a total of 2,785 Federal permit holders fishing with traps that will have to comply with both the trap regulations and the maximum carapace in Area 1. The average number of traps fished by these vessels was 667 and 1,321 by nearshore and offshore vessels, respectively. For an average nearshore zone vessel fishing 667 traps, trap tag regulations will require an annual increase in compliance costs of \$247. For an average offshore vessel fishing 1,321 traps, the annual increase in compliance costs for trap tags will be \$515.

The regulations prohibit the taking of lobsters in excess of the maximum size by anyone fishing with either trap or trawl gear in Area 1. The prohibition also applies to any trap vessel that selects Area 1 no matter where it fishes. Entities that currently fish in Area 1 will not be able to sell lobsters above the maximum carapace length and will lose

a portion of their revenues. Landings data by carapace length are not available to provide a quantitative estimate of these lost revenues. However, estimates of the size structure of female lobsters landed in the Gulf of Maine produced for the stock assessment for American lobster during June 1993 at the NMFS Northeast Region's Stock Assessment Workshop No. 16 indicate lobsters in excess of 128 mm (approximately 5") comprised 0.06 percent of 1992 landings. Given this finding, the proportion of total revenues to Area 1 vessels comprised of lobsters in excess of the maximum size is not likely to be very high.

NMFS analysis indicates that approximately 30 percent of trap fishermen will have to reduce the numbers of traps fished. However, within certain limits, adjustments to days fished, trap hauls, crew, soak times, and trap configurations may be adopted to at least partially offset the loss in traps. These adaptive strategies, together with an anticipated reduction in fishing mortality rates, will likely result in an eventual increase in catch per unit effort (*i.e.*, catch per trap hauled). However, given the difference in timing between the trap reductions and the anticipated longer term increases in catch, it seems likely that a substantial number of individual entities will experience reductions in total revenues that exceed 5 percent for at least some portion of the stock rebuilding schedule. Even if vessels find ways of maintaining gross revenues, it will likely require substantial changes in the way in which they organize their business. Further, as described above, for at least some portion of fishermen operating in Area 1, additional revenues will be lost from the sale of lobsters in excess of the proposed maximum carapace length. Therefore, it appears likely that a substantial number of vessels will experience a reduction in revenues, and that trap reductions will likely require significant changes in business operations for a substantial number of entities.

Maximum Trap Size and Increased Escape Vent

In addition, it is likely that at least some portion of the trap fishery will bear compliance costs relating to maximum trap size, and increased escape vent size. These regulations impose a limit on trap size in terms of volume. The maximum size differs between offshore and nearshore fishing zones and affect all Federal permit holders that use trap gear. The maximum trap size is intended as a capping mechanism to prevent

increased trapping efficiency by limiting expansion of trap sizes. No data is currently available to document the numbers of traps that are currently above the size cap in either nearshore or offshore areas. However, the size caps were determined through a series of Commission meetings with industry representatives and were set at or above known industry standards at the time. For this reason, the maximum trap size has been set to accommodate the majority of gear currently in use. For the worst case scenario, the average nearshore vessel fishing 667 traps have to replace every trap at a cost of \$50 per trap for a total cost of \$33,350. Similarly, the cost burden for an average offshore vessel will be \$66,050 (1,321 traps at \$50/trap). The regulations require installation of an escape vent that is 1/16th of an inch (0.159 cm) greater than what the regulations use to require. This regulation applies to all traps fished by Federal lobster permit holders. Evidence offered by Effort Management Team (EMTs) members during the development of Amendment 5 to the American lobster FMP indicates that at least some portion of the lobster industry is already using escape vents larger than old regulations use to require, and are in compliance with the new regulation. No data is currently available to document the actual number of escape panels that will be replaced. However, assuming a worst case scenario, replacement of escape vents cost an average nearshore vessel fishing 667 traps a total of \$933. The cost to an average offshore vessel fishing 1,321 traps will be \$1,848. These costs represent a one-time only increase in compliance costs since the new escape vents will be incorporated into traps through normal replacement and maintenance. Vessels that are currently using conforming escape vents will not have to bear these costs. The added costs of replacing escape vents may be partially offset with cost savings, as the time required to cull the catch will be reduced (the principal reason why many industry participants already are using escape vents larger than required by the old regulations).

Although it is likely that compliance costs for some vessels will increase by 5 percent or more compared to current compliance costs, the exact number of vessels that will be effected cannot be determined with the maximum trap size, trap tags requirements, and increased escape vents requirements. Some amount of cash outlay will be required to come into compliance. Under a worst case scenario, for an average vessel, the cumulative cost of

replacing escape vents and purchasing trap tags is estimated to be \$1,180 and \$2,363 for nearshore and offshore vessels, respectively. Surveys of offshore and nearshore lobster vessels by the University of Rhode Island indicate that average annual operating costs for offshore vessels will be approximately \$190,000 per year, exclusive of crew payments. Similarly, the estimated average operating costs for nearshore vessels are \$24,000. As a proportion of operating costs, the estimated compliance costs (1.2 percent) for offshore vessels does not exceed NMFS threshold. The proportional increase (4.9 percent) in compliance costs for replacement of escape panels and trap tags by nearshore vessels does not approach the NMFS threshold for significance. Replacement of nonconforming traps represents a significantly larger increase in compliance costs, since new traps are estimated to cost \$50 each. It is likely that at least some portion of small entities will bear compliance costs that will exceed the NMFS threshold of a 5 percent or greater increase in compliance costs. However, given available data, it is not possible to determine with reasonable certainty whether a substantial number of entities will be significantly impacted.

Vessels that are currently fishing a number of traps greater than the trap caps under this final rule will likely suffer greater short run revenue losses. If these same vessels also previously used traps in excess of the maximum trap size dimensions, the combined impacts of revenue losses and gear replacement cost (compliance costs) could likely put some of these vessels out of business. Unfortunately, while the possibility exists for these circumstances to occur, because of lack of data it is not possible to determine how many vessels will actually be affected.

Non-Trap Sector

Interim non-trap regulations on March 2, 1998 (63 FR 10154) become permanent this rulemaking. The non-trap regulations impose a possession limit of 100 lobsters (or parts thereof) per day up to a maximum of 500 lobsters (or parts thereof) per trip for vessels using mobile gear to harvest lobsters. The impact of this limit was evaluated by examining Northeast dealer data for the 1996 calendar year for all Federally permitted vessels using bottom trawl gear. Dealer data does not include landings on a count basis or vessel fishing time. To overcome this lack of information, two assumptions were required. First, it is assumed that

the average weight of a trawl-caught lobster is 1 lb (0.454 kg). A one pound lobster is approximately the weight of a lobster at its minimum legal size. Second, all landings are associated with one 24-hour period. These two assumptions are equivalent to a 100-pound (45.4 kg) possession limit for mobile gear fishing participants. Based on this analysis and the threshold of a 5 percent reduction in gross revenues, 48 (5.3 percent) trawl vessels will be impacted by more than a 5 percent reduction in revenues. By contrast, 76 percent of all trawl vessels included in the analysis will not be impacted at all because their documented landings did not exceed the possession limit on any trips taken during the 1996 calendar year. Based on these findings, the threshold of a 5 percent reduction in gross revenues for more than 20 percent of participants is not exceeded. The majority of vessels harvesting lobster by mobile gear in the EEZ do not rely on lobster as the principal source of annual income.

The ISFMP, through its area management approach, identifies and addresses socio-economic impacts among the industry sectors on an area-by-area basis. In the ISFMP, the management unit for American lobster (state and Federal waters from Maine to North Carolina) is subdivided into seven areas, and LCMTs were established for each of these areas. These LCMTs, comprised of lobster industry members, make recommendations for management measures to meet predefined targets designed to end overfishing. Industry recommended LCMT measures, implemented on an area by area basis after favorable review and by the Commission and NMFS, would mitigate adverse economic impacts to area participants by allowing for variable regulations by area, depending on the fishing practices and unique fishery characteristics for each management area. This approach, with industry participation, strives to alleviate adverse economic impacts to the extent possible.

NMFS regulations, under this action, do not identify "default" management measures (such as continued trap reductions) beyond the fishing year 2000. Instead, NMFS will evaluate the Commission's recommendations for resource-wide management of lobster in the EEZ, based upon the Commission's review and approval of conservation-equivalent proposals submitted by the LCMTs. On at least an annual basis, NMFS will identify, in consultation with the Commission and its LCMTs, these and/or additional measures in Federal waters to meet ISFMP objectives to end overfishing and to rebuild stocks

of American lobster. If additional measures are necessary, NMFS will conduct a rulemaking action, including the appropriate biological and economic analyses.

Selection of Alternative

The DEIS/RIR analyzed six different alternatives for the lobster trap fishery and three alternatives for the non-trap (mobile gear) fishery. For the trap fishery, the six alternatives included: Taking no action (status quo); implementing measures in Federal waters recommended by the Commission; implementing additional nearshore/offshore trap limits with a buffer zone; implementing a four-tier nearshore/offshore trap limit; implementing nearshore fixed trap limits in combination with offshore limits based on historical participation; and prohibiting lobster fishing in Federal waters. The non-trap fishery alternatives included: A possession limit of 100 lobsters (or parts thereof) per day or a maximum of 500 per trip (no action/status quo); a possession limit of 500 per trip regardless of trip length, and a prohibition on the harvest and possession of American lobster in Federal waters. In addition, various alternatives were suggested by the commenters which were rejected for reasons given in the response to such sections.

Overall public comment during review of the DEIS/RIR indicated strong support for the plan embodied by the Commission's ISFMP (Alternative 2, for the lobster trap fishery and Alternative 1 for the non-trap fishery), and little support for other alternatives. Due to the preponderance of public comment for the alternatives noted here, NMFS continued development of those alternatives in the FEIS/RIR and in the proposed rule. See also Section III of the FEIS/RIR for rationale for the adoption of the subject action.

Trap Fishery

In this regulatory action, management of the American lobster trap fishery in the EEZ implements Alternative 2 identified in the DEIS: Implement ASMFC Interstate FMP Amendment 3 measures in Federal waters recommended by the Commission. The regulations implement a trap tag program and trap limits in Federal waters throughout the species' range. For nearshore management areas (Area 1, 2, 4, 5, 6, and the Outer Cape), fishermen are limited to a maximum of 1000 traps in 1999, and to a maximum of 800 traps in fishing year 2000. For the offshore fishery (Management Area 3), fishermen are limited to a maximum of

2000 traps in 1999, and to a maximum of 1800 traps in fishing year 2000. Additional new measures include: A prohibition on spearing lobster; adopting the lobster management areas specified in the Commission's ISFMP; a requirement that vessel owners who elect to use traps must inform NMFS each year of the lobster management areas in which they will set gear; a near-shore maximum trap size which, after a phase-in period will, beginning May 1, 2003, be in line with the Commission's Amendment 3 recommended size of 22,950 cubic inches (376,081 cubic centimeters); an off-shore maximum trap size which, after a phase in period will, beginning May 1, 2003, be in line with the Commission's Amendment 3 size of 30,100 cubic inches (493,249 cubic centimeters); increasing the minimum size of rectangular escape vents on lobster traps to not less than $1\frac{5}{16}$ inches ($\frac{1}{2}$ cm) by $5\frac{3}{4}$ inches (14.61 cm) or an increase in the minimum size of circular escape vents to two portals with unobstructed openings not less than $2\frac{7}{16}$ inches (6.19 cm) diameter; for Federal permit holders fishing in lobster management area 1, lobsters with a carapace size greater than 5 inches (12.7 cm) cannot be retained, or effective May 1, 2000, when the area designation requirement is implemented, lobsters with a carapace size greater than 5 inches (12.7 cm) cannot be retained by fishermen who elect Area 1 as one of their designated management areas; and a requirement, effective May 1, 2000, that each trap set by a Federal permit holder have a trap tag attached to the trap bridge or central cross-member.

In addition, a continuation of existing measures include: Extending the moratorium on new entrants into the fishery; a prohibition on the possession of lobsters bearing eggs or from which eggs have been removed; a prohibition on the possession of lobster meat and detached tails, claws, or other parts; a prohibition on the possession of V-notched lobsters; a requirement to install a biodegradable "ghost" panel on traps; a minimum carapace size of $3\frac{1}{4}$ inches (8.26 cm); a requirement to install escape vents on traps; a prohibition on the possession at any time of more than six lobsters per person when aboard a head, charter, or dive vessel; a requirement that gear be marked in order to identify the permit holder; and a prohibition on the interstate or international trade of live whole lobsters smaller than the Federal minimum size.

1. Alternative 1—No Action/Status Quo

See Section III.2.A of the DEIS/RIR.

Taking no action would continue current regulations pertaining to harvest, possession, sale, purchase, or receipt of American lobster. No other management measures would be implemented for the trap fishery. Alternative 2, containing the measures implemented by this final rule, was selected and Alternative 1 was rejected since current fishing effort levels, if left unchecked under this alternative, would jeopardize the ability of the lobster population to sustain itself and would continue the danger of a possible stock collapse. Requirements for trap tags and tag replacement costs in Alternative 2, compared to alternative 1 (taking no action), will cost industry approximately \$2,501,821 over 10 years. The estimated costs for administering the trap tag program implemented by this final rule will be \$94,506 for the first and subsequent years of the program. Enforcement costs will focus on verifying lobster management area designations and enforcing the trap tag requirement. Enforcement costs should stabilize unless future management measures include additional reductions in trap limits in future years. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

2. Alternative 3—Nearshore/Offshore Trap Limits With a Buffer Zone

See Section III.2.C of the DEIS/RIR. Alternative 3 would implement a four-year annual reduction in the maximum number of lobster traps fished by, and would establish a 10 nm (18.52 km) buffer zone where no traps could be deployed, in an effort to separate the inshore and offshore EEZ fisheries for enforcement and conservation purposes. No positive comments were provided on this alternative at the 1998 public hearings. The 4-year reduction in trap limits was rejected as a “default” approach in favor of an allowance for primary consideration of conservation-equivalent measures to be identified by the LCMTs. The buffer zone concept also received little, if any, favorable public support, primarily since it was construed as an unfair restriction on the trap vs. non-trap lobster fishery. Requirements for trap tags and tag replacement costs in Alternative 2, measures implemented by this final rule, will cost industry approximately \$2,501,821 over 10 years compared to this alternative 3, which would cost industry approximately \$1,804,754 over 10 years, due to the trap reduction

schedule in this alternative of 10 percent a year up to a 40 percent reduction in the total number of traps fished. The estimated costs for administering the trap tag program implemented by the final rule will be \$94,506 for the first and subsequent years of the program, while Alternative 3 would cost \$94,506.00 for the first and second year. By year 3, the trap tag reduction schedule would impact traps in the water with a scheduled 10 percent reduction continuing until year five. Costs therefore in year three would be approximately \$85,000, year four would be \$75,600 and year five and thereafter would be \$66,150. Enforcement costs under alternative 3 would focus on verifying lobster management area designations, enforcing the buffer zone prohibition and enforcing the trap tag requirement. Enforcement costs under alternative 3 would increase, compared to measures implemented under Alternative 2, since the additional 10 percent reductions in trap limits in Alternative 3 would require additional enforcement effort. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

3. Alternative 4—Four-tier Trap Reduction Strategy

See Section III.2.D of the DEIS/RIR. This alternative compared to Alternative 3, would further limit trap allocations among Federal permit holders, based upon the number of traps actually fished in 1997. When compared to Alternative 2, Alternative 4 was rejected since further analysis and public comments indicates that this strategy is more germane to trap fisheries in certain state waters, and not germane to the EEZ fishery. Available data indicates that Federal permit holders tend to fish at or above the maximum trap limits proposed in Alternative 4.

Requirements for trap tags and tag replacement costs in this final rule will cost industry approximately \$2,501,821 over 10 years, while costs in Alternative 4 would cost industry approximately \$1,353,566 over 10 years. Under Alternative 4, the estimated costs for administering the trap tag program would be approximately \$70,880.00 for the first year and second year, \$63,750 in year three, \$56,700 for year four, and \$49,600 for year five and thereafter versus \$94,506 for the first and subsequent years of the program to be implemented by regulations in this rule. Under the final rule and under

Alternative 4, enforcement costs will focus on verifying lobster management area designations and enforcing the trap tag requirement. Enforcement costs should stabilize unless future management measures include additional reductions in trap limits in future years. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

4. Alternative 5—Nearshore Fixed Trap Limits/Offshore Historical Participation

See Section III.2.E of the DEIS/RIR. This alternative is similar to Alternative 3, but would allow higher trap allocations to Federal permit holders in the offshore vs nearshore EEZ fishery. This strategy for the offshore fishery is supported by the Area 3 LCMT, which has been evaluated by the Commission through public hearings. Issues concerning how this approach relates to fishing effort limitations and other elements of the other six lobster area management plans, have been contentious. Lobstermen often fish in more than one management area in both nearshore and offshore EEZ waters, and area plans under the ISFMP vary with respect to proposed regulatory measures such as lobster minimum size, historic participation, trap limits, and trap allocation procedures. The Commission has recently approved guidelines for historical participation in four of the seven lobster management areas (including Area 3), and has recommended that NMFS implement such measures in the EEZ portion of those areas. In follow-up to that recommendation, an Advance Notice of Proposed Rulemaking (ANPR) was published in the **Federal Register** on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need to restrict access of Federal permit holders to the lobster EEZ fishery on the basis of historical participation. Depending on this public response, continued Federal rulemaking, along with associated biological and economic analyses, may be initiated in the near future. Accordingly, Alternative 5 was rejected, but may be re-considered during future rulemaking, depending on public response to the ANPR.

Requirements for trap tags and tag replacement costs in this final rule will cost industry approximately \$2,501,821 over 10 years, compared to Alternative 5 which will cost industry approximately \$1,679,095 over 10 years. The estimated costs for administering the trap tag program implemented by

this final rule will be \$94,506 for the first and subsequent years of the program, while administrative costs under Alternative 5 would be \$86,945.00 for the first and second year, approximately \$78,200 in year three, \$69,550 in year four, and in year five and thereafter costs would be approximately \$60,850. Also, it should be noted that Alternative 5 would have an additional requirement to identify and verify the recent historical trap possession by about 200 offshore permitted vessels and allow the vessel owners to appeal to resolve trap tag allocation. The additional requirement would accrue an additional administrative task which is estimated to require a 0.5 staff year at the cost to the government of approximately \$16,000.00 for the first year. Enforcement costs will focus on verifying lobster management area designations and enforcing the trap tag requirement. Enforcement costs should stabilize, unless future management measures include additional reductions in trap limits in future years. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

5. Alternative 6—Ban Fishing for and Possession of Lobster

See Section III.2.F of the DEIS/RIR.

Alternative 6 would require removal of all trap gear and closure of the EEZ to fishing for, and possession of lobster by any fishing vessel until lobster stocks recover throughout their range. This alternative was rejected when compared to Alternative 2, since it would have severe socio-economic impacts on Federal permit holders and would likely result in an adverse, substantial shift of fishing effort to other EEZ, as well as inshore fisheries.

Requirements for trap tags and tag replacement costs in this final rule will cost industry approximately \$2,501,821 over 10 years compared to Alternative 6 which would close Federal waters and therefore have no tagging requirements or associated costs. However, based on exvessel value for 1997, the trap ban would result in revenue loss to Federal permit holders of \$21.5 million in the first year. It is not known whether these vessels would be able to move into state waters or other fisheries to continue in business.

Compared to Alternative 6, the estimated costs for administering the trap tag program implemented by this final rule will be \$94,506 for the first and subsequent years of the program.

Enforcement costs under Alternative 6 would provide the most cost savings of any alternative, since there would be no requirement to verify lobster management area designations or enforce a trap tag requirement. Enforcement activities under Alternative 6 would focus on compliance of the trap gear ban and lobster possession prohibitions from EEZ waters. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

Non-Trap Fishery

NMFS will continue the regulations pertaining to the non-trap landing limits that are currently in place, implemented in Federal waters as an interim final regulation (63 FR 10154) March 2, 1998. It will be unlawful for a vessel that takes lobster by a method other than traps to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea, or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted.

1. Alternative 2—Limit Landings to 500 Lobster Per Day, Regardless of Trip Length

See Section III.3.B of the DEIS/RIR.

Alternative 2 was rejected in favor of Alternative 1, the status quo option because Alternative 1 will retain lobster landings by the non-trap fishery at historical levels, and prevent any potential expansion of harvest during the American lobster stock rebuilding period.

2. Alternative 3—Ban Fishing for and Possession of Lobster

See Section III.3.C of the DEIS/RIR.

This alternative was rejected in favor of Alternative 1, the status quo option, because Alternative 3 would have severe economic impacts on Federal permit holders and would likely result in an adverse, substantial shift of fishing effort to other EEZ, as well as inshore fisheries.

Although this rule does not modify existing regulations found at 50 CFR part 697 pertaining to weakfish, Atlantic striped bass, and Atlantic sturgeon, the entirety of part 697, as proposed, is repeated here.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 649 and 697

Fisheries, Fishing.

Dated: November 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, 15 CFR chapter IX and 50 CFR parts chapter VI, are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by:

A. Removing under 50 CFR the entries for §§ 649.4, 649.5, 649.6, 649.7 and 649.21; and

B. Adding under 50 CFR the following entries in numerical order.

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Number ¹ |
|---|---------------------|
| * * * * * | |
| 50 CFR: | |
| * * * * * | |
| 697.4(a), (d) and (e) | 0648–0202 |
| 697.5 | –0202 |
| 697.6 | –0202 |
| 697.8 | –0350 |
| 697.12 | –0202 |
| 697.21 | –0351 |
| 697.22 | –0309 |

¹ Current OMB control number (all numbers begin with 0648—).

50 CFR CHAPTER VI

PART 649—AMERICAN LOBSTER FISHERY—[REMOVED]

3. Part 649 is removed.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

Authority: 16 U.S.C. 1801 *et seq.*

5. Part 697 is revised to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—General Provisions

Sec.

- 697.1 Purpose and scope.
- 697.2 Definitions.
- 697.3 Relation to other Federal and state laws.
- 697.4 Vessel permits and trap tags.
- 697.5 Operator permits.
- 697.6 Dealer permits.
- 697.7 Prohibitions.
- 697.8 Vessel identification.
- 697.9 Facilitation of enforcement.
- 697.10 Penalties.
- 697.11 Civil procedures.
- 697.12 At-sea sea sampler/observer coverage.

Subpart B—Management Measures

- 697.17 Non-trap harvest restrictions.
- 697.18 Lobster management areas.
- 697.19 Trap limits and trap tag requirements for vessels fishing with traps.
- 697.20 Size, harvesting and landing requirements.
- 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.
- 697.22 Exempted fishing.
- 697.23 Restricted gear areas.
- 697.24 Exempted waters for Maine State American lobster permits.
- 697.25 Adjustment to management measures.

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Subpart A—General Provisions

§ 697.1 Purpose and scope.

The regulations in this part are issued under the authority of section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note, and govern fishing in the EEZ on the Atlantic Coast for species covered by those acts.

§ 697.2 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in §§ 600.10 and 648.2 of this chapter, for the purposes of this part, the following terms have the following meanings:

American lobster or lobster means *Homarus americanus*.

Approved TED means any approved TED as defined at § 217.12 of this title.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis* found in the waters of the Atlantic Ocean north of Key West, FL.

Atlantic sturgeon means members of stocks or populations of the species *Acipenser oxyrinchus*.

Berried female means a female American lobster bearing eggs attached to the abdominal appendages.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, RI, and defined as follows: Located at 40°09.2' N. lat., 71°33.1' W. long; is 201 ft (61.3 m) above the water; and is shown from a brick octagonal tower 67 ft (20.4 m) high attached to a dwelling on the southeast point of Block Island, RI.

BRD means bycatch reduction device.

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. The carapace is the unsegmented body shell of the American lobster.

Certified BRD means any BRD, as defined in part 622, Appendix D of this chapter: Specifications for Certified BRDs.

Charter or head boat means any vessel carrying fishing persons or parties for a per capita fee, for a charter fee, or any other type of fee.

Commercial dive vessel means any vessel carrying divers for a per capita fee, a charter fee, or any other type of fee.

Commercial purposes means for the purpose of selling, trading, transferring, or bartering all or part of the fish harvested.

Commission means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by Congress in Pub. L. 77-539 and Pub. L. 81-721.

Continuous transit means that a vessel does not have fishing gear in the water and remains continuously underway.

CPH means Confirmation of Permit History.

Crab trawl means any trawl net that is rigged for fishing and has a mesh size of 3.0 inches (7.62 cm), as measured between the centers of opposite knots when pulled taut.

Cull American lobster means a whole American lobster that is missing one or both claws.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), any species of fish, the harvest of which is managed by this part, from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), any species of fish managed under this part.

De minimis state means any state where the landings are so low that the Commission's Fisheries Management Board has exempted that state from

some of its regulatory responsibilities under an Interstate Fishery Management Plan.

Egg Production Rebuilding Schedule means the schedule identified in section 2.5 of Amendment 3 to the Commission's ISFMP.

Escape vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

Fishing trip or trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means, for the American lobster fishery, from May 1 through April 30 of the following year.

Flynet means any trawl net, except shrimp trawl nets containing certified BRDs and approved TEDs, when required under § 227.72(e)(2) of this title, and except trawl nets that comply with the gear restrictions specified at § 648.104 of this chapter for the summer flounder fishery and contain an approved TED, when required under § 227.72 (e)(2) of this title.

Ghost panel means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

ISFMP means the Commission's Interstate Fishery Management Plan for American Lobster, as amended.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Lobster day-at-sea with respect to the American lobster fishery means each 24-hour period of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess, or land, or fishes for, possesses, or lands American lobster.

Lobster permit means a Federal limited access American lobster permit.

Lobster trap trawl means 2 or more lobster traps, all attached to a single ground line.

Management area means each of the geographical areas identified in this part for management purposes under the lobster ISFMP.

Montauk light means the aid to navigation light located at Montauk Point, NY, and defined as follows: Located at 41°04.3' N. lat., 71°51.5' W. long.; is shown from an octagonal, pyramidal tower, 108 ft (32.9 m) high; and has a covered way to a dwelling.

Natural Atlantic sturgeon means any Atlantic sturgeon that is not the result of a commercial aquaculture operation, and includes any naturally occurring Atlantic sturgeon (those Atlantic sturgeon naturally spawned and grown

in rivers and ocean waters of the Atlantic Coast).

Parts thereof means any part of an American lobster. A part of a lobster counts as one lobster.

Point Judith Light means the aid to navigation light located at Point Judith, RI, and defined as follows: Located at 41°21.7' N. lat., 71°28.9' W. long.; is 65 ft (19.8 m) above the water; and is shown from an octagonal tower 51 ft (15.5 m) high.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and head boats and commercial dive vessels are not considered recreational fishing vessels.

Regional Administrator means the Regional Administrator, Northeast Region, NMFS, or a designee.

Retain means to fail to return any species specified under § 697.7 of this chapter to the sea immediately after the hook has been removed or after the species has otherwise been released from the capture gear.

Sea sampler/observer means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits.

Shrimp trawl net means any trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each trawl net, as defined in § 622.2 of this chapter, that is rigged for fishing and has a headrope length longer than 16 ft (4.9 m).

Stocked Atlantic sturgeon means any Atlantic sturgeon cultured in a hatchery that is placed in rivers and ocean waters of the Atlantic Coast to enhance the Atlantic sturgeon spawning stocks.

TED means Turtle Excluder Device, which is a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Trap means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters. Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), is gear deemed not to be a trap for the purpose of this part, and is not subject to the provisions of this part.

V-notched American lobster means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail

toward the viewer), or any female American lobster that is mutilated in a manner that could hide or obliterate such a mark.

V-shaped notch means a straight-sided triangular cut, without setal hairs, at least ¼ inch (0.64 cm) in depth and tapering to a point.

Weakfish means members of the stock or population of the species *Cynoscion regalis*, found along the Atlantic Coast from southern Florida to Massachusetts Bay.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). An American lobster with an intact and measurable body that is missing one or both claws, i.e., a cull lobster, is considered to be a whole American lobster.

(b) [Reserved]

§ 697.3 Relation to other Federal and state laws.

(a) The provisions of sections 307 through 311 of the Magnuson-Stevens Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson-Stevens Act.

(b) The relation of this part to other laws is set forth in § 600.705 of this chapter.

(c) The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing. 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 or measure.

§ 697.4 Vessel permits and trap tags.

(a) *Limited access American lobster permit.* Any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. This requirement does not apply to: charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if such lobsters are not intended for, nor used, in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

(1) *Eligibility in 1999 and thereafter.* To be eligible for issuance or renewal of a Federal limited access lobster permit for fishing year 1999 and thereafter, a vessel must:

(i) Have been issued a Federal limited access lobster permit for the preceding fishing year by the last day of such fishing year unless a CPH has been issued as specified in paragraph (a)(5) of this section or unless otherwise authorized by the Regional Administrator;

(ii) Be replacing a vessel that was issued a Federal limited access lobster permit for the preceding year; or

(iii) Be replacing a vessel issued a CPH.

(2) *Qualification restriction.* Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a Federal limited access lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is eligible for the permit or a CPH under paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history, and management area designation, when required of a vessel, is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history, and management area designation, for the purposes of replacing the vessel.

(4) *Consolidation restriction.* Federal limited access American lobster permits, and any rights or privileges associated thereto, may not be combined or consolidated.

(5) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing

and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (o) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form means the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (c) of this section.

(6) *Restriction on permit splitting.* A Federal limited access lobster permit will not be issued to a vessel or its replacement, or remain valid, if the vessels' permit or fishing history has been used to qualify another vessel for another Federal fishery.

(7) *Management area designations for vessels fishing with traps.* (i) For fishing year 2000 and beyond, it is unlawful for vessels issued a limited access American lobster permit fishing with traps, to retain on board, land, or possess American lobster in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s).

(ii) For fishing year 2000 and beyond, each owner of a vessel which fishes with traps capable of catching American lobster, applying for a limited access American lobster permit must declare to NMFS in his/her application for a permit or permit renewal, in which management areas described in § 697.18 the vessel will fish.

(iii) A lobster management area designation certificate or limited access American lobster permit shall specify in which lobster management area or areas the vessel may fish.

(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 unless such vessel becomes a replacement vessel for another qualified vessel.

(v) A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area 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.

(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. 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.

(c) *Vessel permit application.* Applicants for a Federal limited access American lobster permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. To be complete, an application for a Federal limited access American lobster permit must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; lobster management area designation the vessel will fish in, as specified in § 697.18, if fishing with traps capable of catching American lobster; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of

fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Administrator at least 30 days prior to the date on which the permit is needed by the applicant. The Regional Administrator shall notify the applicant of any deficiency in the application.

(d) *Trap tag application, lost and replacement tags.* (1) Beginning fishing year 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member.

(2) Trap tags shall be issued by the Regional Administrator, or, by state agencies, by agreement with the Regional Administrator, provided that such state tagging programs accurately identify the Federal limited access American lobster permit holder. NMFS will provide notice to American lobster permit holders as to the procedure for applying for trap tags and any required fees.

(3) Vessel owners or operators are required to report to the Regional Administrator lost, destroyed, and missing tags as soon as feasible within 7 days after the tags have been discovered lost, destroyed, or missing, by letter or fax to the Regional Administrator.

(4) Requests for replacement of lost tags in excess of the tag limit specified in § 697.19(c) must be submitted in writing to the Regional Administrator on an appropriate form obtained from the Regional Administrator and signed by the permit holder or authorized representative. The form and request for replacement tags will be reviewed by the Regional Administrator on a case-by-case basis and a decision will be reached on the number of replacement tags to be issued, if any. A check for the cost of the replacement tags must be received before tags will be re-issued.

(e) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit or trap tags required under this section. Fee amounts shall be calculated in accordance with the procedures of

the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. Fees may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit or tags, as applicable, within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received;

(ii) The application was not received by the Regional Administrator by any applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section or the number of tags requested exceeds the applicable tag limit specified in § 697.19(c);

(iv) The applicant has failed to meet any other application or tag requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A permit expires annually upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect until the renewal date unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance.* A vessel permit may be reissued by the Regional Administrator when requested in writing by the owner or authorized representative, stating the need for reissuance, the name of the vessel, and the number of the permit requested to be reissued. An application for a

reissued permit is not considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(j) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(k) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Administrator. If the written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. Any permit issued under this part must be maintained in legible condition.

(n) *Sanctions.* Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(o) *Abandonment or voluntary relinquishment of limited access American lobster permits.* Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years. If a vessel's Federal limited access American lobster permit or CPH is voluntarily relinquished to the Regional Administrator, or abandoned through failure to renew or otherwise, no Federal limited access American lobster permit or CPH may be reissued or renewed based on the qualifying vessel's history.

§ 697.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access American lobster permit under § 697.4(a), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters, harvested in or from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to: Charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if said lobsters are not intended for nor used in trade, barter or sale; recreational fishing vessels; and vessels

that fish exclusively in state waters for American lobster.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree, as a condition of this permit, that the operator and vessels fishing, catch, crew size, 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 while fishing in the EEZ or on board a vessel permitted under § 697.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in off loading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement or measure.

(d) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and shall be specified with each application form.

The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of the application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the application fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit expires upon the renewal date specified in the permit.

(g) *Duration.* An operator permit is valid until it is revoked, suspended, or modified under subpart D of 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Administrator as specified in paragraph (j) of this section.

(h) *Reissuance.* An operator permit may be reissued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the number of the permit requested to be reissued. An applicant for a reissued operator permit must also provide two recent (no more than 1 year old) color passport-size photos of the applicant. An application for a reissued permit is not considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(j) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(n) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 697.6 Dealer permits.

(a) Any person who receives, for a commercial purpose (other than solely for transport on land), American lobster from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), American lobster, managed by this part, must have been issued, and have in his/her possession, a valid permit issued under this section.

(b) *Dealer application.* Applicants for a dealer permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares, must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one partner, names of all partners having more than a 25 percent interest; and name and signature of all partner or partners authorized must be included with the application. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant needs the permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(c) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a

permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(d) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit at any time during the fishing year to an applicant, unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(e) *Expiration.* A permit expires upon the renewal date specified in the permit.

(f) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as required by paragraph (i) of this section.

(g) *Reissuance.* A dealer permit may be reissued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the number of the permit requested to be reissued. An application for a reissued permit is not considered a new application. An appropriate fee may be charged.

(h) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person, or other business entity, to which it is issued.

(i) *Change in application information.* Notice of a change in the dealer's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the

Regional Administrator within 15 days, the permit is void.

(j) *Alteration*. Any permit that has been altered, erased, or mutilated is invalid.

(k) *Display*. Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(l) *Federal versus state requirements*. If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit under this part must comply with the more restrictive requirement.

(m) *Sanctions*. Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

§ 697.7 Prohibitions.

(a) *Atlantic Coast weakfish fishery*. In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for, harvest, or possess any weakfish less than 12 inches (30.5 cm) in total length (measured as a straight line along the bottom of the fish from the tip of the lower jaw with the mouth closed to the end of the lower tip of the tail) from the EEZ.

(2) Retain any weakfish less than 12 inches (30.5 cm) in total length taken in or from the EEZ.

(3) Fish for weakfish in the EEZ with a minimum mesh size less than 3¼-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3¾-inch (9.5 cm) diamond stretch mesh for trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets.

(4) Possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3¼-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3¾-inch (9.5 cm) diamond stretch mesh for finfish trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets.

(5) Fish using a flynet in the EEZ off North Carolina in the area bounded as follows:

(i) On the north by a straight line connecting points 35°10.8' N. lat., 75°29.2' W. long. (3 nm off Cape Hatteras) and 35°03.5' N. lat., 75°11.8' W. long. (20 nm off Cape Hatteras).

(ii) The east by a straight line connecting points 35°03.5' N. lat., 75°11.8' W. long. (20 nm off Cape Hatteras) and 33°21.1' N. lat., 77°57.5'

W. long., (about 30 nm off Cape Fear on the extension of the North Carolina/South Carolina state line into the EEZ).

(iii) On the south by a straight line connecting points 33°21.1' N. lat., 77°57.5' W. long., and 33°48.8' N. lat., 78°29.7' W. long. (3 nm off Little River Inlet on the North Carolina/South Carolina state line).

(iv) On the west by state waters.

(6) Possess any weakfish in the closed area of the EEZ, as described in paragraph (a)(5) of this section, when fishing with shrimp trawls or crab trawls.

(7) Land weakfish for commercial purposes caught in the EEZ in any state other than Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina.

(b) *Atlantic striped bass fishery*. In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for Atlantic striped bass in the EEZ.

(2) Harvest any Atlantic striped bass from the EEZ.

(3) Possess any Atlantic striped bass in or from the EEZ, except in the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit.

(4) Retain any Atlantic striped bass taken in or from the EEZ.

(c) *American lobster*. (1) In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to do any of the following:

(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(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.

(ii) Retain on board, land, or possess, up to the time when a dealer first receives or possesses American lobster for a commercial purpose, any American lobster or parts thereof in violation of the mutilation standards specified in § 697.20(c).

(iii) Retain on board, land, or possess any berried female American lobster specified in § 697.20(d).

(iv) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

(v) Retain on board, land, or possess any V-notched female American lobster.

(vi) Spear any American lobster, or land or possess any American lobster which has been speared.

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

(viii) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not identified, vented, paneled, and of a volume larger than specified in accordance with the requirements in § 697.21, unless such gear has been rendered unfishable.

(ix) Beginning May 1, 2000, possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not tagged in accordance with the requirements in § 697.19, unless such gear has been rendered unfishable.

(x) Beginning May 1, 2000, fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer.

(xi) Beginning May 1, 2000, reproduce, or cause to be reproduced, lobster trap tags without the written consent of the Regional Administrator.

(xii) Beginning May 1, 2000, possess a lobster trap tag, tag a lobster trap with, or use, a lobster trap tag that has been reported lost, missing, destroyed, or issued to another vessel.

(xiii) Beginning May 1, 2000, sell, transfer, or give away lobster trap tags that have been reported lost, missing, destroyed, or issued to another vessel.

(xiv) Fail to affix and maintain permanent markings, as required by § 697.8.

(xv) Fish for, retain on board, land, or possess American lobsters, unless the operator of the vessel has been issued an

operator's permit under § 697.5, and the permit is on board the vessel and is valid.

(xvi) Fail to report to the Regional Administrator within 15 days any change in the information contained in the permit application as required under § 697.4(k) or § 697.5(j).

(xvii) Make any false statement in connection with an application under § 697.4, § 697.5, or § 697.6.

(xviii) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any American lobsters, unless the dealer has a valid Federal Dealer's Permit issued under § 697.6.

(xix) Refuse or fail to carry a sea sampler/observer if requested to do so by the Regional Administrator.

(xx) Fail to provide a sea sampler/observer with required food, accommodations, access, and assistance, as specified in § 697.12.

(xxi) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xxii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps.

(xxiii) Fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xxiv) Possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xxv) Transfer or attempt to transfer American lobster from one vessel to another vessel.

(xxvi) Beginning May 1, 2000, possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster

permit specifying such management area(s) as required under § 697.4(a)(7).

(2) In addition to the prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraph (c)(1) of this section, it is unlawful for any person to do any of the following:

(i) Retain on board, land, or possess American lobsters unless:

(A) The American lobsters were harvested by a vessel that has been issued and carries on board a valid Federal limited access American lobster permit under § 697.4; or

(B) The American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters; or

(C) The American lobsters were harvested by a charter boat, head boat, or commercial dive vessel that possesses six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be, or are not, traded, bartered, or sold; or

(D) The American lobsters were harvested by a recreational fishing vessel; or

(E) The American lobsters were harvested by a vessel or person holding a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 697.24.

(ii) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under § 697.4, or the American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and that is fishing under the provisions of and in the areas designated in § 697.24.

(iii) To be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ, or issued a Federal limited access American lobster permit under § 697.4, without having been issued and possessing a valid operator's permit under § 697.5.

(iv) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from or harvested by a fishing vessel issued a Federal limited access American lobster permit, unless in

possession of a valid dealer's permit issued under § 697.6.

(v) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a valid Federal limited access American lobster permit under § 697.4, or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 697.24, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters.

(vi) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved sea sampler/observer aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties.

(vii) Refuse to carry a sea sampler/observer if requested to do so by the Regional Administrator.

(viii) Refuse reasonable assistance to either a NMFS-approved sea sampler/observer conducting his or her duties aboard a vessel.

(ix) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobster.

(x) Violate any provision of this part, the ACFCMA, the Magnuson-Stevens Act, or any regulation, permit, or notification issued under the ACFCMA, the Magnuson-Stevens Act, or these regulations.

(xi) Retain on board, land, or possess any American lobsters harvested in or from the EEZ in violation of § 697.20.

(xii) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster in violation of § 697.20.

(xiii) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), (d)(2), and (e)(2) on a fishing vessel with mobile gear during the time periods specified in § 697.23(b)(1), (c)(1), (d)(1), and (e)(1), except as provided in § 697.23(b)(1), (c)(1), (d)(1), and (e)(1).

(xiv) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) on a fishing vessel with lobster trap gear on

board during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(xv) Deploy or fail to remove lobster trap gear in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(xvi) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xvii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ on a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps.

(xviii) Fish for, take, catch, or harvest lobster on a fishing trip in the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xix) Possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xx) Transfer or attempt to transfer American lobster from one vessel to another vessel.

(3) *Presumptions.* (i) Any person possessing, or landing American lobsters or parts thereof at or prior to the time when those American lobsters are landed, or are received or possessed by a dealer for the first time, is subject to all of the prohibitions specified in paragraph (c) of this section, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel and the lobsters are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

(ii) American lobsters or parts thereof that are possessed, or landed at or prior to the time when the American lobsters are received by a dealer, or whole American lobsters that are possessed by

a dealer, are presumed to have been harvested from the EEZ or by a vessel with a Federal limited access American lobster permit. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel without a Federal limited access American lobster permit and fishing exclusively for American lobsters in state or foreign waters will be sufficient to rebut this presumption.

(iii) The possession of egg-bearing female American lobsters, V-notched female American lobsters, American lobsters that are smaller than the minimum size set forth in § 697.20(b), or lobster parts, possessed at or prior to the time when the aforementioned lobsters or parts are received by a dealer, will be *prima facie* evidence that such American lobsters or parts were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

(d) *Atlantic sturgeon fishery.* In addition to the prohibitions set forth in § 600.725, it is unlawful for any person to do any of the following:

(1) Fish for Atlantic sturgeon in the EEZ.

(2) Harvest any Atlantic sturgeon from the EEZ.

(3) Possess any natural or stocked Atlantic sturgeon in or from the EEZ.

(4) Retain any Atlantic sturgeon taken in or from the EEZ.

(5) Possess any natural Atlantic sturgeon parts, including Atlantic sturgeon eggs, in the EEZ.

§ 697.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel issued a limited access American lobster permit and over 25 ft (7.6 m) in registered length must:

(1) Have affixed permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Have its official number displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, each fishing vessel issued a limited access American lobster permit must display its official number in block arabic numerals in contrasting color at least 18

inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel issued a limited access American lobster permit shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels over 25 ft (7.6 m) in registered length, fishing in the EEZ and carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the aforementioned requirements.

§ 697.9 Facilitation of enforcement.

(a) *General.* See § 600.504 of this chapter.

(b) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16, when hailed by an enforcement officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

§ 697.10 Penalties.

See § 600.735 of this chapter.

§ 697.11 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, permit sanctions, seizures, and forfeitures under the Atlantic Striped Bass Conservation Act and the ACFCMA, and to the regulations of this part.

§ 697.12 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel issued a Federal limited access American lobster permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Administrator to carry a sea sampler/observer, a vessel may not engage in any fishing operations in the respective fishery unless a sea sampler/observer is on board, or unless the requirement is

waived, as specified in paragraph (c) of this section.

(b) If requested in writing by the Regional Administrator to carry an sea sampler/observer, it is the responsibility of the vessel owner to arrange for and facilitate sea sampler/observer placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Administrator, as specified by the Regional Administrator, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in election letters to vessel owners.

(c) The Regional Administrator may waive in writing the requirement to carry a sea sampler/observer if the facilities on a vessel for housing the sea sampler/observer, or for carrying out sea sampler/observer functions, are so inadequate or unsafe that the health or safety of the sea sampler/observer, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the sea sampler/observer, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of sea samplers/observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy the vessel's log,

communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a Federal limited access American lobster permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, or other specimens taken by the vessel.

(f) NMFS may accept sea sampler/observer coverage funded by outside sources if:

(1) All coverage conducted by such sea samplers/observers is determined by NMFS to be in compliance with NMFS' sea sampler/observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The sea sampler/observer is approved by the Regional Administrator.

Subpart B—Management Measures

§ 697.17 Non-trap harvest restrictions.

(a) *Non-trap landing limits.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board capable of catching lobsters, or, that fishes for, takes, catches, or harvests lobster on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(b) All persons that fish for, take, catch, or harvest lobsters on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer American lobster from one vessel to another vessel.

(c) Any vessel on a fishing trip in the EEZ that fishes for, takes, catches, or harvests lobster by a method other than traps may not possess on board, deploy, fish with, or haul back traps.

§ 697.18 Lobster management areas.

The following lobster management areas are established for purposes of implementing the management measures specified in this part. (A copy of a chart showing the American lobster EEZ management areas is available upon request to the Office of the

Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are near-shore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point on Cape Cod:

| Point | Latitude | Longitude |
|----------|--------------|--------------|
| A | 43°58' N. | 67°22' W. |
| B | 43°41' N. | 68°00' W. |
| C | 43°12' N. | 69°00' W. |
| D | 42°49' N. | 69°40' W. |
| E | 42°15.5' N. | 69°40' W. |
| G | 42°05.5' N. | 70°14' W. |
| G1 | 42°04.25' N. | 70°17.22' W. |
| G2 | 42°02.84' N. | 70°16.1' W. |
| G3 | 42°03.35' N. | 70°14.2' W. |

Along the coastline of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are near-shore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---------|--------------|--------------|
| H | 41°40' N. | 70°00' W. |
| I | 41°15' N. | 70°00' W. |
| J | 41°21.5' N. | 69°16' W. |
| K | 41°10' N. | 69°06.5' W. |
| L | 40°55' N. | 68°54' W. |
| M | 40°27.5' N. | 72°14' W. |
| N | 40°45.5' N. | 71°34' W. |
| O | 41°07' N. | 71°43' W. |
| P | 41°06.5' N. | 71°47' W. |
| Q | 41°11'30" N. | 71°47'15" W. |
| R | 41°18'30" N. | 71°54'30" W. |

From point "R" along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point "H" along the Rhode Island and Massachusetts coast.

(c) *Area 2/3 Overlap.* The Area 2/3 Overlap is defined by the area, comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---------|-------------|-------------|
| K | 41°10' N. | 69°06.5' W. |
| L | 40°55' N. | 68°54' W. |
| M | 40°27.5' N. | 72°14' W. |
| N | 40°45.5' N. | 71°34' W. |

(d) *EEZ Offshore Management Area 3.* EEZ Offshore Management Area 3 is defined by the area, comprised entirely

of Federal waters, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|----------|-------------|-------------|
| A | 43°58' N. | 67°22' W. |
| B | 43°41' N. | 68°00' W. |
| C | 43°12' N. | 69°00' W. |
| D | 42°49' N. | 69°40' W. |
| E | 42°15.5' N. | 69°40' W. |
| F | 42°10' N. | 69°56' W. |
| K | 41°10' N. | 69°06.5' W. |
| N | 40°45.5' N. | 71°34' W. |
| M | 40°27.5' N. | 72°14' W. |
| U | 40°12.5' N. | 72°48.5' W. |
| V | 39°50' N. | 73°01' W. |
| X | 38°39.5' N. | 73°40' W. |
| Y | 38°12' N. | 73°55' W. |
| Z | 37°12' N. | 74°44' W. |
| ZA | 35°34' N. | 74°51' W. |
| ZB | 35°14.5' N. | 75°31' W. |
| ZC | 35°14.5' N. | 71°24' W. |

From point "ZC" along the seaward EEZ boundary to point "A".

(e) *EEZ Nearshore Management Area 4.* EEZ Nearshore Management Area 4 is defined by the area, including state and Federal waters that are near-shore in the northern Mid-Atlantic, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---------|-------------|-----------|
| M | 40°27.5' N. | 72°14' W. |
| N | 40°45.5' N. | 71°34' W. |
| O | 41°07' N. | 71°43' W. |
| P | 41°06.5' N. | 71°47' W. |
| S | 40°58' N. | 72°00' W. |
| T | 41°00.5' N. | 72°00' W. |

From Point "T", along the New York/New Jersey coast to Point "W"

| | | |
|---------|-------------|-------------|
| W | 39°50' N. | 74°09' W. |
| V | 39°50' N. | 73°01' W. |
| U | 40°12.5' N. | 72°48.5' W. |

From Point "U" back to Point "M".

(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. | 73°01' W. |
| X | 38°39.5' N. | 73°40' W. |
| Y | 38°12' N. | 73°55' W. |
| Z | 37°12' N. | 74°44' W. |
| ZA | 35°34' N. | 74°51' W. |
| ZB | 35°14.5' N. | 75°31' W. |

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

(g) *Nearshore Management Area 6.* The Nearshore Management Area 6 is defined by the area, including New York and Connecticut state waters, bounded

by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---------|-------------|-----------|
| T | 41°00.5' N. | 72°00' W. |
| S | 40°58' N. | 72°00' W. |

From Point "S", boundary follows the 3 mile limit of New York as it curves around Montauk Point to Point "P"

| | | |
|---------|--------------|--------------|
| P | 41°06.5' N. | 71°47' W. |
| Q | 41°11'30" N. | 71°47'15" W. |
| R | 41°18'30" N. | 71°54'30" W. |

From point "R", along the maritime boundary between Connecticut and Rhode Island to the coast; then west along the coast of Connecticut to the western entrance of Long Island Sound; then east along the New York coast of Long Island Sound and back to Point "T".

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|----------|--------------|--------------|
| F | 42°10' N. | 69°56' W. |
| G | 42°05.5' N. | 70°14' W. |
| G1 | 42°04.25' N. | 70°17.22' W. |
| G2 | 42°02.84' N. | 70°16.1' W. |
| G3 | 42°03.35' N. | 70°14.2' W. |

From Point G3 along the outer Cape Cod coast to Point H

| | | |
|---------|-------------|-----------|
| H | 41°40' N. | 70°00' W. |
| I | 41°15' N. | 70°00' W. |
| J | 41°21.5' N. | 69°16' W. |

From Point "J" back to Point "F".

(i) NMFS may, consistent with § 697.25, implement management measures necessary for each management area, in order to end overfishing and rebuild stocks of American lobster.

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

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Beginning January 5, 2000, through April 30, 2000, vessels fishing in any EEZ management area except EEZ Offshore Management Area 3, shall not fish with, deploy in, possess in, or haul back from such area more than 1,000 traps.

(2) Beginning May 1, 2000, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying the EEZ Nearshore Management Area(s) and the Area 2/3 Overlap, or, only the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 traps.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Beginning January 5, 2000, through April 30, 2000, vessels fishing only EEZ Offshore Management Area 3, or, fishing only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 2,000 traps.

(2) Beginning May 1, 2000, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 1,800 traps.

(c) *Trap tag requirements for vessels fishing with traps.* Beginning May 1, 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member.

(d) In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

§ 697.20 Size, harvesting and landing requirements.

(a) *Condition.* By being issued a Federal limited access American lobster permit, the vessel owner is subject to all measures in this subpart, unless otherwise specified, regardless of where American lobsters were harvested.

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ 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, is 3¼ inches (8.26 cm).

(3) The maximum carapace length for all American lobster harvested in or from EEZ Nearshore Management Area 1, as defined in § 697.18(a)(1), is 5 inches (12.7 cm). Any vessel fishing in or permitted to fish in EEZ Nearshore Management Area 1 must comply with the 5 inch (12.7 cm) maximum carapace length requirement regardless of where the lobsters are harvested.

(4) 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 (b) in this section.

(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.

(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.

(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 may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any American lobster which has been speared.

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

(a) *Gear identification and marking.* All lobster gear deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit, and not permanently attached to the vessel must be legibly and indelibly marked with the following:

(1) *Identification.* Effective through April 30, 2000, all lobster gear must be marked with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

(2) *Identification and trap tagging.* Beginning May 1, 2000, lobster gear must be marked with a trap tag (as specified in § 697.19) with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

(b) *Deployment and gear configuration.* In the areas of the EEZ described in paragraph (b)(4) of this section, lobster trap trawls are to be displayed and configured as follows:

(1) Lobster trap trawls of three or fewer traps deployed in the EEZ must be attached to and marked with a single buoy.

(2) Lobster trap trawls consisting of more than three traps must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster trap trawl must be configured with a radar reflector only. Standard tetrahedral corner radar reflectors of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed. (A copy of a diagram showing a standard tetrahedral corner radar reflector is available upon request to the Office of the Regional Administrator.)

(3) No American lobster trap trawl shall exceed 1.5 nautical miles (2.78

km) in length, as measured from radar reflector to radar reflector.

(4) Gear deployment and configuration requirements specified in paragraphs (b)(1) through (b)(3) of this section apply in the following areas:

(i) *Gulf of Maine gear area.* Gulf of Maine gear area is defined as all waters of the EEZ north of 42°20' N. lat. seaward of a line drawn 12 nautical miles (22.2 km) from the baseline of the territorial sea;

(ii) *Georges Bank gear area.* Georges Bank gear area is defined as all waters of the EEZ south of 42°20' N. lat. and east of 70°00' W. long. or the outer boundary of the territorial sea, whichever lies farther east;

(iii) *Southern New England gear area.* Southern New England gear area is defined as all waters of the EEZ west of 70°00' W. long., east of 71°30' W. long. at a depth greater than 25 fathoms (45.72 m); and

(iv) *Mid-Atlantic gear area.* Mid-Atlantic gear area is defined as all waters of the EEZ, west of 71°30' W. long. and north of 36°33' N. lat. at a depth greater than 40 fathoms (73.15 m).

(c) *Escape vents.* (1) All American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, 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 1⁵/₁₆ inches (4.92 cm) by 5³/₄ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2⁷/₁₆ inches (6.19 cm) in diameter.

(2) 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 paragraphs (c)(1)(i) and (ii) of this section.

(d) *Ghost panel.* (1) Lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel located in the outer parlor(s) of the trap and not in the bottom of the trap constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than 3/₁₆ inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/₃₂ inch

(0.24 cm) in diameter and covering a rectangular opening not less than 3³/₄ inches (9.53 cm) by 3³/₄ inches (9.53 cm). The door of the trap may serve as the ghost panel, if fastened with one of these materials.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this rule, any other design, mechanism, material, or other parameter that serves to create an escape portal not less than 3³/₄ inches (9.53 cm) by 3³/₄ inches (9.53 cm).

(e) *Maximum trap size.* (1) *EEZ Nearshore Management Area maximum trap size.* (i) Beginning January 5, 2000, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap shall not exceed 25,245 cubic inches (413,690 cubic centimeters) in volume, as measured on the outside portion of the trap, exclusive of the runners;

(ii) Beginning May 1, 2003, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap, shall not exceed 22,950 cubic inches (376,081 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(2) *EEZ Offshore Management Area maximum trap size.* (i) Beginning January 5, 2000, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 33,110 cubic inches (542,573 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners;

(ii) Beginning May 1, 2003, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by

a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 30,100 cubic inches (493,249 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(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 part 219 of this title.

§ 697.22 Exempted fishing.

The Regional Administrator may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, or Atlantic sturgeon, resource or fishery pursuant to the provisions of § 600.745 of this chapter.

(a) The Regional Administrator may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of any applicable stock rebuilding program, the provisions of the ACFCMA, the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, or Atlantic sturgeon resource or fishery; or

(2) Create significant enforcement problems.

(b) Each vessel participating in any exempted fishing activity is subject to all provisions of this part, except those explicitly relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption. Exempted fishing activity shall be authorized pursuant to and consistent with § 600.745 of this chapter.

§ 697.23 Restricted gear areas.

(a) Resolution of lobster gear conflicts with fisheries managed under the Magnuson-Stevens Act shall be done

under provisions of § 648.55 of this chapter.

(b) *Restricted Gear Area I*—(1)

Duration—(i) *Mobile Gear.* From October 1 through June 15 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area I, as defined in paragraph (b)(2) of this section, unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From June 16 through September 30 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area I as defined in paragraph (b)(2) of this section.

(2) *Definition of Restricted Gear Area I.* Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

| Point to | Latitude | Longitude |
|-----------|--------------|--------------|
| 120 | 40°06.4' N. | 68°35.8' W. |
| 69 | 40°07.9' N. | 68°36.0' W. |
| 70 | 40°07.2' N. | 68°38.4' W. |
| 71 | 40°06.9' N. | 68°46.5' W. |
| 72 | 40°08.7' N. | 68°49.6' W. |
| 73 | 40°08.1' N. | 68°51.0' W. |
| 74 | 40°05.7' N. | 68°52.4' W. |
| 75 | 40°03.6' N. | 68°57.2' W. |
| 76 | 40°03.65' N. | 69°00.0' W. |
| 77 | 40°04.35' N. | 69°00.5' W. |
| 78 | 40°05.2' N. | 69°00.5' W. |
| 79 | 40°05.3' N. | 69°01.1' W. |
| 80 | 40°08.9' N. | 69°01.75' W. |
| 81 | 40°11.0' N. | 69°03.8' W. |
| 82 | 40°11.6' N. | 69°05.4' W. |
| 83 | 40°10.25' N. | 69°04.4' W. |
| 84 | 40°09.75' N. | 69°04.15' W. |
| 85 | 40°08.45' N. | 69°03.6' W. |
| 86 | 40°05.65' N. | 69°03.55' W. |
| 87 | 40°04.1' N. | 69°03.9' W. |
| 88 | 40°02.65' N. | 69°05.6' W. |
| 89 | 40°02.00' N. | 69°08.35' W. |
| 90 | 40°02.65' N. | 69°11.15' W. |
| 91 | 40°00.05' N. | 69°14.6' W. |
| 92 | 39°57.8' N. | 69°20.35' W. |
| 93 | 39°56.65' N. | 69°24.4' W. |
| 94 | 39°56.1' N. | 69°26.35' W. |
| 95 | 39°56.55' N. | 69°34.1' W. |
| 96 | 39°57.85' N. | 69°35.5' W. |
| 97 | 40°00.65' N. | 69°36.5' W. |
| 98 | 40°00.9' N. | 69°37.3' W. |
| 99 | 39°59.15' N. | 69°37.3' W. |
| 100 | 39°58.8' N. | 69°38.45' W. |
| 102 | 39°56.2' N. | 69°40.2' W. |
| 103 | 39°55.75' N. | 69°41.4' W. |
| 104 | 39°56.7' N. | 69°53.6' W. |
| 105 | 39°57.55' N. | 69°54.05' W. |
| 106 | 39°57.4' N. | 69°55.9' W. |
| 107 | 39°56.9' N. | 69°57.45' W. |
| 108 | 39°58.25' N. | 70°03.0' W. |
| 110 | 39°59.2' N. | 70°04.9' W. |
| 111 | 40°00.7' N. | 70°08.7' W. |

INSHORE BOUNDARY—Continued

| Point to | Latitude | Longitude |
|--------------|--------------|--------------|
| 112 | 40°03.75' N. | 70°10.15' W. |
| 115 | 40°05.2' N. | 70°10.9' W. |
| 116 | 40°02.45' N. | 70°14.1' W. |
| 119 | 40°02.75' N. | 70°16.1' W. |
| to 181 | 39°59.3' N. | 70°14.0' W. |

OFFSHORE BOUNDARY

| Point to | Latitude | Longitude |
|-----------|--------------|--------------|
| 69 | 40°07.9' N. | 68°36.0' W. |
| 120 | 40°06.4' N. | 68°35.8' W. |
| 121 | 40°05.25' N. | 68°39.3' W. |
| 122 | 40°05.4' N. | 68°44.5' W. |
| 123 | 40°06.0' N. | 68°46.5' W. |
| 124 | 40°07.4' N. | 68°49.6' W. |
| 125 | 40°05.55' N. | 68°49.8' W. |
| 126 | 40°03.9' N. | 68°51.7' W. |
| 127 | 40°02.25' N. | 68°55.4' W. |
| 128 | 40°02.6' N. | 69°00.0' W. |
| 129 | 40°02.75' N. | 69°00.75' W. |
| 130 | 40°04.2' N. | 69°01.75' W. |
| 131 | 40°06.15' N. | 69°01.95' W. |
| 132 | 40°07.25' N. | 69°02.0' W. |
| 133 | 40°08.5' N. | 69°02.25' W. |
| 134 | 40°09.2' N. | 69°02.95' W. |
| 135 | 40°09.75' N. | 69°03.3' W. |
| 136 | 40°09.55' N. | 69°03.85' W. |
| 137 | 40°08.4' N. | 69°03.4' W. |
| 138 | 40°07.2' N. | 69°03.3' W. |
| 139 | 40°06.0' N. | 69°03.1' W. |
| 140 | 40°05.4' N. | 69°03.05' W. |
| 141 | 40°04.8' N. | 69°03.05' W. |
| 142 | 40°03.55' N. | 69°03.55' W. |
| 143 | 40°01.9' N. | 69°03.95' W. |
| 144 | 40°01.0' N. | 69°04.4' W. |
| 146 | 39°59.9' N. | 69°06.25' W. |
| 147 | 40°00.6' N. | 69°10.05' W. |
| 148 | 39°59.25' N. | 69°11.15' W. |
| 149 | 39°57.45' N. | 69°16.05' W. |
| 150 | 39°56.1' N. | 69°20.1' W. |
| 151 | 39°54.6' N. | 69°25.65' W. |
| 152 | 39°54.65' N. | 69°26.9' W. |
| 153 | 39°54.8' N. | 69°30.95' W. |
| 154 | 39°54.35' N. | 69°33.4' W. |
| 155 | 39°55.0' N. | 69°34.9' W. |
| 156 | 39°56.55' N. | 69°36.0' W. |
| 157 | 39°57.95' N. | 69°36.45' W. |
| 158 | 39°58.75' N. | 69°36.95' W. |
| 159 | 39°58.8' N. | 69°36.95' W. |
| 160 | 39°57.95' N. | 69°38.1' W. |
| 161 | 39°54.5' N. | 69°38.25' W. |
| 162 | 39°53.6' N. | 69°46.5' W. |
| 163 | 39°54.7' N. | 69°50.0' W. |
| 164 | 39°55.25' N. | 69°51.4' W. |
| 165 | 39°55.2' N. | 69°53.1' W. |
| 166 | 39°54.85' N. | 69°53.9' W. |
| 167 | 39°55.7' N. | 69°54.9' W. |
| 168 | 39°56.15' N. | 69°55.35' W. |
| 169 | 39°56.05' N. | 69°56.25' W. |
| 170 | 39°55.3' N. | 69°57.1' W. |
| 171 | 39°54.8' N. | 69°58.6' W. |
| 172 | 39°56.05' N. | 70°00.65' W. |
| 173 | 39°55.3' N. | 70°02.95' W. |
| 174 | 39°56.9' N. | 70°11.3' W. |
| 175 | 39°58.9' N. | 70°11.5' W. |
| 176 | 39°59.6' N. | 70°11.1' W. |
| 177 | 40°01.35' N. | 70°11.2' W. |
| 178 | 40°02.6' N. | 70°12.0' W. |
| 179 | 40°00.4' N. | 70°12.3' W. |
| 180 | 39°59.7' N. | 70°13.05' W. |

OFFSHORE BOUNDARY—Continued

| Point to | Latitude | Longitude |
|-----------|--------------|----------------|
| 181 | 39°59.3' N. | 70°14.0' W. to |
| 119 | 40°02.75' N. | 70°16.1' W. |

(c) *Restricted Gear Area II*—(1) *Duration*—(i) *Mobile Gear*. From November 27 through June 15 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area II (as defined in paragraph (c)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear*. From June 16 through November 26 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area II as defined in paragraph (c)(2) of this section.

(2) *Definition of Restricted Gear Area II*. Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

| Point to | Latitude | Longitude |
|-------------|--------------|--------------|
| 1 | 39°59.3' N. | 70°14.0' W. |
| 49 | 40°02.75' N. | 70°16.1' W. |
| 50 | 40°00.7' N. | 70°18.6' W. |
| 51 | 39°59.8' N. | 70°21.75' W. |
| 52 | 39°59.75' N. | 70°25.5' W. |
| 53 | 40°03.85' N. | 70°28.75' W. |
| 54 | 40°00.55' N. | 70°32.1' W. |
| 55 | 39°59.15' N. | 70°34.45' W. |
| 56 | 39°58.9' N. | 70°38.65' W. |
| 57 | 40°00.1' N. | 70°45.1' W. |
| 58 | 40°00.5' N. | 70°57.6' W. |
| 59 | 40°02.0' N. | 71°01.3' W. |
| 60 | 39°59.3' N. | 71°18.4' W. |
| 61 | 40°00.7' N. | 71°19.8' W. |
| 62 | 39°57.5' N. | 71°20.6' W. |
| 63 | 39°53.1' N. | 71°36.1' W. |
| 64 | 39°52.6' N. | 71°40.35' W. |
| 65 | 39°53.1' N. | 71°42.7' W. |
| 66 | 39°46.95' N. | 71°49.0' W. |
| 67 | 39°41.15' N. | 71°57.1' W. |
| 68 | 39°35.45' N. | 72°02.0' W. |
| 69 | 39°32.65' N. | 72°06.1' W. |
| 70 | 39°29.75' N. | 72°09.8' W. |
| to 48 | 39°29.0' N. | 72°09.25' W. |

OFFSHORE BOUNDARY

| Point to | Latitude | Longitude |
|----------|--------------|--------------|
| 49 | 40°02.75' N. | 70°16.1' W. |
| 1 | 39°59.3' N. | 70°14.0' W. |
| 2 | 39°58.85' N. | 70°15.2' W. |
| 3 | 39°59.3' N. | 70°18.4' W. |
| 4 | 39°58.1' N. | 70°19.4' W. |
| 5 | 39°57.0' N. | 70°19.85' W. |
| 6 | 39°57.55' N. | 70°21.25' W. |

OFFSHORE BOUNDARY—Continued

| Point to | Latitude | Longitude |
|-------------|--------------|--------------|
| 7 | 39°57.5' N. | 70°22.8' W. |
| 8 | 39°57.1' N. | 70°25.4' W. |
| 9 | 39°57.65' N. | 70°27.05' W. |
| 10 | 39°58.58' N. | 70°27.7' W. |
| 11 | 40°00.65' N. | 70°28.8' W. |
| 12 | 40°02.2' N. | 70°29.15' W. |
| 13 | 40°01.0' N. | 70°30.2' W. |
| 14 | 39°58.58' N. | 70°31.85' W. |
| 15 | 39°57.05' N. | 70°34.35' W. |
| 16 | 39°56.42' N. | 70°36.8' W. |
| 21 | 39°58.15' N. | 70°48.0' W. |
| 24 | 39°58.3' N. | 70°51.1' W. |
| 25 | 39°58.1' N. | 70°52.25' W. |
| 26 | 39°58.05' N. | 70°53.55' W. |
| 27 | 39°58.4' N. | 70°58.0' W. |
| 28 | 39°59.8' N. | 71°01.05' W. |
| 29 | 39°58.2' N. | 71°05.85' W. |
| 30 | 39°57.45' N. | 71°12.15' W. |
| 31 | 39°57.2' N. | 71°15.0' W. |
| 32 | 39°56.3' N. | 71°18.95' W. |
| 33 | 39°51.4' N. | 71°36.1' W. |
| 34 | 39°51.75' N. | 71°41.5' W. |
| 35 | 39°50.05' N. | 71°42.5' W. |
| 36 | 39°50.0' N. | 71°45.0' W. |
| 37 | 39°48.95' N. | 71°46.05' W. |
| 38 | 39°46.6' N. | 71°46.1' W. |
| 39 | 39°43.5' N. | 71°49.4' W. |
| 40 | 39°41.3' N. | 71°55.0' W. |
| 41 | 39°39.0' N. | 71°55.6' W. |
| 42 | 39°36.72' N. | 71°58.25' W. |
| 43 | 39°35.15' N. | 71°58.55' W. |
| 44 | 39°34.5' N. | 72°00.75' W. |
| 45 | 39°32.2' N. | 72°02.25' W. |
| 46 | 39°32.15' N. | 72°04.1' W. |
| 47 | 39°28.5' N. | 72°06.5' W. |
| 48 | 39°29.0' N. | 72°09.25' W. |
| to 70 | 39°29.75' N. | 72°09.8' W. |

(d) *Restricted Gear Area III*—(1) *Duration*—(i) *Mobile Gear*. From June 16 through November 26 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area III (as defined in paragraph (d)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear*. From January 1 through April 30 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area III as defined in paragraph (d)(2) of this section.

(2) *Definition of Restricted Gear Area III*. Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

| Point to | Latitude | Longitude |
|-----------|--------------|--------------|
| 49 | 40°02.75' N. | 70°16.1' W. |
| 182 | 40°05.6' N. | 70°17.7' W. |
| 183 | 40°06.5' N. | 70°40.05' W. |

INSHORE BOUNDARY—Continued

| Point to | Latitude | Longitude |
|-------------|--------------|--------------|
| 184 | 40°11.05' N. | 70°45.8' W. |
| 185 | 40°12.75' N. | 70°55.05' W. |
| 186 | 40°10.7' N. | 71°10.25' W. |
| 187 | 39°57.9' N. | 71°28.7' W. |
| 188 | 39°55.6' N. | 71°41.2' W. |
| 189 | 39°55.85' N. | 71°45.0' W. |
| 190 | 39°53.75' N. | 71°52.25' W. |
| 191 | 39°47.2' N. | 72°01.6' W. |
| 192 | 39°33.65' N. | 72°15.0' W. |
| to 70 | 39°29.75' N. | 72°09.8' W. |

OFFSHORE BOUNDARY

| Point to | Latitude | Longitude |
|--------------|--------------|--------------|
| 182 | 40°05.6' N. | 70°17.7' W. |
| 49 | 40°02.75' N. | 70°16.1' W. |
| 50 | 40°00.7' N. | 70°18.6' W. |
| 51 | 39°59.8' N. | 70°21.75' W. |
| 52 | 39°59.75' N. | 70°25.5' W. |
| 53 | 40°03.85' N. | 70°28.75' W. |
| 54 | 40°00.55' N. | 70°32.1' W. |
| 55 | 39°59.15' N. | 70°34.45' W. |
| 56 | 39°58.9' N. | 70°38.65' W. |
| 57 | 40°00.1' N. | 70°45.1' W. |
| 58 | 40°00.5' N. | 70°57.6' W. |
| 59 | 40°02.0' N. | 71°01.3' W. |
| 60 | 39°59.3' N. | 71°18.4' W. |
| 61 | 40°00.7' N. | 71°19.8' W. |
| 62 | 39°57.5' N. | 71°20.6' W. |
| 63 | 39°53.1' N. | 71°36.1' W. |
| 64 | 39°52.6' N. | 71°40.35' W. |
| 65 | 39°53.1' N. | 71°42.7' W. |
| 66 | 39°46.95' N. | 71°49.0' W. |
| 67 | 39°41.15' N. | 71°57.1' W. |
| 68 | 39°35.45' N. | 72°02.0' W. |
| 69 | 39°32.65' N. | 72°06.1' W. |
| 70 | 39°29.75' N. | 72°09.8' W. |
| to 192 | 39°33.65' N. | 72°15.0' W. |

(e) *Restricted Gear Area IV*—(1) *Duration for Mobile Gear.* From June 16 through September 30 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area IV (as defined in paragraph (e)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(2) *Definition of Restricted Gear Area IV.* Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

| Point | Latitude | Longitude |
|-----------|--------------|--------------|
| 193 | 40°13.60' N. | 68°40.60' W. |
| 194 | 40°11.60' N. | 68°53.00' W. |
| 195 | 40°14.00' N. | 69°04.70' W. |
| 196 | 40°14.30' N. | 69°05.80' W. |
| 197 | 40°05.50' N. | 69°09.00' W. |
| 198 | 39°57.30' N. | 69°25.10' W. |
| 199 | 40°00.40' N. | 69°35.20' W. |
| 200 | 40°01.70' N. | 69°35.40' W. |
| 201 | 40°01.70' N. | 69°37.40' W. |

INSHORE BOUNDARY—Continued

| Point | Latitude | Longitude |
|--------------|--------------|--------------|
| 202 | 40°00.50' N. | 69°38.80' W. |
| 203 | 40°01.30' N. | 69°45.00' W. |
| 204 | 40°02.10' N. | 70°45.00' W. |
| 205 | 40°07.60' N. | 70°04.50' W. |
| 206 | 40°07.80' N. | 70°09.20' W. |
| to 119 | 40°02.75' N. | 70°16.1' W. |

OFFSHORE BOUNDARY

| Point to | Latitude | Longitude |
|--------------|--------------|--------------|
| 193 | 40°13.60' N. | 68°40.60' W. |
| 69 | 40°07.90' N. | 68°36.00' W. |
| 70 | 40°07.20' N. | 68°38.40' W. |
| 71 | 40°06.90' N. | 68°46.50' W. |
| 72 | 40°08.70' N. | 68°49.60' W. |
| 73 | 40°08.10' N. | 68°51.00' W. |
| 74 | 40°05.70' N. | 68°52.40' W. |
| 75 | 40°03.60' N. | 68°57.20' W. |
| 76 | 40°03.65' N. | 69°00.00' W. |
| 77 | 40°04.35' N. | 69°00.50' W. |
| 78 | 40°05.20' N. | 69°00.50' W. |
| 79 | 40°05.30' N. | 69°01.10' W. |
| 80 | 40°08.90' N. | 69°01.75' W. |
| 81 | 40°11.00' N. | 69°03.80' W. |
| 82 | 40°11.60' N. | 69°05.40' W. |
| 83 | 40°10.25' N. | 69°04.40' W. |
| 84 | 40°09.75' N. | 69°04.15' W. |
| 85 | 40°08.45' N. | 69°03.60' W. |
| 86 | 40°05.65' N. | 69°03.55' W. |
| 87 | 40°04.10' N. | 69°03.90' W. |
| 88 | 40°02.65' N. | 69°05.60' W. |
| 89 | 40°02.00' N. | 69°08.35' W. |
| 90 | 40°02.65' N. | 69°11.15' W. |
| 91 | 40°00.05' N. | 69°14.60' W. |
| 92 | 39°57.80' N. | 69°20.35' W. |
| 93 | 39°56.75' N. | 69°24.40' W. |
| 94 | 39°56.50' N. | 69°26.35' W. |
| 95 | 39°56.80' N. | 69°34.10' W. |
| 96 | 39°57.85' N. | 69°35.05' W. |
| 97 | 40°00.65' N. | 69°36.50' W. |
| 98 | 40°00.90' N. | 69°37.30' W. |
| 99 | 39°59.15' N. | 69°37.30' W. |
| 100 | 39°58.80' N. | 69°38.45' W. |
| 102 | 39°56.20' N. | 69°40.20' W. |
| 103 | 39°55.75' N. | 69°41.40' W. |
| 104 | 39°56.70' N. | 69°53.60' W. |
| 105 | 39°57.55' N. | 69°54.05' W. |
| 106 | 39°57.40' N. | 69°55.90' W. |
| 107 | 39°56.90' N. | 69°57.45' W. |
| 108 | 39°58.25' N. | 70°03.00' W. |
| 110 | 39°59.20' N. | 70°04.90' W. |
| 111 | 40°00.70' N. | 70°08.70' W. |
| 112 | 40°03.75' N. | 70°10.15' W. |
| 115 | 40°05.20' N. | 70°10.90' W. |
| 116 | 40°02.45' N. | 70°14.1' W. |
| 119 | 40°02.75' N. | 70°16.1' W. |
| to 206 | 40°07.80' N. | 70°09.20' W. |

§ 697.24 Exempted waters for Maine State American lobster permits.

A person or vessel holding a valid permit or license issued by the State of Maine that lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobsters in the following areas designated as EEZ, if such fishing is

conducted in such waters in accordance with all other applicable Federal and State regulations:

(a) West of Monhegan Island in the area located north of the line 43.5 deg.42°08' N. lat., 69.5 deg.34°18' W. long., and 43.5 deg.42°15' N. lat., 69.5 deg.19°18' W. long.

(b) East of Monhegan Island in the area located west of the line 43.5 deg.44°00' N. lat., 69.5 deg.15°05' W. long., and 43.5 deg.48°10' N. lat., 69.5 deg.08°01' W. long.

(c) South of Vinalhaven in the area located west of the line 43.5 deg.52°21' N. lat., 68.5 deg.39°54' W. long., and 43.5 deg.48°10' N. lat., 67.5 deg.40°33' W. long.

(d) South of Boris Bubert Island in the area located north of the line 44.5 deg.19°15' N. lat., 67.5 deg.49°30' W. long. and 44.5 deg.23°45' N. lat., 67.5 deg.40°33' W. long.

§ 697.25 Adjustment to management measures.

(a) On or before February 15, 2001, and annually on or before February 15, thereafter, NMFS may, after consultation with the Commission, publish a proposed rule to implement additional or different management measures for Federal waters in any of the management areas specified in § 697.18 if it is determined such measures are necessary to achieve or be compatible with ISFMP objectives, or the ISFMP, to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. These management measures may include, but are not limited to, continued reductions of fishing effort or numbers of traps, increases in minimum or decreases in maximum size, increases in the escape vent size, decreases in the lobster trap size, closed areas, closed seasons, landing limits, trip limits and other management area-specific measures as may be identified and recommended by the Commission prior to December 1 of the previous year. After considering public comment, NMFS may publish a final rule to implement any such measures.

(b) At any other time, NMFS may publish a proposed rule, after consultation with the Commission, to implement any additional or different management measures in order to achieve ISFMP objectives or be compatible with Commission measures or recommendations or to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. After

considering public comments, NMFS may publish a final rule to implement any such measures.

(c) Notwithstanding other provisions of this part, NMFS may publish any additional or different management measures as described herein without

prior public comment, pursuant to and consistent with 5 U.S.C. 553.

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