

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0167, dated September 2, 2008; BAE Systems (Operations) Limited Inspection Service Bulletin ISB.55–020, dated December 11, 2007; and BAE Systems (Operations) Limited Repair Instruction Leaflet HC551H9061, Issue 3, dated January 31, 2008; for related information.

**Material Incorporated by Reference**

(i) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.55–020, dated December 11, 2007, to do the actions required by this AD, unless the AD specifies otherwise. If you do the repair option provided in paragraph (f)(4) of this AD, you must use BAE Systems (Operations) Limited Repair Instruction Leaflet HC551H9061, Issue 3, dated January 31, 2008, unless the AD specifies otherwise. (The issue date, January 31, 2008, of BAE Systems (Operations) Limited Repair Instruction Leaflet HC551H9061, Issue 3, is specified only on the first page of the document.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail [raebusiness@baesystems.com](mailto:raebusiness@baesystems.com); Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

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

[Docket No. 070717357–91069–03]

RIN 0648–AV77

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces new Federal American lobster (*Homarus americanus*) regulations which implement a mandatory Federal lobster dealer electronic reporting requirement, changes to the maximum carapace length regulations for several lobster conservation management areas (LCMAs/Areas), and a modification of the v-notch definition for protection of egg-bearing female American lobsters in certain LCMAs.

**DATES:** *Effective Date:* This final rule is effective August 28, 2009.

*Applicability dates:* The revised broodstock protection measures (maximum carapace length and v-notch definition) set forth in this final rule in § 697.20(b)(3) through § 697.20(b)(6) and § 697.20(g)(3) and (4) for Areas 2, 3, 4, 5 and 6 are applicable August 28, 2009. Broodstock protection measures relevant to the Outer Cape Area are applicable July 1, 2010 as set forth in § 697.20(b)(7) and (8) and § 697.20(g)(7) and (8). The weekly trip-level Federal lobster dealer electronic reporting requirements are applicable for all Federal lobster dealers beginning January 1, 2010 as set forth in § 697.6 paragraphs (n) through (s).

**ADDRESSES:** Copies of the American Lobster Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RI/FRFA) prepared for this regulatory action are available upon written request to Harold C. Mears, Director, State, Federal and constituent Programs Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281–9327. The documents are also available online at <http://www.nero.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information

requirements contained in this final rule may be submitted to the mailing address listed above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:**

Peter Burns, Fishery Management Specialist, telephone (978) 281–9144, fax (978) 281–9117.

**SUPPLEMENTARY INFORMATION:** This action responds to the recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). The mandatory Federal lobster dealer reporting requirement is consistent with the recommendations for Federal action by the Commission in Addendum X to Amendment 3 of the ISFMP and allows for a more comprehensive and consistent coastwide accounting of lobster harvest data to facilitate stock assessment and fishery management. Accordingly, effective January 1, 2010, this final rule requires all Federal lobster dealers to provide trip-level electronic reports on a weekly basis. Under the preferred alternative in the proposed rule for this action (70 FR 58099), the dealer reporting requirements would have been effective thirty days after publication of this final rule. However, in consideration of the public comments received on the reporting requirements, NMFS has deferred the effective date for electronic reporting for affected lobster dealers until January 1, 2010, to provide dealers with several additional months to adjust their business practices and comply with these new requirements.

In addition to expanded dealer reporting requirements, this action revises existing Federal lobster regulations and implements new requirements to support the Commission's ISFMP by adopting v-notching and maximum carapace length measures (together referred to as broodstock protection measures) in Areas 2, 3, 4, 5 and 6 (see 50 CFR § 697.18 for descriptions and locations of all LCMAs). These measures are, for the most part, identical to those already enforced by the states. These Federal broodstock protection measures complement the Commission's ISFMP objectives and state regulations, thereby reducing confusion and facilitating enforcement and resource assessment within and across lobster stock and management areas.

Specifically, for Areas 2, 4, 5 and 6, this rule implements a maximum carapace size restriction for both male and female American lobster at 5 1/4 inches (13.34 cm) and a maximum size

of 6 7/8 inches (17.46 cm) for offshore Area 3. These measures take effect thirty days after the publication of this final rule. On July 1, 2010, the maximum carapace length regulation in Area 3 will decrease to 6 3/4 inches (17.15 cm). Further, effective thirty days after the publication of this rule, Areas 2, 3, 4, 5 and 6 will be held to the Commission's v-notch definition which is a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch (0.32 cm), with or without setal hairs. The Commission's definition revises the definition of a standard v-shaped notch in § 697.2.

Finally, this action expands the Commission's recommended broodstock protection measures to include the Outer Cape Management Area (Outer Cape Area/Outer Cape) to provide further opportunities to protect lobster broodstock and provide for a framework of consistent management measures across lobster stock areas. The broodstock protection measures for the Outer Cape Area, under the preferred alternative in the proposed rule, would have taken effect thirty days after the publication of this final rule, consistent with the broodstock requirements for Areas 2, 3, 4, 5 and 6. However, after considering the concerns of the Outer Cape lobster industry regarding the perceived economic impacts of these measures, and after reviewing, at the request of the Outer Cape industry, newly-available Outer Cape sea sampling data provided by the Commonwealth of Massachusetts, NMFS has deferred effective implementation of the Outer Cape Area broodstock measures until July 1, 2010, to allow affected fishers in the Outer Cape Area additional time to adjust to these new regulatory requirements. Accordingly, the revised standard v-notch definition (a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch (0.32 cm), with or without setal hairs) and the 6 3/4-inch (17.15 cm) maximum size will take effect in the Outer Cape Area on July 1, 2010. Until July 1, 2010, the Outer Cape Area will not have a maximum carapace length restriction and will remain governed by the 1/4-inch (0.64-cm) v-notch definition in the Federal lobster regulations which is a straight-sided triangular cut, without setal hairs, at least 1/4 inch (0.64 cm) in depth and tapering to a point.

#### Statutory Authority

This final rule modifies the Federal lobster regulations in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative

Management Act (Atlantic Coastal Act) 16 U.S.C. 5101 *et seq.*, which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

#### Purpose and Need for Management

One purpose of this action is to improve the availability and utility of fishery-dependent lobster data to meet the need for a more comprehensive baseline for assessing the status of lobster stocks coastwide. It also will provide NMFS with a complete set of trip-level harvest data from all Federal lobster dealers for use in cooperative and internal policy decisions and analyses. Additionally, this action will enhance lobster broodstock protection, facilitate enforcement of lobster measures, and aid in resource assessment by revising American lobster maximum carapace size and v-notch requirements, consistent with the recommendations of the Commission in the ISFMP. Finally, this rule expands the curtain of protection on broodstock lobster migrating among lobster management areas by extending the revised maximum carapace size and v-notch requirements to the Outer Cape Management Area. As referenced in the EA for this action, the Outer Cape lobster fishery is categorized as fishing on a population of transient lobsters migrating between inshore and offshore areas. Therefore, the expansion of the broodstock measures in the Outer Cape Area complements those measures in adjacent areas which may augment long-term biological benefits on a multi-area and multi-stock basis and aid in resource assessment since the Outer Cape Area overlaps all three lobster stock areas.

The need for action is rooted in the 2005 peer-reviewed American lobster stock assessment and in recommendations in a subsequent peer review panel report. The findings of the stock assessment and peer review panel prompted the Commission to take action by adopting measures to address the need for improved fishery data

collection and broodstock protection. The Commission took action to address these issues through the adoption of Addendum X and Addendum XI to Amendment 3 of the ISFMP. The focus of this rulemaking is on the mandatory dealer reporting requirements in Addendum X and the broodstock protection measures of Addendum XI. This action also will facilitate enforcement and resource assessment by aligning measures of different management areas that fish on a common lobster stock.

A new stock assessment was completed and approved by the Commission's Lobster Management Board in May 2009 and released to the Lobster Technical Committee for recommendations on future management measures to address the concerns raised by the assessment. Due to the timing of this Federal regulatory action, the Lobster Technical Committee recommendations are not available for incorporation in this document. However, a review of the assessment information available when this rule was prepared suggests that the measures identified in this action will not be contrary to the assessment results.

#### Background

American lobsters are managed within the framework of the Commission. The Commission serves to develop fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission decides upon a management strategy as a collective and then forwards that strategy to the states and Federal Government, along with a recommendation that the states and Federal Government take action (e.g., enact regulations) in furtherance of this strategy. The Federal Government is obligated by statute to support the Commission's ISFMP and overall fishery management efforts.

In support of the ISFMP, NMFS revises the Federal American lobster regulations in response to the Commission's recommendations for Federal action in Addenda X and XI. The addenda were themselves a response, at least in part, to conclusions contained in the 2005 lobster stock assessment. More specifically, the 2005 stock assessment and peer review process identified the dearth of landings data in the American lobster fishery as an inhibitor to the effective evaluation of the status of the lobster resource, that available data are woefully inadequate to fulfill the management needs of the

resource, and that a mandatory catch reporting system is needed. Such conclusions provided the impetus for Addendum X's reporting requirements, which initiated this action to implement the mandatory Federal dealer reporting requirement.

This same 2005 assessment and peer review process concluded that the Southern New England (SNE) lobster stock is suffering from depleted stock abundance and recruitment with high dependence on new recruits. The SNE stock component is in poor shape with respect to spawning, recruit and full-recruit abundance indices. The assessment results also indicated that the Georges Bank (GBK) lobster stock, although in a stable state with respect to abundance and recruitment, is also dependent on new entrants to the fishery a cause for concern that the fishery is too reliant on newly recruited lobster. These issues prompted the Commission to adopt Addendum XI, which sought to protect SNE broodstock lobsters by creating new maximum carapace lengths and implementing a more restrictive definition of a v-notch in certain Lobster Management Areas. Accordingly, NMFS published a proposed rule in the **Federal Register** on October 6, 2008 (73 FR 58099) which presented the following three independent regulatory actions for public comment:

(1) Requiring all Federal lobster dealers to electronically report trip-level lobster landings to NMFS on a weekly basis;

(2) Establishing a maximum carapace length restriction for lobster in Area 2, Area 3, Area 6, and the Outer Cape Management Area and revising the maximum carapace length requirements for Areas 4 and 5; and

(3) Revising the Federal definition of a standard v-notched lobster, applicable to lobster in all areas, with the exception of Area 1.

Three alternatives for each of the three proposed regulatory actions were analyzed in a draft Environmental Assessment (EA) and included: a status quo (no action) alternative; an alternative to implement the Commission's ISFMP recommendations in Addendum X and XI; and a third modified alternative which varies in certain aspects from the Commission recommendations, but still would be compatible with the Commission's ISFMP. Specifically, with respect to issue (1) - Dealer Reporting - the preferred alternative would have implemented weekly, trip-level electronic reporting requirements for all Federal lobster dealers within 30 days of publication of the final rule. The

modified option allowed for a one-year delay in the implementation of the measure. This final rule finds a middle ground between the two options by requiring all Federal American lobster dealers to comply with electronic reporting requirements beginning several months after publication of this rule, effective January 1, 2010. The decision is based on public comments (five in favor of mandatory dealer reporting and four in opposition, See Comments and Responses) in response to the proposed rule that electronic reporting requirements may be expensive for dealers who do not currently own computers. The EA prepared for this action determined that delaying the requirements would reduce short-term costs of acquiring Internet service, for those who did not already have it, during that interim year. Additionally, a delay would provide more time for affected dealers to obtain the required equipment and otherwise adjust their business practices to accommodate electronic reporting. Some affected dealers may choose to offset costs by obtaining the file upload software through a NMFS contractor, at no cost to the impacted dealer. The no-cost option could mitigate some of the financial impact to Federal lobster dealers who now will be subject to mandatory dealer reporting on January 1, 2010. Additionally, delaying implementation of the dealer reporting program until January 1, 2010 will allow for a more seamless integration of the new dealers into the data collection program since the effective date coincides with the start of the annual Federal dealer reporting period which is January 1. All dealer data are entered into the Standard Atlantic Fisheries Information System (SAFIS).

With respect to the broodstock protection measures of this rule: Issue (2)- Maximum Size Restrictions; and Issue (3) - Revisions to the V-Notch Definition, NMFS analyzed two options in addition to the no action alternative. These options included the straight Commission recommendations that would not extend the broodstock measures to the Outer Cape Area and a modified alternative that would include the Outer Cape Area.

NMFS received many comments from the Outer Cape industry in opposition to the expansion of the broodstock measures into the Outer Cape (See Comments and Responses). The general theme of the comments was that the proposed broodstock measures would affect a higher percentage of the catch than the NMFS analysis in the draft EA had determined and would, consequently, have greater economic

impacts. In an effort to understand industry concerns with the proposed rule, NMFS attended an Outer Cape Lobster Conservation Management Team (LCMT) meeting in Chatham, MA on November 10, 2008, which occurred during the comment period for the proposed rule. This industry meeting, facilitated by the Massachusetts Division of Marine Fisheries (MA DMF), was widely attended by the Outer Cape lobster fishing sector as well as members and proxies of the Massachusetts state legislature and local media.

NMFS listened to the concerns of the industry during the meeting and encouraged the public to submit written comments by the end of the comment period. At the suggestion of the industry during the meeting, NMFS agreed to review data from an ongoing expanded sea sampling program designed to further evaluate the potential impacts of the proposed measures on the Outer Cape lobster fishing sector. Conducted as a cooperative effort between MA DMF and the Outer Cape industry, the expanded sea sampling program in 2008 was initiated to more accurately document the impacts of the broodstock measures in the Outer Cape Management Area.

Accordingly, in 2008, MA DMF enhanced its ongoing sea sampling program by doubling the number of Outer Cape sea sampling trips for the 2008 sampling year. Normally, MA DMF takes 14 sea sampling trips from the Outer Cape ports of Chatham and Nauset from May through November of each year (seven trips from each of Chatham (southern part of the Outer Cape Area) and Nauset (central part of the Outer Cape Area)). However, for this expanded 2008 program MA DMF completed an additional 14 Outer Cape sea sampling trips during the sampling season. All 14 additional trips were conducted aboard vessels operating out of the port of Provincetown (northern part of the Outer Cape Area), a port not previously included in MA DMF's lobster sea sampling program.

NMFS received the completed analysis of the expanded sea sampling program from MA DMF on February 11, 2009. Upon review of the MA DMF analysis (MA DMF Report) of the enhanced sea sampling program data, NMFS chose to support the preferred alternative to expand the broodstock measures into the Outer Cape Area, as the information in the report did not contradict the rationale for expanding the broodstock measures to include the Outer Cape Area. However, in consideration of the comments and concerns of the Outer Cape industry as

demonstrated through the industry meeting and in written comments, NMFS defers the effective date of these measures (the 6 3/4-inch (17.15-cm) maximum carapace length restriction and 1/8-inch (0.32 cm) v-notch definition) only in the Outer Cape Area for a full year (until July 1, 2010) to allow the industry time to adjust to the new requirements.

The decision to move ahead with the preferred alternative was straightforward with respect to the maximum size requirements. The NMFS EA analysis estimates impacts to the Outer Cape industry due to restricting the harvest of lobster in excess of 6 3/4 inches (17.15 cm) as not significant - about 0.5 percent for the trap sector and about 5.7 percent for the non-trap sector. The MA DMF 2008 expanded sea sampling data analysis had similar findings. In fact, the expanded sea sampling data suggest that the impacts on Outer Cape lobstermen of the 6 3/4-inch (17.15-cm) maximum size are even less than estimated in the NMFS analysis. Specifically, during the entire 2008 sea sampling season, which included 28 sampling trips aboard commercial trap fishing vessels in the Outer Cape Area, not one harvestable lobster was observed in excess of the 6 3/4-inch (17.15-cm) maximum carapace length. Although the MA DMF report affirms NMFS' rationale in proposing these new regulations, the report is not being relied upon to form the basis of the rationale.

Based on the findings of the NMFS analysis with which the expanded MA DMF sampling program data is consistent, the impacts of the maximum size regulations on the Outer Cape lobster industry are not expected to be significant. This finding is highlighted in the MA DMF report on the expanded Outer Cape sea sampling program which indicated that "very few marketable (non-egg bearing, non-v-notched) lobsters greater than the proposed maximum sizes were observed, as such the potential loss to the fishery...would be negligible." The MA DMF report further states that only 14 lobsters out of 85,695 lobsters sampled in the Outer Cape region since 1981 (0.02 percent) had a carapace length which exceeded the proposed maximum size of 6 3/4 inches (17.15 cm). NMFS stands behind its analysis of the impacts of these measures in the EA and reviewed the MA DMF report at the industry's request as a check on the accuracy of the analysis. After reviewing the MA DMF report, there is nothing to change the decision to expand the maximum size restrictions to include the Outer Cape. It should be noted that the MA DMF

expanded survey only sampled trap vessels but the expected impacts to the non-trap component of the Outer Cape lobster fishery are not expected to be significant based on the analysis conducted in the EA for this action. On balance, NMFS will defer the implementation of the 6 3/4-inch (17.15-cm) maximum size in the Outer Cape Area for a full year, until July 1, 2010, to allow the industry additional time to mitigate any adverse impacts resulting from the implementation of these broodstock measures on Outer Cape lobstermen.

NMFS review of the v-notch data from the expanded MA DMF sea sampling program found results to be consistent with the NMFS impact analysis in the EA regarding the Nauset and Chatham trips. The EA considered MA DMF sea sampling data collected from 1999 to 2005, which indicated that the percentage of females with a v-notch in the Outer Cape Area varied between 2 percent and 4 percent of the lobsters observed as cited in the EA. This long-term data set is among the few available for assessing v-notch status for the northwest Atlantic lobster resource and the best available for assessing v-notch status in the Outer Cape Area. Despite the longevity and consistency of the data set, concerns with the precision of the v-notch measurement are notable. Specifically, MA DMF sampling protocol did not include quantitative measurement of notch depth. Since the notches were not measured, it is not known what proportion of the population of v-notched lobsters would be legal under various v-notching definitions. Regardless of the notch depth, if the most conservative assumption is applied (essentially a zero-tolerance definition) and all the v-notched lobsters are considered illegal for harvest, still only about 4 percent of the lobster would be illegal due to the presence of any type of v-notch. However, the percentage of illegal lobster is likely less than 4 percent since some unknown number of notched lobsters would still be legal under either the 1/8-inch (0.32-cm) or 1/4-inch (0.64-cm) v-notch definitions.

Since the 1/8-inch (0.32-cm) definition is more restrictive (assuming that all notches are made consistent with an industry standard of a 1/4-inch (0.64-cm) notch), it would appear that the impacts of this standard would be somewhat less than 4 percent, although somewhat higher than under a 1/4-inch (0.64-cm) standard. Regardless, these losses in catch are expected to be relatively low for the Nauset and Chatham fleets. This estimate was supported by MA DMF's expanded sea

sampling program which considered Outer Cape v-notch statistics from 2005 through 2008. That data segment estimated that the difference in losses in catch between the current 1/4-inch (0.64-cm) v-notch definition and the proposed 1/8-inch (0.32-cm) v-notch would fall between 3.8 percent to 5 percent for the Nauset and Chatham areas.

The data in the MA DMF report on the 14 Provincetown trips revealed a much higher instance of v-notched female lobster, estimated at approximately 14.9 percent of the catch. Therefore, without considering the manner in which the sampling was conducted and other relevant factors, the report indicates that implementation of a 1/8-inch (0.32-cm) v-notch standard could result in a 10.7 percent loss in harvest when compared to the 1/4-inch (0.64-cm) v-notch standard. However, this estimate does not accurately reflect the expected losses in catch that would be endured by the lobster industry if the 1/8-inch (0.32-cm) v-notch standard is applied, in fact, the impacts are expected to be much less. The MA DMF report aptly points out the reasons for this over-estimation as noted below and cautions users of the data from accepting the data on face value, stating "the dramatic difference in v-notch rate detected by location mandates caution when applying any OCC-wide estimates of losses."

When considering the data from the Provincetown sampling trips, many factors must be considered. Primarily, the data reflect only one season's worth of sea sampling, totaling 14 trips between May and November, 2008. More than one third of the trips were conducted in November when lobsters are expected to be moving from cooling inshore waters to deeper offshore locations. Therefore, more notched lobsters may be present and observed as they move offshore from Massachusetts and Cape Cod Bays through the Outer Cape Area. Further, the sampling bias from conducting over 30 percent of the sampling trips for the season in a single month limits the manner in which the data can be interpreted and applied. More importantly, one would expect the incidence of v-notched lobsters in the northern portion of the Outer Cape Area to be higher than other parts of the Outer Cape Area since it is immediately adjacent to Lobster Management Area 1, which is part of the GOM Stock Area and subject to a mandatory v-notching requirement (lobstermen must v-notch and release all egg-bearing lobsters) and a more restrictive "zero-tolerance" v-notch definition. According to the MA DMF report, 87 percent of the sampling

trips out of Provincetown occurred west of 70 ° W. Long., the meridian which separates the GOM and GBK stocks, with the former on the west side of the meridian (NMFS Statistical Area 514) and the latter on the east side (NMFS Statistical Area 521). Additionally, the MA DMF report states that “the highest incidence of v-notched lobster was observed in the “overlap area” around Provincetown where Area 1 lobstermen and Outer Cape lobstermen fish side-by-side....indicating that the majority of the Provincetown fishery occurred within the Gulf of Maine Stock Unit.” The overlap area refers to the Area 1/Outer Cap Overlap Area. Lobstermen who traditionally fish in Area 1 can fish in this overlap area under Area 1 management regulations, while lobstermen who fish in the Outer Cape Area can fish in the overlap under the Outer Cape Area management measures.

Another important fact in assessing the extent to which the incidence of v-notched lobsters in the MA DMF investigation may be interpreted is that the sea samplers did not measure the depth of the v-notch of the lobsters encountered during the sea sampling trips. Rather, samplers categorized notches as either a sharp notch, old notch, or mutilated or missing flipper. In the MA DMF report, a sharp notch is defined as a straight-sided v-shaped notch without setal hair. An old notch is defined as a notch that has endured at least one molt, usually more irregular in shape and often with setal hair present. A flipper that is missing or mutilated in a manner that could obscure the notch was considered by samplers as a v-notch. Therefore, since all such notches were not measured, the MA DMF analysis assumes that all old notches were deeper than 1/8 inch (0.32 cm) and therefore all such lobster were protected, as cited in the MA DMF report. However, it is expected that many of these old notches, as well as some subset of the mutilated lobster, would actually be legal for harvest under the 1/8-inch (0.32 cm) notch definition. In other words, the sampling design estimated the incidence of v-notch based on a zero-tolerance definition and assumes that all notched lobster are illegal. The MA DMF report points out that this represents “a worst case scenario” and that the “actual degree of protection and losses to the industry would be less” than the additional 10.7 percent calculated in the report for the Provincetown area, based only on one season’s worth of data (2008).

Despite the short time series of the Provincetown v-notch data set and the skewed distribution of sampling trips

from that port over the course of the season, the 2008 MA DMF data affirms the rationale for NMFS to carry forward with the expansion of the 1/8-inch (0.32-cm) v-notch requirement to include the Outer Cape Area. Under the current scenario, fishermen in Area 1 are subject to the most restrictive zero tolerance v-notch definition. These fishermen are discarding lobster with any mark resembling a trace of a notch or any which are mutilated in a manner that could obscure a notch. Fishing alongside them are Provincetown fishermen who, prior to this rulemaking, were subject to the least restrictive 1/4-inch (0.64-cm) v-notch definition and allowed to harvest some percentage of the v-notched lobsters that the Commission’s ISFMP, as well as Area 1 lobstermen, are trying to protect from harvest. Mitigating the compromising effects of inconsistent management measures across management areas is one of the intentions of this rule which has generally focused on alignment of the broodstock protection measures of the Outer Cape with those of Area 3 since the majority of the Outer Cape fishery targets the GBK stock it shares with Area 3. However, the 2008 data from the MA DMF expanded sampling program suggests that inconsistent measures may be compromising management of the GOM stock as well, although the short-term nature of this data should not be over-interpreted and is insufficient to make any robust determinations. The expanded MA DMF sampling data provided a snapshot of conditions existing at the time of observation, and accordingly, the MA DMF report cautioned against giving it undue weight. Nevertheless, even if accorded little weight, the report was notable in that it did nothing to contradict NMFS’ findings.

Although the MA DMF data indicate that the majority of the Provincetown fishery occurs on the GOM stock, they still remain part of the Outer Cape fishery and their continuance in this category was affirmed by the adoption of a common overlap area with Area 1 in the Commission’s plan, and subsequently by NMFS for the purposes of consistency and cooperation. Applying the more restrictive zero-tolerance v-notch definition to the Provincetown sector of the fishery may more directly assist in the conservation of the GOM stock, although such an assumption warrants more extensive review and evaluation. The scope of the analysis of the broodstock protection measures focused on aligning the Outer Cape with Area 3 since the majority of the Outer Cape and a major component

of Area 3 fall within the GBK stock area. Given the confusion that differential management measures would cause within a single management area, the potential for additional economic impacts due to the implementation of the zero-tolerance definition, and the lack of confidence in a single years’ worth of data (2008) for making such assumptions, NMFS intends to implement the 1/8-inch (0.32-cm) standard to the entire Outer Cape Area.

The MA DMF study shows that the impacts of the 1/8-inch (0.32 cm) v-notch on Nauset and Chatham fishermen are relatively consistent with those estimated by NMFS in the EA (3.8–5 percent loss of catch in the MA DMF study versus less than 4 percent in the EA based on previous MA DMF sea sampling time series data). At the same time, data collected in 2008 by MA DMF indicate additional losses in Provincetown could exceed 10 percent under an unlikely “worst case scenario” due to the manner in which the sea sampling data was collected. However, NMFS acknowledges the challenges referenced in the report which states that “the dramatic difference in v-notch rate detected by location mandates caution when applying any OCC-wide estimates of losses.” Accordingly, NMFS maintains its intent to expand the 1/8-inch (0.32-cm) v-notch measure to the Outer Cape Area. However, the effective implementation date for Federal Outer Cape Area permit holders is deferred until July 1, 2010, to mitigate the impacts and allow the industry additional time to adjust their business practices to this new requirement.

### Description of the Public Process

The actions set forth in this Final Rule have undergone extensive and open public notice, debate and discussion both at the Commission and Federal levels.

#### 1. Commission Public Process

Typically, this public discussion of a potential Federal lobster action begins within the Commission process. Specifically, the Commission’s Lobster Board often charges its Plan Development Team or Plan Review Team sub-committees of the Lobster Board - to investigate whether the existing ISFMP needs to be revised or amended to address a problem or need, often as identified in a lobster stock assessment. The Plan Review and Plan Development Teams are typically comprised of personnel from state and federal agencies knowledgeable in scientific data, stock and fishery condition and fishery management issues. If a team or teams conclude that

management action is warranted, it will so advise the Lobster Board, which would then likely charge the LCMTs to develop a plan to address the problem or need. The LCMTs most often comprised of industry representatives will conduct a number of meetings open to the public wherein they will develop a plan or strategy, i.e., remedial measures, in response to the Lobster Board's request. The LCMTs then vote on the plan and report the results of their vote back to the Lobster Board. Minutes of the LCMT public meetings can be found at the Commission's website at <http://www.asmfrc.org> under the "Minutes & Meetings Summary" page in the American Lobster sub-category of the Interstate Fishery Management heading.

After receiving an LCMT proposal, the Commission's Lobster Board will often attempt to seek specialized comment from both the Lobster Technical Committee and Lobster Advisory Panel before the proposal is formally brought before the Board. The Technical Committee is comprised of specialists, often scientists, whose role is to provide the Lobster Board with specific technical or scientific information. The Advisory Panel is a committee of individuals with particular knowledge and experience in the fishery, whose role is to provide the Lobster Board with comment and advice. Minutes of the Technical Committee and Advisory Panel can be found at the Commission's website at <http://www.asmfrc.org> under the "Minutes & Meetings Summary" page in the American Lobster sub-category of the Interstate Fishery Management heading.

After receiving sub-committee advice, the Lobster Board debates the proposed measures in an open forum whenever the Board convenes (usually four times per year, one time in each of the spring, summer, fall and winter seasons). Meeting transcripts of the Lobster Board can be found at the Commission's website at <http://www.asmfrc.org> under "Board Proceedings" on the "Minutes & Meetings Summary" page in the American Lobster sub-category of the Interstate Fishery Management heading. These meetings are typically scheduled months in advance and the public is invited to comment at every Board meeting. In the circumstance of an addendum, the Board will vote on potential measures to include in a draft addendum. Upon approving a draft addendum, the Lobster Board will conduct further public hearings on that draft addendum for any state that so requests. After conducting the public hearing, the Lobster Board will again convene to discuss the public

comments, new information, and/or whatever additional matters are relevant. After the debate, which may or may not involve multiple Lobster Board meetings, additional public comment and/or requests for further input from the LCMTs, Technical Committee and Advisory Panel, the Lobster Board will vote to adopt the draft addendum, and if applicable, request that the Federal Government implement compatible regulations.

The need for the Federal action is rooted in the 2005 peer-reviewed American lobster stock assessment and in recommendations in a subsequent peer review panel report. The findings of the stock assessment and peer review panel prompted the Commission to take action by adopting measures to address the need for improved fishery data collection and broodstock protection. The Commission took action to address these issues through the adoption of Addendum X and Addendum XI to Amendment 3 of the ISFMP. The focus of this rulemaking is on the mandatory dealer reporting requirements in Addendum X and the broodstock protection measures of Addendum XI.

Addendum X was approved by the Board in February 2007 to augment and enhance fisheries-dependent and fisheries-independent data collection efforts at the state and Federal level and set forth an expanded coastwide mandatory reporting and data collection program. The program set coastwide standards for the submission of dealer and harvester reports, sea and port sampling and trawl surveys. The purpose of the addendum was to address the concerns of inadequate data for use in fishery assessments as indicated in the 2005 stock assessment peer-review process.

Addendum XI was released for public comment as a draft document in April 2007 and responded to the findings of the 2005 peer-reviewed stock assessment regarding the need for the development of management measures to address the depleted abundance, low recruitment and high fishing mortality rates in the SNE stock. Several states held public hearings on the draft addendum in April 2007 and the final addendum was approved by the Commission's Lobster Board in May 2007. Addendum XI includes a full suite of management measures designed as the SNE Stock Rebuilding Program. Certain measures in the Addendum XI SNE Stock Rebuilding Program, such as the Area 3 minimum gauge size increase and escape vent size increase, and two additional Area 3 trap reductions of 2.5 percent, were implemented by NMFS in a separate rulemaking published in the

**Federal Register** (72 FR 56935). The dealer reporting requirements and broodstock protection measures of the SNE Stock Rebuilding Program are addressed here in this final rule.

## 2. Federal Public Process

Since the transfer of Federal lobster management in December 1999 from the Magnuson Stevens Act, with its Federal Fishery Management Councils, to the Atlantic Coastal Act, with the Atlantic States Marine Fisheries Commission, Federal lobster action has typically been undertaken in response to a Commission action.

The development of this current rulemaking began in response to the Commission's approval of Addenda X and XI February 2007 and May 2007, respectively, and the Commission's request for complementary Federal regulations. Since that time, NMFS has filed an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (72 FR 53978, September 21, 2007) and a proposed rule (73 FR 58099, October 6, 2008) seeking public comment on the recommendations made by the Commission and the NMFS alternatives based on Addenda X and XI. The Commission and the New England and Mid-Atlantic Fishery Management Councils were also invited to comment and consult on the proposed rule, consistent with past actions, in letters dated October 6, 2008. Since the publication of the proposed rule, NMFS met with concerned members of the Outer Cape lobster industry to hear their comments. At the industry's request and in cooperation with the Commonwealth of Massachusetts, NMFS received additional information from MA DMF and considered its findings in determining the measures for implementation in this final rule. NMFS received 49 comments to its proposed Federal action, which are summarized below.

## Comments and Responses

The proposed rule for this action was published in the **Federal Register** on October 6, 2008 (73 FR 58099) to address the Commission's recommendations for Federal action in Addenda X (dealer reporting) and XI (broodstock protection) to Amendment 3 of the Commission's ISFMP for American Lobster. The proposed rule solicited public comments through November 20, 2008. A total of 49 comments were received. Four comments were received in opposition to the Federal lobster dealer electronic reporting requirements, while five wrote in favor of the dealer electronic

reporting requirements. Similar to those received in response to the ANPR for this action as addressed in the proposed rule, the comments in opposition to the electronic dealer reporting requirements were received from two lobster dealers, the State of Maine Department of Marine Resources (ME DMR), and a lobster fishermen's organization. The general theme of these comments was that mandatory weekly electronic reporting would add more administrative burden to affected lobster dealers and would be redundant since many dealers are already providing the data to their respective state fisheries agency.

Thirty-two comments were received in opposition to the inclusion of the Outer Cape Area under the expanded broodstock protection measures. Seven comments were received in general support of the broodstock protection measures, while four individuals wrote to support the expansion of the broodstock measures into the Outer Cape Area. Three commenters opposed the broodstock protection measures in management areas other than the Outer Cape Area.

Two comments opposing the maximum size requirements were received by a mid-Atlantic pot gear fisherman and a recreational diving group. Representatives of the offshore lobster fishing sector wrote in favor of the dealer reporting, maximum size and v-notching requirements. Two fishermen recommended consistent measures throughout all lobster management areas and one fisherman commented that more restrictive broodstock measures are needed coastwide.

The significant comments and the NMFS response to each comment are provided here.

*Comment 1:* Two lobster dealers from Maine wrote in opposition to the mandatory electronic dealer reporting requirement, generally stating that this measure would unnecessarily add to the reporting burden already mandated by the state.

*Response:* NMFS understands that there might be a small amount of redundancy for those Federally permitted dealers who also have a state dealer permit and who are thus already bound to report by virtue of their state permit. Generally, these requirements mirror those of state agencies as both NMFS and the states use the same SAFIS system (see Changes to Existing Regulations). By design, users meet the requirements of all relevant regulatory entities. On balance, NMFS believes that the utility of electronic reporting outweighs the burden associated with

the minority of dealers who would have to report both electronically and by paper. More specifically, the majority of Federal lobster permit dealers, approximately 71 percent, already have to report electronically. Collection and assembly of the requisite data likely the most time intensive task is a one-time event that must occur regardless of the format in which the data is ultimately reported (and such data is undoubtedly being collected by the business in some form as part of the dealer's regular business practices). Although there might be some start-up costs associated with electronic reporting, computer reporting is intuitively more efficient and less time intensive than having to write the data out and submit it in paper format. Whether computer reporting would ultimately result in new efficiencies in every case is difficult to gauge and might be dependent on individuals on a case by case basis.

In adopting the mandatory electronic Federal lobster dealer reporting, NMFS balances the relatively small additional burden against the utility gained by the requirement. First, there is great utility for Federal managers having access to, and thus having their decisions guided by, up-to-date harvest information. Electronic reporting allows for far more expedient collection of data than can be accomplished through a paper reporting system. The submission of paper reports is cumbersome and the data are not consistently loaded by the states into the SAFIS system in a timely manner. Some states require trip-level dealer reports be submitted on a monthly basis and upon receipt, state employees enter in the data. Consequently, the data may not reach the SAFIS system until several weeks or more after a particular lobster fishing trip which could hamper fisheries management and assessment efforts and limit the availability and utility of the dataset for internal needs. Conversely, under the proposed electronic reporting process, once received, the data is already in the system, with no data entry or handling of paper reports needed. Some states may even eliminate their paper-based reporting requirements for those state dealers who would be required under a Federal mandatory reporting program to report to NMFS on an electronic basis, although such an outcome is speculative.

Second, NMFS believes that data received through different systems can undermine the integrity and usefulness of the data. When similar data elements are collected in an inconsistent manner, the ability to efficiently utilize that information is compromised. NMFS finds it advantageous for its data to be

collected in consistent fashion, such as through the use of the SAFIS system, not only for administrative efficiencies (NMFS already has a successful and tested electronic reporting system in place for other species), but for the statistical integrity of collecting similar data sets for a single species by the same means. Further, NMFS's experience suggests that while overall compliance with Commission plans is excellent, states do not always interpret, and are not always able to implement, the plans consistently and uniformly. Accordingly, NMFS believes it more prudent in this instance to mandate a single uniform Federal lobster dealer reporting system rather than rely on the eleven states on the Lobster Board to submit data for certain Federal dealers according to the individual state's reporting program.

*Comment 2:* One dealer wrote that he purchases lobster from fishermen who drop off their catch on a floating lobster car. The lobster are dropped off by fishermen when the dealer is not there, complicating the ability to garner specific data on the statistical area and time the lobster were harvested.

*Response:* The Commission's plan recommends that the dealer provide the statistical area where the lobster were harvested. The Final Rule does not implement such a requirement. NMFS has considered but rejected this recommendation and has not adopted a fishing area data collection requirement for dealers. NMFS believes that lobster harvesting information is best provided by the harvester, not the dealer.

*Comment 3:* Some commenters commented that dealer reporting for lobster is not necessary since lobster is not a quota-managed species and the data are not needed on a weekly basis.

*Response:* Although the lobster fishery is not managed by a quota system, the benefits of consistent fishery-dependent data in effectively managing the resource cannot be overstated. The lobster fishery is the most economically lucrative in the Northwest Atlantic, with ex-vessel revenues totaling nearly \$349 million in 2007, sustaining numerous fishing communities. Yet, only 61 percent of Federal lobster harvesters and only 71 percent of Federal lobster dealers provide landings data to NMFS. The 2005 peer-reviewed lobster stock assessment indicated that improvements to the quality and quantity of fishery-dependent data, including dealer data, are needed to facilitate the assessment of the lobster stocks. In the absence of a mandatory Federal harvester reporting program NMFS has adopted a mandatory electronic dealer reporting



program for Federal dealers to complement the Commission's plan and the actions of the states in enhancing the quality and quantity of lobster fishery data to assist in the management of this important fishery.

More and more, landings data are needed by NMFS to address not only lobster policy issues, but other relevant issues such as large whale take reduction planning, Endangered Species Act analyses, and economic analyses, for example. NMFS is consistently challenged with insufficient and questionable data and sees this as an opportunity to obtain a consistent data set, from its own dealers, to assist in its decision-making and policy analysis responsibilities for lobster management and other critical needs.

Although data on lobster landings may not be needed on a weekly basis, weekly receipt of trip-level data from all Federal dealers is certainly more timely and hence, more readily available. Additionally, implementing a weekly reporting requirement for the affected Federal lobster dealers will mesh with the current requirements in place for all Federal seafood dealers, creating a common format across all Federal fisheries. The opportunity to obtain this important information in a consistent manner will improve its utility for internal as well as for cooperative management and policy needs.

*Comment 4:* ME DMR responded in opposition to the dealer reporting measure, indicating that it would impact about 86 small dealers in Maine. ME DMR is collecting trip-level data from dealers on a monthly basis and believes that weekly electronic reporting requirements would be too burdensome on dealers who do not have access to the Internet or to a computer and are now able to provide this data on paper trip tickets to fulfill state requirements.

*Response:* NMFS understands that Maine lobster dealers have recently begun reporting trip level transactions to ME DMR on a monthly basis. Although a Federal electronic dealer reporting requirement would only impact a minority of lobster dealers (estimated to be 29 percent of all Federal lobster dealers), a large portion of the 29 percent come from Maine (88 of the 148 non-reporting Federal lobster dealers are based in Maine, based on NMFS permit data). At the same time, 36 dealers in Maine are successfully reporting on an electronic basis. However, as the largest lobster harvesting state by far, Maine harvest data is critical to ensure the responsible management of the fishery and comprises a major component of the overall universe of Federal harvest data

that currently is not readily available to NMFS in a consistent, reliable or easily-accessible fashion.

It is evident, both anecdotally and from some of the comments received that some dealers, especially in more remote areas, may not use computers as part of their business operations. However, that number is unknown. Since no additional information is available regarding either the number of individuals without the required equipment or more specific details on the costs of acquiring the technology, NMFS stands behind its analysis in the EA regarding the impacts of electronic reporting on the affected set of Federal dealers. As such, NMFS estimates that the initial costs to dealers would be about \$580 for an adequate computer and approximately \$652 annually to support Internet access for those dealers that currently do not have a computer or Internet service. In consideration of ME DMR's concern, however, NMFS reassessed the potential costs to dealers and found that they are likely to be less than initially estimated (see response to comment 6).

*Comment 5:* ME DMR and one other commenter disputed that dealers get a 40 percent markup on lobsters they sell and, therefore, the NMFS estimates of the costs of purchasing the necessary equipment as a percentage of gross income, based on this percentage, are inaccurate.

*Response:* It is possible that many affected dealers, especially smaller operations, do not convey a 40-percent markup on their product. ME DMR made these comments based on responses to an "informal survey" of Maine dealers but it is not known how many dealers ME DMR canvassed or the size of their respective operations. The NMFS analysis of impacts is based on business transaction information acquired from Federal dealer data which is the best information available for assessing the impacts of Federal dealers. NMFS understands that this data may not be reflective of the entire universe of Federal lobster dealers which vary in size and sales volume. Consequently, if all Federal dealers report to NMFS in a consistent fashion, then the assessment of future impacts on dealers may more accurately reflect the overall range of affected businesses.

The potential impact that the cost of acquiring a computer and maintaining Internet access would have on affected Federal dealer business income is uncertain. However, potential impacts to lobster dealers with no other Federal permits could be assumed to be similar to Federal dealers who are currently subject to mandatory reporting whose

business is solely or primarily comprised of lobster sales. Under this assumption, the estimated first-year cost of purchasing equipment and Internet access would represent 0.47 percent of gross net sales assuming a 40-percent markup (based on a NMFS economic analysis conducted on lobster fishery transactions) and median purchases of 134,000 pounds (60,909 kg) with net gross sales valued at \$245,000 during 2007. These estimates are based on dealer reports for all Federal lobster permit holders who were subject to mandatory reporting during 2007. At these values, the annual cost of maintaining Internet access would be 0.27 percent of net gross sales. The expected costs would be lower for any dealer who already has Internet access and a computer meeting the minimum specifications. Further, the computer and Internet service, having been purchased, may provide additional benefits to the dealer's business in ways not associated with data reporting.

*Comment 6:* ME DMR commented that NMFS failed to account for the time and cost burdens to dealers associated with completing the weekly electronic reports and underestimated the costs associated with purchasing a computer and Internet service.

*Response:* NMFS analyzed the costs associated with the collection of information requirements for weekly electronic dealer reporting. This analysis was completed under the authority of the Paperwork Reduction Act (OMB Control Number 0648-0229). NMFS based the burden estimates on the data available from the current pool of Federal seafood dealers who are already required to submit weekly electronic reports. The analysis estimated the reporting burden for each weekly transaction to be about 4 minutes to populate and submit the electronic data files. The reporting costs are based on a respondent wage of \$18.88 per hour, with the overall annual burden for all 148 affected dealers estimated at 539 hours, costing \$10,171. NMFS realizes that the time needed to complete and upload the reports may be higher for some dealers who may not be familiar with the electronic programs. However, NMFS staff will work with all dealers to assist them in meeting their reporting requirements, consistent with past practices.

Although 148 Federal lobster dealers will be affected by the electronic dealer reporting requirement, NMFS believes that only a small, albeit unknown, number will need to purchase both a computer and acquire Internet service to comply with the new reporting standards. Further, only one dealer



commented that the costs associated with purchasing the necessary equipment would be too expensive. However, to further address concerns with costs to Federal dealers associated with acquiring the necessary technology to comply with electronic reporting, NMFS reassessed its cost estimates by investigating computer pricing in May 2009. The investigation revealed that the costs for a computer as presented in the initial NMFS analysis are probably overestimated and, more than likely, represent a high-end, worst-case scenario of potential cost to affected Federal lobster dealers. Based on the information obtained through the new cost investigation, a new desk-top personal computer system can be purchased for as little as \$272. This is a price for a system with specifications that reflect the most current technology with electronic capabilities (speed and memory) which far exceed what is needed for the purposes of electronic dealer reporting. The pricing query revealed the availability of 17 models of desktop computer systems that range in price from \$272 to \$403 with sufficient technology such as 1.60 GHz, 1 GB RAM, 160 GB hard drive ([www.pricescan.com](http://www.pricescan.com)). Further, it is expected that the cost of purchasing a used computer would likely be even less, especially since old computers usually require a disposal fee, prompting many who have upgraded their systems to attempt to sell their used computer equipment rather than pay for disposal. These figures reveal the potential for substantially lower costs than the initial NMFS estimates of about \$580.

NMFS also re-assessed the costs associated with Internet service, particularly in Maine where the majority of the affected Federal lobster dealers do business. The inquiry revealed that Internet service could be attained throughout Maine at a cost of about \$20 per month. Even more remote, down-east locations such as Machias have access to Internet service providers offering dial-up Internet service for as low as \$14.95 per month. This equates to annual Internet service costs of between \$180 and \$240, compared to the more conservative initial NMFS estimates of about \$652 or approximately \$54 per month.

NMFS stands by its initial estimates of costs to Federal lobster dealers associated with the electronic reporting requirements which, on balance, are not perceived to be overly intrusive to the majority of dealers since most are likely to have a computer and Internet service already. However, these more recent investigations of the economic impacts

of acquiring the computer and Internet service should not be overlooked and may, in fact, reflect a more current and realistic estimate of the costs associated with this action. Generally, in consideration of the more recent cost query, if one considers the cost of a computer to be about \$400 and the annual cost of Internet service to be \$240 (assuming the \$20 per month charge and not the lowest possible charge) then the annual cost could be about 50 percent less than NMFS has estimated in the initial estimation. More specifically, the cost to pay in full for a brand new computer and the annual Internet service charge would be approximately \$640 or about \$53 per month, compared to the initial estimate of \$1,232 or about \$103 per month.

*Comment 7:* ME DMR commented that some affected dealers from Maine may not have the appropriate software or other capabilities to upload the information to SAFIS.

*Response:* NMFS acknowledges that some unknown, but likely small, number of affected dealers may not have the appropriate electronic capabilities at the current time to facilitate the submission of electronic reports. However, on balance, NMFS believes that acquiring the data in an electronic format will provide long-term benefits for the management of the resource and improve the usefulness of the data, consistent with the recommendations for improved coastwide fishery dependent data in the 2005 stock assessment peer review. Understanding that a subset of affected dealers may not have the necessary technological means, NMFS has postponed the electronic reporting requirement for the 148 Federal lobster dealers who previously have not been required to report to NMFS. The delay until January 1, 2010, of the weekly electronic reporting requirements, will allow these dealers some additional time to adjust their business practices to mitigate the impacts of electronic reporting. During that time, NMFS will inform the affected dealers of the specifics of the reporting systems. Additionally, due to this specific situation, affected dealers will have the opportunity to acquire the necessary software packages from a NMFS contractor at no charge to the dealer.

NMFS is aware that the costs associated with the electronic reporting requirements will vary for some affected dealers, and those costs may be higher for some businesses than the NMFS estimates, although it is difficult to envision it being significantly so based upon the best available present information. Expanding the weekly

electronic dealer reporting requirements to all Federal lobster dealers will provide a consistent framework for Federal dealer data submission to assist NMFS in fisheries policy decisions and will facilitate error checking and reporting compliance checks. On balance, NMFS anticipates that the longer term benefits will outweigh the shorter term impacts. Further, the transition to an electronic reporting format is expected to ease the cost and time burdens to dealers, states and the Federal Government as users become more adept at electronic reporting and if states decide to accept Federal dealer reports in satisfaction of state requirements for Federal dealers with state dealer permits.

*Comment 8:* A representative of a federally permitted wholesale lobster dealer who purchases lobster exclusively from other dealers requested that NMFS clarify whether the trip level reporting requirements would apply to dealer-to-dealer transactions.

*Response:* The trip-level electronic dealer reporting requirements apply to first-point-of-sale transactions between federally permitted lobster vessels and federal lobster dealers. The trip level information is reflected in the dealer reports which would document the dealer's purchase from each vessel. Lobster sold by those dealers to other dealers or to other establishments would not need to be reported by either the dealer or the recipient of the lobsters since the purchases would already be accounted for.

*Comment 9:* Two dealers from Maine responded that the data NMFS collects from a mandatory dealer reporting program will be flawed because the data set will not include the several hundred dealers that have state dealer licenses but no Federal dealer permit. Similarly, ME DMR quoted the NMFS proposed rule for this action wherein it states that NMFS is proposing that all Federal dealers report because such a requirement would "...assist in providing a more comprehensive and consistent coastwide accounting of lobster harvest data...". ME DMR and the dealers who commented point out that, in spite of mandatory reporting for Federal permit holders, NMFS will not obtain a comprehensive data set of lobster landings because the requirements fail to include lobster dealers with only a state and not a federal dealer permit and thus not be required to report.

*Response:* To clarify, NMFS intends to obtain a "comprehensive and consistent" set of electronic data from all Federal dealers, not all dealers coast wide. The intent of this Federal data

collection program is to obtain data on lobster purchased by Federal dealers, a statistic that is not currently available to NMFS in a simple, common, or real-time capacity. NMFS is not using the data to estimate the overall coastwide catch, although a consistent and commonly reported Federal dealer dataset will certainly assist in stock assessments and other resource-wide needs. The states will continue to provide the data from state-only dealers into the SAFIS system which is designed to hold the data for all lobster landed coastwide and used for the stock assessments and other cooperative interjurisdictional management purposes. Overall, a consistent Federal lobster dealer reporting system will improve the data available to NMFS and will enhance its utility for internal and shared management and policy purposes.

NMFS is implementing the electronic dealer reporting requirement because, under the current scenario, NMFS does not have comprehensive, real-time data on lobster catch from either the full complement of Federal harvesters or Federal dealers readily available in a consistent format. Since the Federal reporting requirements are currently determined by the type of permits a vessel or dealer holds, and not mandated by a random stratified or other statistically sound means, extrapolating the data from a portion of the industry to derive total coast-wide Federal landings, landings by area or other useful statistics is difficult to accomplish with certainty.

Mandating dealer reports from all Federal lobster dealers will address a gap in the current Federal catch data resulting from a lack of mandatory vessel and dealer reporting. About 61 percent of all Federal lobster vessels report their landings on a trip-by-trip basis to NMFS through the Federal Vessel Trip Report (VTR) system and about 71 percent of Federal dealers report electronically to NMFS. However, at any given time, NMFS does not have an internal data set that fully accounts for current lobster purchases by dealers from Federal vessels. Specifically, 77 percent (about 1,000 lobster vessels) of the Federal lobster vessels which are not required to report landings to NMFS because they hold only a Federal lobster permit and no other federal permits, hail from Maine ports. Moreover, more than half of the Federal lobster dealers who are not reporting are from Maine. Therefore, this represents a component of both the harvester and dealer sectors from the most prolific lobster-producing state that is not reporting landings to NMFS. NMFS eventually can access this

data through the SAFIS system, but only after it is sent to ME DMR by the dealers on a monthly basis, keypunched into an electronic system by ME DMR staff and then, at some later date, uploaded onto SAFIS. The time lag and inconsistency in reporting delays the availability of the data and decreases its utility in management and policy decisions.

*Comment 10:* One lobster industry association wrote in favor of the broodstock protection measures, including the expansion of these measures to the Outer Cape Management Area. The association, representing a large portion of both the offshore and coastal lobster industry approves of these measures because of the benefits of protecting large broodstock lobsters, and because including the Outer Cape will provide additional benefits by protecting lobsters that migrate in and out of the Outer Cape Area.

*Response:* NMFS agrees and believes that the broodstock measures set forth in this final rule provide a balanced approach for protecting lobster broodstock across and within management and stock areas. Further, the measures will complement the Commission's plan and address efforts to improve broodstock protection as recommended in the 2005 stock assessment peer review.

*Comment 11:* Several Area 3 lobstermen and a lobster industry association representing offshore lobstermen wrote in favor of mandatory dealer reporting, the modified v-notch definition and the Area 3 maximum size requirements.

*Response:* NMFS agrees and believes that the maximum size and broodstock protection measures provide a measure of protection to GBK and SNE lobster broodstock with minimal impact to the industry. These measures will also facilitate enforcement and resource evaluation efforts by aligning management measures on a stock-wide basis. Electronic trip-level reporting for Federal dealers will assist NMFS in its role in managing the fishery and will improve the quality of Federal lobster data for internal and cooperative management purposes.

*Comment 12:* One Area 1 lobsterman agreed with the broodstock protection measures established in this final rule but recommended even more restrictive measures such as a 5-inch (12.7-cm) maximum size and a zero-tolerance v-notch requirement coast-wide. A mid-Atlantic lobsterman who fishes in Area 4 is opposed to the implementation of a more restrictive maximum size requirement for that area because it will add to the numerous restrictions already

in place. Specifically, the maximum size in Area 4 will decrease from 5 1/2 inches (13.97 cm) to 5 1/4 inches (13.34 cm) and will now include both male and female lobster. Finally, one lobsterman recommended that a 6-inch (15.24-cm) maximum size be implemented coastwide.

*Response:* NMFS understands the view points on all sides of this issue as expressed by these commenters. One commenter believes even more stringent regulations are necessary, another feels that the fishery is already too restricted, and a third states the need for a consistent maximum size coastwide.

Lobster management is complicated by several factors. First, it requires the management of three distinct stock units, each with its own stock rebuilding needs. Second, these stock areas include either all, or portions, of multiple management areas. There are multiple jurisdictions - both state and Federal - which must implement and enforce the differential area-specific management measures in place in the Commission's plan. Additionally, there are several different sectors of the fishery - a nearshore fishery, offshore fishery, a directed trap fishery, and multiple non-trap sectors that rely on lobster as a bycatch. All of these important factors influence and complicate the management of the lobster resource.

Overall, NMFS embraces the concept of cooperative management and the area-based management of the lobster fishery. This concept allows stakeholders to have input in how their segment of the fishery is managed. However, a balance must be achieved that allows for the responsible management of the resource in consideration of the impacts on the industry. On balance, given the multifaceted nature of the industry, NMFS believes that the broodstock measures in this final rule will best complement Addendum XI of the Commission's plan which is intended to protect lobster and enhance the SNE stock. With this rule, affected management areas will have a maximum size that corresponds to the needs of the resource and the industry working in those areas, consistent with limits already in place and enforced at the state level. Although broodstock measures are expanded to the Outer Cape Area beyond the scope of the Commission's plan, NMFS believes that these measures complement the plan, will benefit the resource and will facilitate management and enforcement efforts within and across stock and management areas since both the Outer Cape and Area 3 overlap into all three stock areas.

*Comment 13:* Thirty-two commenters wrote in opposition to the expansion of the broodstock protection measures into the Outer Cape lobster management area. Among the reasons for the opposition, the commenters stated that the estimates for impacts in catch by NMFS were underestimated. Some commenters suggested that since the broodstock measures were not part of those approved in the Commission's plan for the Outer Cape Area, their inclusion in this final rule undermines the utility and integrity of the LCMT process.

*Response:* NMFS used the best available data to determine the biological, social and economic impacts associated with this action. The impact estimates were largely based on v-notching and sea sampling data collected consistently in the Outer Cape Area since 1981 by the MA DMF with industry cooperation. As necessary, NMFS observer data and other relevant research was referenced to estimate the impacts of the broodstock measures. At the industry's request, more recent and expanded sea sampling data from the Outer Cape was also considered in this final rule.

Upon review of the additional data MA DMF sea sampling data, there was no information to significantly alter the basis for selection of the preferred alternatives or the expansion of the broodstock measures to the Outer Cape Area. The maximum size data from the MA DMF report indicated that no lobsters over the intended 6 3/4-inch (17.15-cm) maximum size were encountered during any of the 2008 sea sampling trips.

Certainly, the information regarding the estimates of the v-notch in the Provincetown fleet due to the location of the fishing grounds largely within Area 1 was notable, suggesting a higher proportion of v-notched lobster than in the more southerly parts of the Outer Cape Area. In fact, this component of the data underscored the relevance of consistent protections for broodstock lobster across management areas sharing a common stock; in this case the GOM stock (see response to Comment 14). The limitations of the Provincetown data such as its short time series, lack of measured v-notches, and the strong words of caution in the MA DMF report relevant to its application across the entire Outer Cape Area limit its utility in forming any significant conclusions. Thus the additional MA DMF sea sampling data on the Provincetown fleet is not sufficient to cause NMFS to implement either more restrictive v-notch measures commensurate with those in the GOM stock area. Nor is it

sufficient to justify less restrictive v-notch measures due to the potential for higher rates of v-notched lobster and decreased landings. Maintaining the initial intent to implement the 1/8-inch (0.32-cm) v-notch will allow for consistency within the Outer Cape Area itself as well as across the GBK stock area. It will also provide some additional level of protection to lobster in the GOM sector of the Outer Cape fishery beyond the status quo, albeit not as extensive as those imparted upon Area 1 fishermen.

NMFS acknowledges that expansion of the broodstock measures to the Outer Cape Area was not part of the Commission's plan and not recommended for implementation by the Outer Cape LCMT, but that does not mean that NMFS must implement only Commission-sanctioned management measures. Section 803(b) of the Atlantic Coastal Act states that the Secretary of Commerce may implement regulations to govern fishing in federal waters that are both compatible with the effective implementation of a coastal fishery management plan (in this case, the Commission's ISFMP) and consistent with the national standards set forth in the Magnuson-Stevens Act. As such, NMFS is obligated to support the effective implementation of the Commission's lobster plan but retains the authority to enact compatible regulations in Federal waters as long as those regulations are consistent with the MSA National Standards. Therefore, even though the broodstock measures were not part of the Outer Cape component of the Commission's plan, NMFS believes, based on the analysis of the best available and most recent data, that the expansion of the broodstock measures to the Outer Cape Area will support the Commission's intent to protect lobster broodstock in the SNE stock areas as intended in Addendum XI and will extend that barrier of protection to include the GBK stock area. NMFS further acknowledges that the LCMTs serve a valuable role in recommended measures which reflect the fishing practices and nuances of their respective fishing communities and the associated lobster resource. However, this is an advisory role and NMFS maintains the discretion to enact regulations to support the Commission's plan. See Description of the Public Process under **SUPPLEMENTARY INFORMATION** for more details on the role of the LCMTs, NMFS and the Commission. Furthermore, NMFS listened to the industry, specifically the Outer Cape LCMT, waiting to review and consider the expanded 2008 MA

DMF sea sampling data before making a final decision on the management measures associated with this rulemaking. NMFS does not take lightly the advice of the LCMTs and other industry advisors as demonstrated in the consideration of the expanded Outer Cape data in the evaluation of this Final Rule.

*Comment 14:* A Massachusetts Congressman commented that NMFS should postpone the broodstock rule changes for six months and form a working group consisting of NMFS, state and industry representatives to further assess the impacts of these measures on the Outer Cape lobster industry. Similarly, commenters representing the Outer Cape lobster industry requested that NMFS review 2008 sea sampling data collected by the MA DMF to better assess the economic impacts resulting from this final rule.

*Response:* NMFS agrees and postponed the rulemaking to allow for the review of additional sea sampling data, which was not made available by MA DMF until February 2009. In consideration of that data and public comments, NMFS has postponed action in the Outer Cape for a full year to allow the industry to adjust to the new requirements.

As explained in detail in the Background section of this final rule, NMFS staff attended a meeting consisting of Outer Cape lobstermen, a representative of the MA DMF, and representatives of the state legislature and local media in Chatham, MA on November 10, 2008. NMFS listened to the concerns of the industry and explained the rationale for the proposed broodstock protection measures. Many in attendance stated that the NMFS estimates of lost catch resulting from the expansion of the broodstock measures into the Outer Cape area were understated and warranted further investigation. The industry commented that more recent sea sampling in the Outer Cape area was underway to more specifically address the impacts of these measures on the Outer Cape lobster fleet and requested that NMFS consider this new data when determining the course of the final rule.

Upon review of the expanded sea sampling data, NMFS found nothing to suggest that a 6 3/4-inch (17.15-cm) maximum size would substantially impact landings in the Outer Cape lobster fishery. In fact, review of the MA DMF expanded sea sampling data revealed that the impacts could be even less than initially determined in the NMFS EA for this action. Similarly, the findings of the expanded MA DMF sea sampling data collection program were

consistent with the NMFS estimates for catch reductions associated with the implementation of a 1/8-inch (0.32-cm) v-notch standard for the Nauset and Chatham regions of the Outer Cape.

The data collected during the 14 sea sampling trips out of Provincetown provided an interesting perspective on the nature of the lobster fishery in the northern portion of the Outer Cape Area. Specifically, the MA DMF expanded study indicates that the Provincetown fleet is essentially fishing on the GOM lobster stock and the majority of the sea sampling trips (87 percent) occurred in the Outer Cape/Area 1 overlap area, where fishermen from these two adjacent management areas fish side by side but are subject to different maximum size and v-notch standards. Under the current regulatory framework, Area 1 lobstermen are subjected to more restrictive maximum carapace length and v-notching requirements than those in the Outer Cape Area. This phenomenon highlights one of the intentions of this rulemaking which aims to provide a more consistent and enforceable set of broodstock measures within and across management areas, especially among those areas which fish on a common lobster stock. Although it appears that a large proportion of Provincetown's lobster fishery may involve the GOM stock, NMFS did not fully analyze the impacts of applying Area 1 broodstock measures to that segment of the Outer Cape fishery. Limitations in the MA DMF sampling design as illustrated in the MA DMF report caution the use of this data for making assumptions on the entire Outer Cape Area. It is expected that this part of the Outer Cape Area would have a higher instance of v-notched lobster due to its overlap with the Gulf of Maine Area 1 fishery wherein Area 1 lobstermen are required to v-notch all egg-bearing lobsters and are subject to a more restrictive zero-tolerance v-notch definition.

Provincetown fishermen are likely to endure more impacts due to the 1/8-inch (0.32-cm) v-notch requirements than are fellow lobstermen in more southerly portions of the Outer Cape Area. In contrast, the impacts of this rule are likely to be far less than if the northern portion of the Outer Cape were subject to the Area 1 broodstock measures. On balance, and given the uncertainties associated with one year's worth of sampling data, but also considering the potentially higher losses in catches for the northern portion of the Outer Cape Area, NMFS has deferred the effective implementation of the 1/8-inch (0.32-cm) v-notch

standard for the Outer Cape until July 1, 2010.

*Comment 15:* Two state legislators and some industry commenters wrote in opposition to the expansion of the broodstock measures into the Outer Cape Area, stating that the measures could result in a 30-percent loss in catch for the Outer Cape fleet.

*Response:* Initial estimates from the EA, based on NMFS observer data, indicate that less than 5.7 percent of the lobster harvested by non-trap vessels in the GBK stock area is larger than the proposed maximum carapace length of 6 3/4 inches (17.15 cm), while only about 0.5 percent of the trap fishery catch is expected to be impacted in the GBK portion of the Outer Cape. Review of the 2008 expanded sea sampling data provided by the MA DMF revealed similar results. In fact, in 28 sea sampling trips - during the entire 2008 sea sampling season - not one lobster was observed with a carapace length in excess of 6 3/4 inches (17.15 cm).

NMFS agrees that Outer Cape lobstermen are relying heavily on "large" lobsters as the Outer Cape is comprised of individual lobster that are larger, on average, than the minimum legal size. This trend has been documented by MA DMF researchers as cited in the EA. As such, the Outer Cape Area is known for generally landing a "larger-sized" lobster. However, lobstermen, in the general course of their fishing operations, are likely only measuring lobsters against the legal lobster minimum size gauge and are not measuring the actual carapace length of the lobsters. Until now, lobstermen in the Outer Cape Area have not had a maximum size requirement and have needed only to assure that the lobsters they harvest are larger than the minimum size. Therefore, many of the lobsters they encounter at sea and believe to be over 6 3/4 inches (17.15 cm) may not be that large and may remain legal for harvest under the new maximum size requirements. Notably, any lobster with a carapace measuring more than 5 inches (12.7 cm) may be considered a "large" lobster and without actually measuring a lobster, it is difficult to estimate its actual carapace length. This could lead to misconceptions among the fleet of the actual impacts in terms of lost catch resulting from a 6 3/4-inch (17.15-cm) maximum carapace length regulation.

When analyzing the potential impacts of a maximum size restriction for lobster harvested in the Outer Cape, NMFS chose the standard equal to that implemented for Area 3, since both areas are largely within the GBK stock area, although both areas overlap all

three stock areas. Area 3 is subject to these management measures as part of the Commission's SNE stock rebuilding initiatives and including the Outer Cape Area will ensure that stock protection measures occurring in Area 3 and other areas will not be undermined due to a lack of consistent measures in the Outer Cape Area which shares all three stocks with Area 3.

Based on observer data, nearly 17 percent of the lobsters encountered in GBK traps were between 5 inches (12.7 cm) and 6 3/4 inches (17.15-cm) carapace length, and this was true for about 41 percent of the non-trap observances of lobster in GBK. NMFS considered this and concluded that a 5-inch (12.7-cm) maximum size would be too restrictive on the Outer Cape fishery and inconsistent with the management measures set forth for the GBK stock, which accounts for the largest component of the Outer Cape Area.

*Comment 16:* MA DMF stated that they do not dispute the reasons for the expansion of the broodstock measures into the Outer Cape fishery because doing so improves regulatory consistency and compliance and would provide protection to GBK lobster which is the dominant stock in the Outer Cape Area; a stock protected by similar measures in Area 3. MA DMF cautioned that this action could immediately impact Outer Cape lobstermen, especially those in the non-trap sector, and recommended that NMFS postpone any final action until the expanded Outer Cape sea sampling data is considered.

*Response:* NMFS agrees. Review of the expanded sea sampling data provided perspective on the evaluation of the impacts of these new measures to the trap sector of the fishery but the MA DMF investigations did not include any additional data on the non-trap fishery. As previously stated, NMFS expects the resulting losses in catch to be higher for the non-trap fishery, consistent with the estimations in the NMFS EA for this action.

*Comment 17:* The two state legislators indicate that the measures have no basis in science, citing Section 4.2.3.5 of the EA which states, in part, "...there are no expected impacts or benefits to protected resources directly attributable to the maximum lobster size requirements...", and Section 4.3.3.1 which states, "Limited data are available regarding the number or percentage of lobster that may be conserved if the more restrictive v-notch were to expand into the Outer Cape Area...broodstock measures have an inherent uncertainty since so many environmental factors affect larval

survival...and recruitment....these factors...make it difficult to assure Outer Cape Area participants a stake in the economic benefits that would accrue due to the proposed broodstock measures.”

*Response:* As a preliminary matter, given the low observance rate of oversized lobsters present in Outer Cape traps over the years as highlighted by the recently enhanced MA DMF sea sampling program data, some may question the biological need for this management measure. However, the inclusion of the measure is consistent with that for the offshore fishery and could protect some lobster that migrate inshore from Area 3. Aligning the Outer Cape broodstock measures with those in Area 3 is reasonable given the fact that both areas overlap all three stock areas and rely mostly on the GBK stock. Additionally, the inclusion of the maximum size limit to the Outer Cape Area would reduce confusion and facilitate enforcement. Equating a maximum size in the Outer Cape to that of Area 1 (5 inches (12.7 cm)) would be much more restrictive to the industry as NMFS observer data indicate that over 16 percent of the trap harvest and about 41 percent of the non-trap lobster harvested in the GBK stock area fall between 5 inches (12.7 cm) and 6 3/4 inches (17.15 cm) carapace length.

To clarify with respect to Section 4.2.3.5, “protected resources” is a term of art that relates to animals protected under either or both of the Marine Mammal Protection Act and Endangered Species Act. Therefore, this excerpt from the EA indicates, quite simply, that the imposition of a maximum size requirement in the Outer Cape Area is not expected to impact whales or other marine mammals, sea turtles or any species granted special statutory protection.

Regarding Section 4.3.3.1, NMFS agrees that there is little information on the percentage of lobster that may be conserved if the more restrictive v-notch definition is applied to the Outer Cape. The broodstock measures are intended to protect lobster broodstock which are known to travel in and out of the Outer Cape Area. Therefore, as the referenced passage suggests, the broodstock measures may benefit the lobster on a stock-wide or regional level but there is no way to guarantee or equate any such benefits directly to the Outer Cape Area. The same is true for Area 3, since lobsters in that area may move in and out of the Outer Cape Area and elsewhere. Therefore, given the propensity of lobsters to migrate across management and stock areas, these

measures will assure consistent application on a stock-wide basis.

*Comment 18:* Some Outer Cape industry members expressed concerns that the vessels sampled by MA DMF in the expanded sea sampling program are biased against the harvest of larger lobster since these vessels fish traps with smaller entrance heads than are routinely deployed by Outer Cape fishermen.

*Response:* MA DMF staff did not measure the entrance heads on the traps fished during the sea sampling trips so there is no way of verifying this statistic, and thus no means of considering it in the analysis of management alternatives. MA DMF researchers have determined, based on 27 years of sea sampling data that, unlike surrounding management areas, more than 90 percent of the total catch in the Outer Cape Area is comprised of individuals that are larger on average than the minimum legal size. Accordingly, the Outer Cape Area is known for generally landing a “larger-sized” lobster. Because of this areal trend, there is no reason to expect that Outer Cape lobstermen would fish with traps that do not select for larger lobsters. This does not mean that larger lobster are not present in the Outer Cape Area, although MA DMF sea sampling data since 1981 indicates that a relatively low percentage of lobsters over 6 3/4 inches (17.15 cm) are caught in traps. Consequently, as indicated by a review of the NMFS observer data for GBK, the non-trap fishery is expected to suffer more losses due to the maximum size regulations than the trap fishery since non-trap gears are not as size selective and this sector of the industry may high-grade the catch over the course of a fishing trip, selectively retaining the largest lobsters caught.

*Comment 19:* A commercial lobster fishing industry association commented in favor of the proposed maximum size and v-notching requirements as described in the proposed rule, including the expansion of those measures into the Outer Cape Area.

*Response:* NMFS agrees and believes that the implementation of the proposed measures would be compatible with the Commission’s recommendations for Federal action and would reduce confusion on the part of the participants and regulatory agencies, and facilitate enforcement by aligning state and Federal lobster management measures. Additionally, by expanding the scope of this action to include the Outer Cape Area under the maximum size and v-notching requirements as proposed, some, albeit difficult to quantify, level of protection to transient lobster moving among different management areas may

be realized. Further, this action could reduce the potential for more directed fishing effort into the Outer Cape Area that could occur if that area remained the only management area not governed by a maximum size requirement and bound to a less restrictive definition of a legal v-notch.

*Comment 20:* An Outer Cape lobster fisherman wrote in favor of expansion of the maximum size requirements into the Outer Cape Area, specifying that the maximum carapace lengths consistent with those established for the offshore fishery, are appropriate. The commenter added that the maximum size will protect large lobster and accordingly, foster recruitment, and may help to increase the lobster price by lowering the supply of large lobsters on the market.

*Response:* NMFS agrees that applying the maximum sizes to the Outer Cape, consistent with those for Area 3, is appropriate given that Area 3 and a large component of the Outer Cape Area fall within the GBK stock area.

Expanding the Area 3 maximum size requirements to the Outer Cape Area will support efforts to protect broodstock on a stock-wide basis, as the Outer Cape Area is known as a corridor for lobster moving between inshore and offshore areas and between stock and management areas. As such, this action will limit the potential to undermine the maximum size broodstock protection benefits of these proposed measures if lobster are protected in one area (i.e., caught, but released back to the sea), only to have that lobster caught and kept after transiting into another area. In addition, at-sea enforcement would be significantly enhanced if the proposed broodstock measures are implemented in the relevant lobster management areas.

*Comment 21:* A representative of a recreational diving club wrote to express concerns over the passage of Addendum XI wherein the Commission adopted the revised maximum sizes to include both male and female lobster. This group submitted a proposal before the Commission’s Lobster Management Board after adoption of Addendum XI to request the recreational take of one oversized lobster per trip by divers. Although discussed at several Board meetings, both prior to and after approval of Addendum XI, the proposal was not approved by the Board.

*Response:* NMFS acknowledged the recreational dive industry’s concerns about the impacts of maximum size regulations in Areas 4 and 5 beginning with a prior Federal rulemaking in response to the Commission’s recommendations in Addenda II and III.

Those addenda required the states to implement a maximum carapace size for the first time in Area 4 and Area 5 of 5 1/4 inches (13.34 cm) and 5 1/2 inches (13.97 cm) respectively, pertaining only to female lobster. In evaluating the impacts of these measures, NMFS responded to the concerns of the mid-Atlantic recreational dive fishery which tends to target large "trophy lobsters" on wreck sites aboard charter and party vessels. It was determined by canvassing state agencies that an extremely low number of lobster in excess of these new maximum sizes would be taken by the recreational dive sector, considering that most oversized lobsters are likely taken in the deeper offshore areas along the continental shelf in excess of 150 feet (46 meters) which is beyond the depth range of the divers. Consequently, in consideration of the dive industry's concerns and given the small chance that a substantial number of oversized lobsters would be taken in these management areas by the dive sector, the NMFS final rule on this issue (71 FR 13027) allowed recreational divers to possess one female lobster per trip in excess of the maximum carapace length in Area 4 and Area 5. Since then, the Commission adopted the more stringent maximum sizes of Addendum XI which revised the maximum carapace measures for Area 4 and 5 to be consistent at 5 1/4 inches (13.34 cm) and pertain both male and female lobster. Once these regulations became effective at the state level, the more restrictive state regulations negated the standing Federal allowance for recreational divers.

Although NMFS had acknowledged the relatively minimal impacts on the lobster resource associated with allowing the harvest of a single trophy lobster per recreational dive trip, NMFS believes that revising the maximum sizes in Areas 4 and 5 is the best alternative. Given the strong recommendations for broodstock protection in SNE in the 2005 stock assessment peer review, and the continued poor condition of the SNE stock, NMFS will implement measures that remain consistent with those required under the Commission's plan.

Although NMFS acknowledges that the proposed regulation might have some impact on recreational divers seeking so-called "trophy-sized" lobster, NMFS believes that, on balance, applying maximum sizes consistently to male and female lobster is prudent. As a preliminary matter, maximum size restrictions are known to protect larger lobsters which, according to the best available scientific information, are more prolific breeders. Further,

application of the standard to both male and female lobsters would make the regulation more consistent, understandable, and enforceable. Additionally, the maximum size restriction of 5 1/4 inches (13.34 cm) would still allow for the capture of large lobsters and NMFS has received no information to suggest that divers currently diving for oversized lobster would not dive for lobsters in excess of 5 inches (12.7 cm) which would still remain legal under this final rule. Regardless of Federal action, recreational divers are already bound by the proposed maximum size revisions by virtue of the states having approved the restrictions of the Commission's Addendum XI.

*Comment 22:* Some commenters say that the Outer Cape Area is meeting its conservation goals and this final rule will cause unnecessary financial hardship for Outer Cape fishermen. Further, some dissenters state that the Outer Cape industry did not know about this issue prior to the publication of the proposed rule.

*Response:* Outer Cape lobstermen fish primarily on the GOM and GBK lobster stocks. These two stocks tend to be stable, but the 2005 stock assessment raised concerns about high fishing effort and high dependence on newly-recruited lobster which could have impacts on the future stability of these stocks despite relatively high landings. The Outer Cape Area does have an approved effort management plan based on state-level historical participation under the Commission's ISFMP. However, the MA DMF expanded sea sampling data from 2008 brings to light the possibility that a component of the Outer Cape fishery is occurring predominantly in statistical area 514, which is part of the GOM stock. Therefore, it is unknown whether the Outer Cape effort control measures are sufficient in addressing the effort issue in the GOM stock area. Statistical area 514 was identified in the 2005 stock assessment as an area of concern due to extremely high lobster trap fishing effort. Further, from a broodstock perspective, the Outer Cape is the only management area that does not have any broodstock protection measures in place. Given that the Outer Cape Area straddles all three lobster stocks and is a known migratory pathway for lobster from other management areas with broodstock protection, it is reasonable to apply some consistent standard to the Outer Cape Area. Failing to do so could undermine the ongoing broodstock protection measures in place in adjacent management areas, affecting multiple stocks. NMFS has applied the more

liberal standards consistent with the Area 3 offshore fishery since the Outer Cape is known to fish on a larger-sized lobster and the majority of the Outer Cape Area resides within the GBK stock area shared by both the Outer Cape and Area 3.

The commenters also state that the measures could result in undue financial hardship. NMFS expects that the Outer Cape lobster industry will be impacted by this measure but, on balance, believes that the stock-wide broodstock protection, enforcement and resource assessment benefits outweigh the financial impacts. The impacts as estimated in the EA were supported after review of the MA DMF expanded 2008 sea sampling data. The economic impacts are discussed in more detail in the **SUPPLEMENTARY INFORMATION** section and under Economic Impacts of the Selected Actions in the Classification section. NMFS has deferred the implementation of these measures until July 1, 2010 to offset any economic impacts and allow the industry more time to adjust to the new regulations.

NMFS heard the concerns of the Outer Cape industry at the November 10, 2008, LCMT meeting in Chatham, MA. NMFS staff addressed this concern and stated that the general scope of measures was initially announced in the ANPR for this action wherein NMFS notified the public that broodstock measures related to the recommendations of the Commission in Addendum XI were being considered. The ANPR and proposed rule for this action were posted on the NMFS website along with a notice of availability informing the public of this action and how to comment and obtain copies of the relevant documents. Some in attendance stated that they are normally notified by mail of such actions. NMFS does not contact permit holders by mail regarding proposed rules or ANPR publications. However, NMFS does have an email and fax contact list for such actions. NMFS received the contact information of those in attendance expressing interest for electronic notification and NMFS has included these individuals on the list. Further, it should be stated that the Fishery Management Councils, the Commission, state agencies, and a wide range of fishermen's organizations and media contacts were notified of prior publications relevant to this action.

*Comment 23:* One individual commented that the v-notch requirements make the lobster industry more inefficient by increasing the discard rate and requiring harvesters to spend more money on bait, fuel, labor and capital. The commenter suggests

that more effective alternatives such as catch quotas or effort limitations be implemented to control fishing effort at the desired fishing mortality rate.

*Response:* The commenter here suggests a paradigm shift in overall management theory wherein management would focus on input controls (e.g., trap numbers, limited entry) rather than output controls (gauge size, escape vent size requirements). The relative merit to such a theory is the subject of ongoing discussion within industry, academic and management circles. However, the Commission's plan does consider effort as part of the coast-wide lobster fishery management program. The Outer Cape industry has already instituted such a plan as facilitated by the MA DMF which has allocated vessel specific trap allocations to qualified Outer Cape lobstermen. Similar programs are in place at the state level concerning the SNE stock and NMFS is in rulemaking now to address limited entry and trap transferability in multiple management areas, including the Outer Cape, as recommended by the Commission. Effort control is an important component to assuring both economic and biological sustainability with respect to the lobster industry and the resource. Output controls are also important and the two work hand-in-hand by controlling both inputs and outputs in the fishery. However, with respect to this action, the commenter's approach may fall beyond the scope of the present action, although NMFS welcomes such comments and will continue to monitor, and as appropriate, participate in discussions on ways to improve management of the lobster resource.

#### Changes From the Proposed Rule

The following minor changes were made to the regulatory text since the publication of the proposed rule to reflect the timing adjustments made to the implementation dates of the various regulations based on industry concerns and to clarify the revised definition of a standard v-shaped notch.

##### *Edit 1*

This final rule modifies the wording in the definition of a standard v-shaped notch from that provided in the regulatory text of the proposed rule. The definition in the proposed rule read, "a straight-sided triangular cut, with or without setal hairs, at least 1/8 inch (0.32 cm) in depth and tapering to a point." The wording was modified in the final rule to match the Commission's recommended wording in Addendum XI and now reads, "a notch or indentation in the base of the flipper

that is at least as deep as 1/8 inch (0.32 cm), with or without setal hairs." This change in wording is considered minor, is within the scope of this rulemaking, and reflects the true intent of this action to support the Commission's plan and effectuate interjurisdictional management of the lobster resource through compatible broodstock regulations.

##### *Edit 2*

The final rule defers the effective implementation of the revised v-notch measure in the Outer Cape Area until July 1, 2010, whereas in the proposed rule, the Outer Cape Area would have been subject to this measure thirty days after the publication of the final rule. Until July 1, 2010, the Outer Cape Area remains held to the 1/4-inch (0.64-cm) v-notch definition which served as the definition for a standard v-shaped notch prior to this rulemaking. Since the definition of a standard v-shaped notch now relates to a 1/8-inch (0.32-cm) notch effective with this final rule, a new definition for the 1/4-inch (0.64 cm) notch has been established in the regulations to cover the Outer Cape Area through June 30, 2010. This measure is now referred to as a "One-quarter-inch (1/4-inch) v-shaped notch," and defined as "... a straight-sided triangular cut, without setal hairs, at least 1/4 inch (0.64 cm) in depth and tapering to a point."

##### *Edit 3*

Revisions were made to § 697.7 Prohibitions to reflect the changes to the maximum size and v-notching requirements to indicate that those requirements would be effective in the Outer Cape Area beginning July 1, 2010, and effective in Areas 2, 3, 4, 5, and 6 thirty days after the publication of the final rule.

##### *Edit 4*

The text, "Effective January 1, 2010," was added to § 697.6(n)(1) to indicate that the reporting requirements for affected lobster dealers would not begin until that date. In the proposed rule, the preferred alternative would have implemented those requirements 30 days after the publication of this rule.

#### Changes to Existing Regulations

NMFS herein amends the Federal lobster regulations by expanding reporting requirements to all Federal lobster dealers and revising the maximum carapace length regulations and v-notch definition for several LCMA's.

#### *Mandatory Federal Lobster Dealer Electronic Reporting*

The Commission's Expanded Coastwide Data Collection Program set forth in Addendum X is intended to increase the quality and quantity of fishery-dependent and fishery-independent data collected at the state and Federal level and sets guidelines for data collection associated with dealer and harvester reporting, sea sampling, port sampling and fishery-independent data collection programs. Consistent with the Commission's recommendations in Addendum X, NMFS, by way of this final rule, extends weekly, trip-level electronic reporting coverage to all Federal lobster dealers. Formerly, if a seafood dealer held a Federal lobster dealer permit and no other Federal seafood dealer permits, that dealer was not required to report lobster or other seafood purchases to the Federal Government. Based on the analysis completed for this action, 148 Federal lobster dealers (29 percent of all Federal lobster dealers) fell in this category and, therefore, were not previously subjected to Federal reporting requirements. The other 71 percent of Federal lobster dealers have another Federal seafood dealer permit that requires routine reporting. Such dealers have been and will continue to be mandated to report all species purchased, including lobster. The reporting requirements for these dealers who were required to report prior to this rulemaking will not change as a result of this action. Accordingly, this action affects only those Federal lobster dealers not previously required to report lobster sales based on reporting requirements mandated by other federally-managed fisheries.

Under this final rule, all Federal lobster dealers must complete trip-level reports and submit them electronically each week, consistent with current Federal dealer reporting requirements. This measure differs from the Commission's recommendations because it requires the electronic submission of the reports and would collect the data in a timelier manner (weekly vs. monthly). To address concerns from some dealers, the State of Maine, and industry groups which wrote in opposition to this requirement, NMFS has deferred the effective date of this action to January 1, 2010, to allow those affected by this rule some additional time to adjust their business practices to comply with the new requirements.

This action does not alter harvester reporting, sea sampling, port sampling or fishery-independent data collection



programs. Federal fishery-dependent data collection programs, such as sea sampling and port sampling activities, are longstanding and underway, contributing substantially to the pool of information used for lobster stock assessments, as are the trawl surveys conducted by the Northeast Fisheries Science Center. NMFS believes that these Federal fishery-dependent and fishery-independent data collection activities exceed those identified in Addendum X and, therefore, do not warrant further action at this time. Further, with respect to harvester reporting, Addendum X mandates participating states, and recommends that NMFS, require at least 10 percent of all lobster harvesters to report their catch. Currently, approximately 61 percent of all Federal lobster vessels report their catch through the NMFS VTR program, thus exceeding the reporting threshold under the ISFMP. Therefore, with respect to the reporting requirements in Addendum X of the Commission's ISFMP, this final rule changes only the dealer reporting requirements and no other data collection or reporting programs.

Both NMFS and the states acquire dealer and harvester data, although the frequency and reporting requirements vary across state and Federal jurisdictions. In an effort to achieve a common forum for collecting and assessing coastwide fishery data, NMFS and its Atlantic states partners developed the Atlantic Coastal Cooperative Statistics Program (ACCSP). ACCSP is a state and Federal fisheries statistical data collection program. The data are compiled into a common management system to facilitate fishery management and meet the needs of fishery managers, scientists and the fishing industry. To more specifically address the need for real-time landings data to assist in fisheries management, the ACCSP established the Standard Atlantic Fisheries Information System (SAFIS). Since 2003, SAFIS has evolved to handle the fisheries data from state-permitted dealers from participating states along the Atlantic coast. Since May 2004, SAFIS has incorporated Federal seafood dealer data.

Although SAFIS was intended to be the overall entry point and warehouse for state and Federal dealer data, NMFS relies on its Commercial Fisheries Database System (CFDBS), managed by the Northeast Fisheries Science Center, as the official warehouse for Federal dealer data even though all Federal and state data are, ultimately, available on the SAFIS database. The new Federal dealer reporting requirements are consistent with the reporting

requirements already in place for Federal seafood dealers who are already subject to electronic reporting requirements for fisheries managed under the authority of the Magnuson-Stevens Act, including those of whom also hold Federal lobster permits. The electronic dealer reporting requirements for fisheries managed under the authority of the Magnuson-Stevens Act are set forth in 50 CFR 648.6 and 50 CFR 648.7 of the Federal fisheries regulations and specify the data elements and technological requirements needed for electronic reporting.

Federal lobster dealers affected by this action, similar to Federal dealers already required to report, may choose one of three methods for submitting their electronic reports: direct real-time, online data entry into SAFIS; off-line data entry using software provided by NMFS, followed by file upload to SAFIS; or proprietary record-keeping software followed by file upload to SAFIS. Those entering the data directly into the SAFIS system could do so with a personal computer and Internet access. Those who choose to enter the data using a file upload system would also need a computer and Internet access. However, these respondents would be eligible to obtain the file upload software through a NMFS contractor, at no cost to the impacted dealer. The no-cost option would mitigate some of the financial impact to Federal lobster dealers who would be subject to mandatory dealer reporting. All impacted lobster dealers would be required to maintain or have access to a personal computer and Internet connection.

#### *Maximum Carapace Length Requirements*

In support of the Commission's measures in Addendum XI to address the recommendations provided in the stock assessment and peer review process, this final rule establishes a maximum size of 5 1/4 inches (13.34 cm) on all (male and female) lobsters in Area 2 wherein there was formerly no maximum size requirement in the Federal regulations. Formerly, in Area 4, the Federal maximum carapace length regulation restricted the harvest of female lobster in excess of 5 1/4 inches (13.34 cm). This final rule broadens the scope of the maximum size to include all lobsters (male and female) in Area 4. In Area 5, the former Federal maximum carapace regulation restricted harvest of female lobster in excess of 5 1/2 inches (13.97 cm). This action reduces the maximum size in Area 5 to 5 1/4 inches (13.34 cm) and applies to both male and female lobster. Prior to this rule, the

Federal lobster regulations for Area 4 and Area 5 allowed recreational fishermen to retain one female lobster exceeding the maximum size requirement as long as such lobster is not intended for commercial sale. This so-called "trophy" lobster allowance in Area 4 and Area 5 is now eliminated. In Area 6, this action establishes a maximum size of 5 1/4 inches (13.34 cm) for all lobster harvested by Federal vessels in this area. Consequently, with this final rule, the maximum size restrictions are identical for Areas 2, 4, 5 and 6 and consistent with the maximum size measures already enforced by the states adjacent to these management areas.

In addition to the changes in the maximum sizes in the near shore lobster management areas, this regulatory action establishes a maximum carapace size requirement in offshore Area 3. The Commission's plan requires the states to implement a lobster maximum carapace length of 7 inches (17.78 cm) by July 1, 2008, reduced by 1/8 inches (0.32) during each of two successive subsequent years until a terminal maximum size of 6 3/4 inches (17.15 cm) is in place in July 2010. Therefore, to be consistent with the Commission and States' recommended time frame for implementation and fully complement state regulations, this action establishes the maximum size recommended by the Commission for the second year of the three-year implementation schedule, which equates to a 6 7/8-inch (17.46-cm) maximum size effective thirty days after the publication of the final rule. Consistent with the ISFMP, the terminal maximum size for Area 3 of 6 3/4 inches (17.15 cm) will take effect on July 1, 2010. The aforementioned measures are consistent with the Commission's plan. The Commission's plan does not include a maximum size requirement for the Outer Cape Area, the only Area without a maximum size requirement under the Commission's ISFMP. As part of this final rule, NMFS establishes a maximum carapace length requirement for the Federal waters of the Outer Cape Area, consistent with the terminal maximum size for Area 3. The rationale for the expansion of this measure is that the Outer Cape lobster resource, like that of offshore Area 3, is largely composed of animals from the Georges Bank lobster stock. Given the propensity of lobster to move inshore and offshore and between Area 3, the Outer Cape Area and other areas, consistent broodstock protection measures are a reasonable and prudent means of assuring protection of broodstock throughout the stock area. The

expansion of these broodstock measures into the Outer Cape would support the efforts of lobstermen in Area 3 and Area 1 whom are releasing lobster broodstock which would otherwise be harvested as these lobsters move into the Outer Cape Area. The concerns of the Outer Cape industry in response to the proposed rule were seriously considered by NMFS. In consideration of comments in opposition by the Outer Cape lobster industry in response to the proposed broodstock measures and timeline for implementation which under the preferred alternative would have established a 6 7/8-inch (17.46-cm) maximum carapace limit effective thirty days after the publication of this final rule, NMFS has adjusted these requirements in this final rule to alleviate the economic burden on the industry while providing a plan for conserving lobster broodstock throughout the stock area. Accordingly, the maximum size requirement for the Outer Cape Area will be deferred until July 1, 2010. At that time, the maximum size will be 6 3/4 inches (17.15 cm), consistent with the terminal maximum size for Area 3 at that time.

#### *Modified Definition of V-Notch*

As approved by the Commission in Addendum XI, NMFS revises the v-notch definition in Areas 2, 3, 4, 5 and 6 to apply to any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inches (0.32 cm), with or without setal hairs. The Commission's definition also pertains to any female which is mutilated in a manner which could hide, obscure, or obliterate such a mark; a clause which is previously existed and remains part of the definition of a v-notched American lobster in § 697.2. As with the Commission's ISFMP, the zero tolerance v-notch definition for Area 1 remains unchanged. The Commission's ISFMP allows the Outer Cape Area to maintain the former definition of a standard v-notch (at least 1/4 inch (0.64 cm) in depth, without setal hair). However, to provide a consistent set of regulations to protect broodstock across stock and management areas while balancing economic impacts to the Outer Cape lobster industry, this final rule extends the modified definition of a standard v-notch (at least as deep as 1/8 inches (0.32 cm), with or without setal hairs) to include the Outer Cape Area.

The concerns of the Outer Cape industry were not overlooked in selecting the manner in which the v-notch regulation is implemented. Specifically, NMFS has deferred the effective date of the 1/8-inch (0.32-cm)

v-notch in the Outer Cape until July 1, 2010, consistent with the effective date for the maximum size regulations in this area. In the meantime, and consistent with the Commission's ISFMP, the Outer Cape v-notch restriction will prohibit possession of any lobster bearing a notch at least 1/4 inch (0.64 cm) in depth, without setal hair, now defined in the Federal lobster regulations as a "1/4-inch (0.64-cm) v-notch lobster." Effective July 1, 2010, all lobster management areas, with the exception of Area 1- essentially all of the SNE and GBK stock areas - will be bound by a consistent v-notch size which will be the standard v-shaped notch (at least as deep as 1/8 inches (0.32 cm), with or without setal hairs).

#### **Classification**

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

This final rule does not contain policies with Federalism implications as defined in E.O. 13132. The measures set forth in this final rule are based upon the lobster ISFMP that was created and is overseen by the states. The measures are the result of addenda that were unanimously approved by the states, have been recommended by the states through the Commission, for Federal adoption, and are in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP which makes recommendations for Federal action. Additionally, these regulations do not pre-empt state law and do nothing to directly regulate the states.

This final rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648-0229. Public reporting burden for the Mandatory Federal Lobster Dealer Electronic Reporting requirement is estimated to average four minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment was sought during the proposed rule stage regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information,

including through the use of automated collection techniques or other forms of information technology. Some comments were received in response to the proposed rule regarding the collection of information requirements. Those comments disagreed with the estimates for operating and start-up costs associated with the electronic dealer reporting requirements and asked why the proposed rule did not estimate the costs associated with the compilation and submission of the electronic reports. NMFS used existing data based on Federal dealers who already report as the basis for the burden estimates. Further, NMFS did provide information in the proposed rule concerning the estimates of compiling and submitting the data. Since the proposed rule, NMFS reassessed the costs associated with complying with the reporting requirements and found that the initial estimates likely overstated the potential costs of these requirements to affected dealers. This additional information was assessed in the EA for this action. More detailed responses to these and other comments are provided in the Comments and Responses section under **SUPPLEMENTARY INFORMATION**.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this rule, if adopted, will have on small entities. A description of the action, the reason for consideration, and the legal basis are contained in the **SUPPLEMENTARY INFORMATION** section of this final rule.

The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, the NMFS responses to those comments, and a summary of the analyses completed to support the action. The IRFA was summarized in the proposed rule (73 FR 58099, October 6, 2008) and is thus not repeated here. Copies of the FRFA, RIR, and the EA prepared for this action are available from the Northeast Regional Office (see **ADDRESSES**). A description of the action, its reasons for consideration, and the legal basis for this action are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

### Summary of the Significant Issues Raised by the Public Comments

A total of 49 comments were received. Four comments were received in opposition to the Federal lobster dealer electronic reporting requirements, while five wrote in favor of the dealer electronic reporting requirements. Similar to those received in response to the ANPR for this action as addressed in the proposed rule, the comments in opposition to the electronic dealer reporting requirements were received from two lobster dealers, the State of Maine Department of Marine Resources (ME DMR), and a lobster fishermen's organization. The general theme of these comments was that mandatory weekly electronic reporting would add more administrative burden to affected lobster dealers and would be redundant since many dealers are already providing the data to their respective state fisheries agency.

Thirty-two comments were received in opposition to the inclusion of the Outer Cape Area under the expanded broodstock protection measures. Of those comments, 14 stated that the expansion of the broodstock requirements into the Outer Cape Area would cause some level of financial hardship for Outer Cape lobster trap fishermen. Seven of the 32 individuals disagreed with the NMFS estimates of catch reductions in the Outer Cape lobster trap sector associated with the new requirements, stating that the losses in catch would be higher than the NMFS estimates.

Seven comments were received in general support of the broodstock protection measures, and four individuals wrote expressly to support the expansion of the broodstock measures into the Outer Cape Area. Three commenters opposed the broodstock protection measures in management areas other than the Outer Cape Area.

Two comments opposing the maximum size requirements were received, one by a mid-Atlantic pot gear fisherman and one by a recreational diving group. Representatives of the offshore lobster fishing sector wrote in favor of the dealer reporting, maximum size and v-notching requirements. Two fishermen recommended consistent measures throughout all lobster management areas and one fisherman commented that more restrictive broodstock measures are needed coastwide.

Detailed responses to all the comments are provided in the Comments and Responses section of **SUPPLEMENTARY INFORMATION.**

### Description and Estimate of the Number of Small Entities to Which the Final Rule Applies

The final rule will impact approximately 148 Federal lobster dealers who were not formerly required to report lobster purchases to NMFS. With this action, these Federal lobster dealers will be required to submit weekly electronic reports of trip-level lobster purchases from lobster vessels. These requirements are consistent with the reporting requirements in place for all other Federal seafood dealers who are subject to reporting requirements.

Promulgation of Federal regulations to implement the broodstock management measures in Areas 2, 3, 4, 5 and 6 are not expected to impact any vessels as these measures are part of the Commission's plan. Consequently, the measures are currently enforced by the states and Federal vessels are subject to these more restrictive requirements in the absence of complementary Federal regulations. In the Outer Cape Area, the broodstock measures are not part of the Commission's plan and Federal implementation of the broodstock measures in the Outer Cape Area are expected to impact a maximum of 184 to 203 trap and non-trap vessels. However, the actual number of impacted vessels is expected to be much less. The broadness of this estimate is evident because Federal lobster vessels fishing with non-trap gear are not required to indicate a lobster trap fishing area on their permit. If such vessels provide VTRs then a statistical area is provided to reflect fishing areas but the statistical areas do not always fall exclusively within a single management area, complicating the ability to narrow down the specific areas fished. Further, trap vessels may select the Outer Cape Area on their permit but may not fish in that area. For these reasons, the exact number of vessels is unknown but is likely less than the upper end estimates determined from the EA.

### Economic Impacts of the Selected Action

#### *Mandatory Federal Lobster Dealer Electronic Reporting*

Federal lobster dealers are the entity most affected by this requirement. According to the Small Business Administration (SBA), lobster dealers are considered small entities when they employ less than 100 people. NMFS does not collect employment data from Federally-permitted lobster dealers in the Northeast region. However, based on review of data reported in the U.S. Census Bureau's County Business

Patterns it is estimated that all regulated entities that specialize in lobster wholesale trade, as well as those entities that may not specialize in the lobster trade yet would be required to comply with the proposed action, are presumed to be small entities for purposes of the Regulatory Flexibility Act (RFA).

This action requires all federally-permitted lobster dealers to report all seafood purchases, including lobster, through an electronic reporting system. This action affects regulated lobster dealers who are not already required to report by virtue of holding at least one other Federal dealer permit requiring reporting. During 2007 there were 511 lobster dealers issued a Federal permit to purchase lobster. Of these dealers the majority (71 percent) were already required to report to NMFS leaving 148 regulated small entities required to comply with this action.

To comply with the electronic reporting requirements, dealers need a personal computer and Internet service. The required specifications for the personal computer are such that any recently purchased computer, and most older computers would meet the minimum specifications. For this reason, any dealer who currently owns a computer would not likely be required to purchase new equipment. The number of regulated lobster dealers who do not now own a computer is uncertain but is expected to be low. Those who already have Internet access and a computer would not have any specific costs associated with this new reporting requirement. It is estimated that the average start-up costs for those lobster dealers who do not have a computer would be about \$580 to purchase a personal computer and monitor that would meet or exceed the specifications needed to participate in the electronic dealer reporting program. Preliminary estimates of additional costs of about \$652 per year for Internet access would bring the total start-up costs to approximately \$1,232, with costs for Internet access continuing annually. The unknown number of dealers impacted by the proposed dealer reporting program, whom already own a computer but are not connected to the Internet, would assume the estimated annual fees for this service at about \$652 annually. Based on data from dealers who are currently required to report, these costs were estimated to be 0.47 percent of gross net sales (i.e. sales less the cost of purchasing lobster) in the first year for the one-time cost of purchasing a computer and the first year of Internet service. Ongoing costs were estimated to represent 0.27 percent of gross net sales. Since the publication of

the proposed rule and in response to comments regarding the accuracy of the economic impact estimates, NMFS reassessed the costs associated with acquiring the necessary computer and Internet requirements. Although NMFS stands by its initial estimates, the reassessment suggests that the costs for a computer and Internet service as presented in the initial NMFS analysis are probably overestimated and, more than likely, represent a high-end, worst-case scenario of potential cost to affected Federal lobster dealers. Based on the information obtained through the new cost investigation, a new desk-top personal computer system can be purchased for as little as \$272 and Internet service can be acquired in most areas for about \$20 per month. In consideration of the more recent cost query, if one considers the cost of a computer to be about \$400 and the annual cost of Internet service to be \$240 (assuming the \$20 per month charge and not the lowest possible charge) then the annual cost could be about 50 percent less than NMFS has estimated in the initial analysis. More specifically, the cost to pay in full for a brand new computer and the annual Internet service charge would be approximately \$640 or about \$53 per month, compared to the initial estimate of \$1,232 or about \$103 per month.

#### *Changes to Maximum Carapace Length Requirements and Revision to V-Notch Definition*

Since the states have already implemented the maximum size and v-notch requirements for the affected areas, with the exception of the Outer Cape Area as reflected in this rulemaking action, the small entities impacted by the maximum size and v-notch provisions proposed herein would be limited to the Federal commercial lobster fishing vessels and party/charter dive vessels that fish, or are permitted to fish, in the Outer Cape Area. The Outer Cape Area has been characterized as fishing on a population of transient lobsters migrating between inshore and offshore areas.

**Party/Charter Vessels.** Party/Charter operators are classified with businesses that offer sightseeing and excursion services where the vessel departs and returns to the same location within the same day. Relevant to this proposed action, these businesses include party/charter recreational fishing vessels which offer SCUBA divers recreational opportunities to harvest lobsters for personal use. The SBA size standard for this sector is \$ 7 million in gross sales. Although sales data are not available, party/charter operators in the lobster

fishery tend to be small in size and do not carry a large number of passengers on any given trip. For these reasons it is expected that all regulated party/charter operators holding a Federal lobster permit would be classified as a small entity for purposes of the RFA. All Federal lobster party/charter permit holders are already required to abide by all state regulations under the most restrictive rule of the ISFMP. This means that this action would only affect party/charter operators that take passengers for hire in the Outer Cape Area since this is the only area in the proposed Federal action not included for a maximum size or a more restrictive v-notch in the ISFMP and therefore, not under such restrictions by any state.

During 2007 there were a total of 31 Federal permit holders with a party/charter lobster permit. Of these vessels all but one held at least one other Federal party/charter permit (for another species), while the majority (24) held four or more other Federal party/charter permits in addition to the lobster permit. These data indicate nearly all lobster party/charter permit holders have at least one other Federal permit requiring mandatory reporting. Available logbook (VTR) data show that only 3 of the 31 lobster party/charter permit holders reported taking passengers for hire during trips when lobster were kept during the 2007 fishing year. Of the trips that did report landing lobsters none took place within NMFS statistical area 521, used as a proxy for the Outer Cape Area. In fact, all for-hire recreational trips took place in statistical areas in the Mid-Atlantic region. Although the number of participating for-hire vessels was larger in Fishing Year (FY) 2005 (6 vessels) and FY 2006 (7 vessels), these vessels also took recreational lobster fishing trips only within the Mid-Atlantic area. None took a for-hire trip in the Outer Cape Area.

These data suggest that participating for-hire lobster permit holders would not be affected by the proposed action in the Outer Cape Area although these permit holders may have been affected by action already taken by individual states. While the magnitude of any impact associated with state action is uncertain, it is likely to have been relatively small. In the areas where recreational lobster fishing was reported (corresponding to Area 4 and/or 5) a maximum size for female lobsters has already been in place for several years. Despite the state action and this Federal action to reduce the maximum size from 5 1/2 inches (13.97 cm) to 5 1/4 inches (13.34 cm) in Area 5 and expand it to provide additional protection for male

lobsters in Areas 4 and 5, these areas represent the southern terminus of the lobster resource. Therefore, eliminating the exemption for a trophy lobster would have little impact on the recreational fishery since the encounter rate with lobsters of that size is expected to be very low.

**Federal Commercial Lobster Vessels.** The SBA size standard for commercial fishing businesses is \$ 4 million in gross sales. According to dealer records, no single lobster vessel would exceed \$ 4 million in gross sales. Therefore, all operating units in the commercial lobster fishery are considered small entities for purposes of analysis. The economic impacts of the change in maximum size in the Outer Cape Area are uncertain since all vessels are not required to report their landings to NMFS. Survey data collected during 2005 by researchers at the Gulf of Maine Research Institute and made available to NMFS included information on lobster business profitability for vessels operating in Areas 1, 2, and 3. Operators in the Outer Cape Area were not specifically sampled. However, it is likely that these entities are of similar scale to operators that were sampled and fish on a lobster stock that bear some similarities to operators in Area 1 although the size composition of catch tends to be larger than would be the case in Area 1. Subject to these caveats, it was assumed that the cost and earnings profile for Area 1 survey participants would be a suitable proxy for financial performance of Outer Cape Area trap participants.

The survey data indicate that the majority of Area 1 lobster businesses were able to cover operating costs with gross sales. However, net earnings for the majority of businesses were below median personal income for the New England region and only about 20 percent of lobster businesses earned a positive return to invested capital. Since 2005, fuel costs have more than doubled cutting average net return by about 30 percent; this is before taking into account the opportunity cost of the owner's labor or capital. Thus, profit margins have shrunk significantly since 2005 and even small changes in revenue streams could place lobster businesses in financial risk. However, as the following analysis describes, few vessels rely exclusively on the Outer Cape Area for lobster fishing revenue. Further, only a small percentage of the catch in the trap sector is expected to be impacted by the proposed measures.

**Trap Gear Vessels.** This Federal action would directly affect only those Federal lobster vessels that selected the Outer Cape Area. For the 2007 fishing

year, 184 Federal lobster trap vessels selected the Outer Cape as one of the potential trap fishing areas. Federal Fisheries Observer data suggest, in consideration of the terminal maximum size proposed in the preferred alternative of 6 3/4 inches (17.15 cm), trap vessels operating in this area would expect a reduction in catch of approximately 0.5 percent. Note, however, that a price premium is paid for larger lobsters such that the realized economic impact on lobster fishing businesses is likely to be proportionally larger than the expected change in catch.

**Non-Trap Gear Vessels.** Based on a three-year average (2005–2007) overall dependence on lobster for non-trap vessels ranged from 0.03 percent to 30.6 percent in terms of annual value and from 0.01 percent to 10.6 percent in volume. Few vessels relied exclusively on the Outer Cape Area for lobster fishing revenue. Using statistical area 521 as a proxy for the Outer Cape during the 2005–2007 period, dependence on lobster in value ranged from 0.01 percent to 19.4 percent, averaging 1.4 percent of overall value. In volume, lobster harvested from area 521 ranged from 0.002 percent to 5.7 percent, averaging 0.4 percent of overall volume. The maximum expected annual economic impact of the 6 3/4-inch (17.15-cm) maximum size in the Outer Cape Area on non-trap vessels is estimated to be about \$ 1,000, while the median annual impact was estimated to be \$ 117 per vessel. These values are reflective of the relatively low dependence on the Outer Cape Area for lobster fishing revenue and the low encounter rate suggested by observer data of lobsters above the 6 3/4-inch (17.15-cm) maximum size. In terms of total fishing revenue these estimated revenue impacts represent between 0.01 percent and 1.2 percent of total fishing revenue for participating regulated non-trap gear small entities.

The added economic impact of the change in v-notch definition across all areas is highly uncertain. Although this change would result in an unknown level of reduced opportunities to retain legal lobsters it seems likely that this additional impact would have less impact on non-trap than trap vessels since non-trap vessels earn only a portion of total fishing revenue from lobsters. The added effect on trap vessels is difficult to assess, but would reduce potential revenue in addition to that which may be associated with either changes in existing maximum size or implementation of new maximum size regulations. Available sea sampling data from the

Commonwealth of Massachusetts indicate that between 2 percent and 4 percent of females encountered in the Outer Cape Area were v-notched. A substantial portion of the Outer Cape Area legal harvest is comprised of females (64 percent), an unknown proportion of which would be illegal under the preferred alternative.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which and agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. The small entity compliance guide will be sent to all holders of Federal American lobster vessel and dealer permits as part of the permit holder letter. Copies of this final rule and the small entity compliance guide are available upon request from the Northeast Regional Office (see **ADDRESSES**).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 22, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 697 are amended as follows:

#### **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) under “50 CFR” is amended by adding a new entry for 697.7 to read as follows:

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

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CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)			
* * *	*	*	*	*
50 CFR	*	*	*	*
697.7	*	*	–0202	*

#### **PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

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

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 4. In § 697.2(a), the definition for “One-quarter-inch (1/4-inch) v-shaped notch” is added and the definition for “Standard v-shaped notch” is revised to read as follows:

#### **§ 697.2 Definitions.**

(a) \* \* \*

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

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*Standard V-shaped notch* means a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch (0.32 cm), with or without setal hairs.

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■ 5. In § 697.6, paragraphs (n) through (s) are added to read as follows:

#### **§ 697.6 Dealer permits.**

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(n) *Lobster dealer recordkeeping and reporting requirements.* (1) *Detailed report.* Effective January 1, 2010, all Federally-permitted lobster dealers, and any person acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time periods specified in paragraph (q) of this section, or as specified in § 648.7(a)(1)(f) of this chapter, whichever is most restrictive, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a Federal lobster dealer permit under this part must provide the following information, as well as any additional information as applicable under § 648.7(a)(1)(i) of this chapter: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are transferred, purchased or received for a commercial purpose; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip reporting requirement; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2 of this chapter, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part (American lobster), and part 648 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by the provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (n)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be

identified according to the following categories: winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NMFS will provide dealers with a skate species identification guide.

(2) *System requirements.* All persons required to submit reports under paragraph (n)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal lobster dealer permit holders. Failure to comply with the minimum specifications identified in the permit holder letter are prohibited.

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surfclam and ocean quahog processors and dealers whose plant processing capacities change more than 10 percent during any year shall notify the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

(o) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections, all persons required to submit reports under this part must make immediately available for inspection copies of reports, and all records upon which those reports are or will be based, that are required to be submitted or kept under this part.

(p) *Record retention.* Any record as defined at § 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and be available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records

and reports at their principal place of business.

(q) *Submitting dealer reports.* (1) Detailed dealer reports required by paragraph (n)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (n)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(2) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(3) The trip identifier required under paragraph (n)(1) of this section for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip reporting requirement must be submitted with the detailed report, as required under paragraph (q)(1) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(4) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

(5) *At-sea purchasers and processors.* With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (n)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

(r) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection

of age structures such as otoliths or scales.

(s) *Additional dealer reporting requirements.* All persons issued a lobster dealer permit under this part are subject to the reporting requirements set forth in paragraph (n) of this section, as well as §§ 648.6 and 648.7 of this chapter, whichever is most restrictive.

■ 6. In § 697.7, paragraph (c)(1)(v) is revised, paragraph (c)(2)(xxi) is added, and paragraph (c)(3)(iii) is revised to read as follows:

**§ 697.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) Retain on board, land, or possess any female lobster that do not meet the area-specific v-notch requirements set forth in § 697.20(g).

\* \* \* \* \*

(2) \* \* \*

(xxi) Fail to comply with dealer record keeping and reporting requirements as specified in § 697.6.

\* \* \* \* \*

(3) \* \* \*

(iii) The possession of egg-bearing female American lobsters, v-notched female American lobsters in violation of the v-notch requirements set forth in § 697.20(g), American lobsters that are smaller than the minimum size set forth in § 697.20(a), American lobsters that are larger than the maximum carapace sizes 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.

\* \* \* \* \*

■ 7. In § 697.20, paragraphs (b)(3) through (b)(7) are revised and paragraph (b)(8) is added; paragraphs (g)(3) and (g)(4) are revised, and paragraphs (g)(5) through (g)(8) are added as follows:

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

\* \* \* \* \*

(b) \* \* \*

(3) The maximum carapace length for all American lobster harvested in or from the EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5 1/4 inches (13.34 cm).

(4) The maximum carapace length for all American lobster landed, harvested,

or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in one or more of EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5 1/4 inches (13.34 cm).

(5) The maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 is 6 7/8 inches (17.46 cm).

(6) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 6 7/8 inches (17.46 cm).

(7) Effective July 1, 2010, the maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6 3/4 inches (17.15 cm).

(8) Effective July 1, 2010, the maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6 3/4 inches (17.15 cm).

\* \* \* \* \*

(g) \* \* \*

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

(4) No vessel, owner or operator issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, 6 or the EEZ Offshore Management Area 3 may land, harvest or possess any female lobster possessing a standard v-shaped notch.

(5) Through June 30, 2010, no person may possess any female lobster possessing a 1/4-inch (0.64-cm) v-shaped notch harvested in or from the EEZ Outer Cape Lobster Management Area.

(6) Through June 30, 2010, no vessel, owner or operator issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Outer Cape Lobster Management Area may land, harvest or possess any female lobster possessing a 1/4-inch (0.64-cm) v-shaped notch.

(7) Effective July 1, 2010, no person may possess any female lobster possessing a standard v-shaped notch harvested in or from the EEZ Outer Cape Lobster Management Area.

(8) Effective July 1, 2010, no vessel, owner or operator issued a Federal

limited access American lobster permit fishing in or electing to fish in the EEZ Outer Cape Lobster Management Area may land, harvest or possess any female lobster possessing a standard v-shaped notch.

\* \* \* \* \*

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BILLING CODE 3510-22-S

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 40, 41, and 45

[Docket No. TTB-2009-0002; T.D. TTB-80; Re: T.D. TTB-78 and Notice No. 95]

RIN 1513-AB72

#### Implementation of Statutory Amendments Requiring the Qualification of Manufacturers and Importers of Processed Tobacco and Other Amendments Related to Permit Requirements, and the Expanded Definition of Roll-Your-Own Tobacco; Correction

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Temporary rule; Treasury decision; correction.

**SUMMARY:** On June 22, 2009, the Alcohol and Tobacco Tax and Trade Bureau published a temporary rule in the *Federal Register* to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009. The principal changes involve permit and related requirements for manufacturers and importers of processed tobacco and an expansion of the definition of roll-your-own tobacco. That temporary rule contained several minor inadvertent errors; this document corrects those errors.

**DATES:** *Effective Date:* These amendments are effective July 29, 2009 through June 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Amy R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-453-2099).

**SUPPLEMENTARY INFORMATION:** On June 22, 2009, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a temporary rule in the *Federal Register* to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009 (see T.D. TTB-78, 74 FR 29401). The temporary rule was effective on the date