

Atlantic States Marine Fisheries Commission

**PUBLIC INFORMATION DOCUMENT
FOR DRAFT FISHERY MANAGEMENT PLAN
FOR CANCER CRABS**



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

*ASMFC Vision Statement:
Sustainably Managing Atlantic Coastal Fisheries*

August 2014

**The Atlantic States Marine Fisheries Commission seeks your comment
on the management of Cancer Crabs**

The public is encouraged to submit comments regarding this document during the public comment period. Comments will be accepted until **X PM (EST) on XXX**. Regardless of when they were sent, comments received after that time will not be included in the official record. The American Lobster Board will consider public comment on this document when developing the first draft of a Cancer Crab Fishery Management Plan.

You may submit public comment in one or more of the following ways:

1. Attend public hearings held in your state or jurisdiction.
2. Refer comments to your state’s members on the American Lobster Advisory Panel, if applicable.
3. Mail, fax, or email written comments to the following address:

Kate Taylor
1050 North Highland St., Suite 200 A-N
Arlington, VA 22201
Fax: (703) 842-0741
ktaylor@asmfc.org (subject line: Cancer Crab PID)

If you have any questions please call Kate Taylor at (703) 842-0740.

Timeline for Completion of Proposed Cancer Crab FMP

Current Step →	May 2014	Board tasks the Plan Development Team to develop Public Information Document
	August 2014	Board receives the PID and considers approval for public comment
	September - October 2014	Public Comment on the PID
	November 2014	Management Board reviews PID for public comment, considers initiation of Draft FMP. PDT will develop FMP with input from TC and AP.
	February 2015	Management Board reviews Draft FMP for public comment
	March -April 2015	Public comment on Draft FMP
	May 2015	Management Board reviews and considers recommendation of approval of the FMP Full Commission considers approval of the FMP

Atlantic States Marine Fisheries Commission
Draft Public Information Document for the Cancer Crab FMP

Introduction

The Atlantic States Marine Fisheries Commission (Commission) is developing a draft Interstate Fishery Management Plan (FMP) for Cancer Crabs, under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Management authority for this species from zero to three nautical miles offshore, including internal state waters, lies with the Commission, and is promulgated through the Coastal States. Responsibility for compatible management action in the Exclusive Economic Zone (EEZ) from 3-200 miles from shore lies with the Secretary of Commerce through ACFCMA in the absence of a federal fishery management plan.

Management Issues

In May 2014, the American Lobster Management Board initiated the development of a FMP for Cancer Crabs, which would address management of Jonah crab (*Cancer borealis*) and rock crab (*Cancer irroratus*) throughout the species range within United States waters. While Jonah crab are typically the preferred catch over rock crab, due to the similarities in appearance between the two species and the continued problem of misidentification, both species could be managed together through the Commission's process.

The development of this FMP was based on recommendations from the Jonah Crab Fishery Improvement Project (FIP). A FIP is a multistakeholder effort to improve a fisheries performance to a level that is consistent with the Marine Stewardship Council's (MSC) sustainable seafood certification. The Jonah Crab FIP was initiated by Delhaize America (a grocery retailer) when the company found Jonah crab did not meet the criteria for sustainable harvest in order to continue the sale of Jonah crab in its stores.

The FIP conducted a pre-assessment benchmark against the MSC sustainable seafood criteria and organized a working group to prioritize threats to Jonah crab and develop potential management measures to address these threats. The Work Group was comprised of members of various lobster industry associations, state agencies, academia, fishermen, and seafood retailers. Specific concerns of the FIP include increasing targeted fishing pressure on Jonah crab, likely due to a fast growing market demand, and the long term health of the fishery. The FIP made several recommendations to the Commission including a minimum size, prohibiting female crab harvest, and reporting requirements.

Purpose of the Public Information Document

The purpose of this document is to inform the public of the Commission's intent to gather information concerning the Cancer Crab fisheries and to provide an opportunity for the public to identify major issues and alternatives relative to the management of this species. Input received at the start of the fishery management plan development process can have a major influence in the final outcome of the fishery management plan. This document is intended to draw out observations

and suggestions from fishermen, the public, and other interested parties, as well as any supporting documentation and additional data sources.

To facilitate public input, this document provides a broad overview of the four issues identified for consideration in the fishery management plan, as well as background information on the Cancer Crab population, fishery, and management. The underlying questions for public comment are: **“How would you like the Cancer Crab fishery and population to look in the future?”** The Commission is looking for both general comments on the Cancer Crab management in state waters and/or any comments specific to the issues listed in this document.

ASMFC’s FMP Process and Timeline

The publication of this document and announcement of the Commission’s intent to develop a FMP for Cancer Crabs is the first step of the fishery management plan development process. Following the initial phase of information gathering and public comment, the Commission will evaluate potential management alternatives and the impacts of those alternatives. The Commission will then develop a draft FMP, incorporating the identified management alternatives, for public review. Following the review and public comment, the Commission will specify the management measures to be included in the fishery management plan, as well as a timeline for implementation.

This is the public’s opportunity to inform the Commission about changes observed in the fishery, things the public feels should or should not be done in terms of management, regulation, enforcement, research, development, enhancement, and any other concerns the public has about the resource or the fishery. In addition, this is the public’s chance to present reasons for the changes and concerns for the fishery.

A tentative schedule for the completion of the FMP is included at the beginning of this document. Please note these dates are subject to change.

Statement of the Problem

While Jonah crab has long been considered a bycatch of the lobster industry, in recent years there has been increasing targeted fishing pressure and growing market demand. The status of the Jonah crab fishery in federal or state waters is relatively unknown. In the absence of a comprehensive management plan and stock assessment, harvest of Jonah crab may compromise the sustainability of the resource.

Description of the Cancer Crab Resource

Status of the Stocks

The status of the Jonah crab fishery in federal or state waters is relatively unknown. There is no range wide stock assessment for Jonah crab. A stock assessment conducted by the Rhode Island Department of Environmental Management found fishing mortality for Cancer crabs in state waters has recently exceeded the F_{msy} level, but biomass was above the B_{msy} level, so was not considered overfished at this time (RIDEM 2012). However, the fishery primarily occurs in federal waters.

Massachusetts, Maine, and New Hampshire conduct inshore state water trawl surveys which are primarily focused on finch and encounter Cancer crab species infrequently, therefore providing only minimal data. NOAA Fisheries conducts a trawl survey in federal waters which collects data on Cancer crab abundance and distribution, distinguished by species; however, this data has not yet been analyzed.

Description of Management

Management for the Jonah crab fishery varies from state-to-state. (Table 1) There is currently no maximum landing size restriction in any state and all states require some form of commercial catch reporting. Commercial licensing in some states is linked to the lobster fishery. While commercial harvest reporting is required by all states, misidentification of Jonah crab with rock crab is a known problem. In federal waters, commercial harvest of Jonah crab is unregulated.

Recreational harvest is allowed in all states. Massachusetts, New York, New Jersey, and Maryland have put in place varying recreational harvest limits, while the remaining states do not have any recreational harvest limits. Limits on recreational traps and recreational licensing requirements also varies by state. In federal waters, recreational harvest of Jonah crab is unregulated.

Description of the Fishery

Jonah crabs are taken in pots and traps and have long been taken as bycatch in the lobster fishery. The value of Jonah crab has increased recently, resulting in higher landings. Landings fluctuated between approximately 2 and 3 million pounds throughout the 1990’s. Beginning in the early 2000’s landings increased to over 6 million pound by 2005 and then nearly doubled again to 11.5 million pounds in 2012. Landings in 2012 predominately came from Massachusetts (65%) followed by Rhode Island (28%) and Maine (5%). Connecticut, New York, New Jersey, and Maryland accounted for a combined 1% of landings. In 2012 the fishery was estimated to be worth over \$8 million.

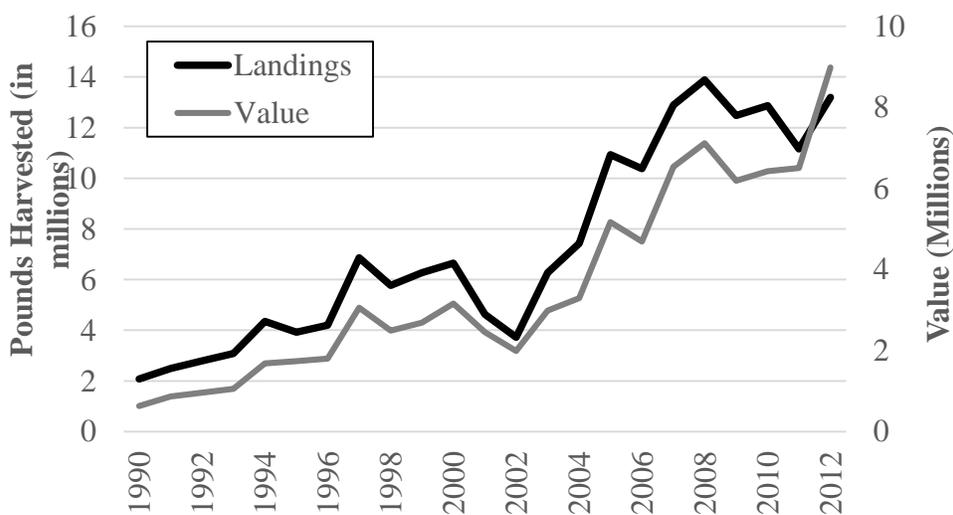


Figure 1. Cancer crab (Jonah and rock crab, combined) landings and value for the Atlantic coast, 1990 – 2012. Source: personal communication NMFS Fisheries Statistics Division, 2014

Landings of rock crabs have fluctuated between approximately 1 and 5 million pounds since 1990. Landings peaked at 4.8 million pounds in 2008, but have continued to decline since then. Landings in 2012 were 1.7 million pounds and estimated to be worth approximately \$830,000.

Since 2002, the cancer crab fishery has increased from an ex-vessel value of 2 million dollars to just under 9 million dollars. Jonah Crab claws are relatively large and can be an inexpensive substitute for stone crab claws. With only a handful of processors specializing in this fishery, the quality of Jonah and rock crabmeat is very consistent. While the ex-vessel prices for other popular crabs such as Dungeness have soared, fishermen have seen their boat prices for Jonah crab rise only modestly from about \$0.50 per pound to \$0.70 per pound from 2009 to 2012 and rock crab prices has remained close to \$0.45 per pound since 2006 (*ACCSP Data Warehouse, September 2013*). That's largely because there is only a small live market for Jonah crab and only a handful of plants process Jonah crabmeat and claws, limiting price competition for the catch. Prices of Jonah crab products, on the other hand have increased as more buyers look for an alternative to much higher priced blue and Dungeness crabmeat. With refreshed Dungeness meat now selling for \$18/lb., the price of Jonah crabmeat has settled in at about \$13-\$15 per pound, depending upon customer species.

Issues for Public Comment

Public comment is sought on a series of issues being considered for inclusion in the FMP. The issues listed below are intended to focus the public comment and provide the Board with the necessary input to develop a FMP. The public is encouraged to submit comments on the issues listed below as well as other issues that may need to be addressed in the FMP.

ISSUE 1: CONSISTENT COASTWIDE MANAGEMENT OF A MIGRATORY STOCK

Background

Currently states manage their cancer crab fisheries independently of one another. The Commission is considering coordinating the management of the cancer crab resource. The Commission will determine if the management of cancer crab will be a part of the American Lobster Board or its own species board.

Management Questions

- Is consistent coastwide management needed for the cancer crab fishery?
- Should management of cancer crab be coordinated through the Commission?
- Are there regional differences in the fishery and/or in the cancer crab stock that need to be considered when implementing management measures?
- Should the Commission include management of rock crab with the management of Jonah crab?

Table 1. Commercial and Recreational Regulations

	Comm Trap Limit	Comm Trap Restrictions	Comm License Required	Comm Min Size	Comm Sex Restrictions	Comm Closed Seasons	Comm Harvest Limit	Rec License	Rec Harvest Limit	Rec Trap Limit
ME	Lobster Limit	Lobster Traps	Yes	None	None	Dec 30 - Apr 1 in rivers	200 pounds/day or 500 pounds/trip	No - hand harvest; Yes - traps	No	5 traps
NH	Lobster Limit (1,200)	Lobster Traps	Yes	None	None	No	No	Yes (if more than 12 taken)	No	No
MA	Lobster Limit	Lobster Traps	Yes	None	No egg bearers	Jan 1 0 Apr 30 in state waters	No	No - hand harvest; Yes - traps/SCUBA	25/day	10 traps
RI	No	No	Yes	None	No egg bearers	No	No	Yes	No	No
CT		Lobster Traps	Yes	3.5" to 5" (varies by hardness)	No egg bearers	Open Apr 1 - Dec 15	No	yes	No	10 traps per day
NY	No	Escape panel required	No	3" - 4.5" (varies by hardness)	No egg bearers	No	50/day	No	50/day	No
NJ	No	Biodegradable panel required	Yes	3" - 4.5" (varies by hardness)	No egg bearers	Yes	No	Yes	One bushel/day	yes
MD	No	Turtle BRD and escape panel required	No	3.5" to 5" (varies by hardness)	No female harvest at certain times	Open Apr 1 - Dec 15	25 bushels per vessel/day	No	3 bushels hard crabs; 2 dozen soft crabs	No
VA	No	No	No	None	No	No	No	No	No	No

**ISSUE 2:
WHAT ARE THE
APPROPRIATE
MANAGEMENT
OBJECTIVES FOR THE
CANCER CRAB FMP?**

Background

The Commission could considering the following management objectives for the FMP for cancer crabs and is seeking input on these or any others that may be raised.

- A. Provide a management plan that strives, to the extent practicable, to maintain coastwide consistency to implement measures, but allows the states limited flexibility to implement alternative strategies that accomplish the objectives of the FMP
- B. Define and foster a quality recreational fishery and an economically viable commercial fishery.
- C. Maximize cost effectiveness of current information gathering and prioritize state obligations in order to minimize costs of monitoring and management.
- D. Adopt a long-term management regime which minimizes or eliminates the need to make annual changes or modifications to management measures.

Management Questions

- What should be the objectives in managing cancer crab fisheries through the Commission?

**ISSUE 3:
WHAT ARE THE
APPROPRIATE
COMMERCIAL AND
RECREATIONAL
MANAGEMENT
MEASURES FOR THE
CANCER CRAB
FISHERY?**

Background

The Commission could consider different management approaches for the commercial cancer crab fishery. They could include: minimum size restrictions and restrictions to protect female Jonah crabs. Additionally, the Commission could consider action on the recreational fishery. Currently, commercial and recreational management measures vary by state.

In the absence of a minimum size restriction for Jonah crab and regulations to preserve the brood stock, the population is at risk of long-term unsustainability. A 5-inch minimum carapace width (CW) could maintain reproductive capacity in the fishery. From a market perspective the FIP found , processors are less likely to purchase crabs that are smaller than 5.25” CW, while dealers of live crab have indicated a minimum size of 5” is a marketable size. However, there are potential emerging markets for smaller crab, including for use as bait.

A 5” CW size restriction would also protect most female crabs from harvest, as very few females exceed this size. The protection

of female crabs was considered to be of utmost importance to the FIP Work Group, and recommends a zero tolerance protection for egg-bearing crabs.

Management Questions

- What level of management is appropriate for cancer crabs (e.g. basic, moderate, intense, etc...).
- Should requirement management be concurrent with monitoring requirements?
- Should the FMP require a 5” minimum carapace width (CW) for commercially caught Jonah crabs? Should there be a tolerance on the possession for enforcement? Should there be a minimum CW for rock crab, if so what size range? Should there be a tolerance on the possession for enforcement?
- Should the FMP prohibit commercial harvest of female cancer crabs? Should there be a tolerance on the possession for enforcement?
- Should there be a prohibition on the possession of egg-bearing females? Should there be a tolerance on the possession for enforcement?
- How should the recreationally fishery be managed?

ISSUE 4: HOW SHOULD THE CANCER CRAB FISHERY BE LICENSED?

Background

The FIP examined the Jonah crab and lobster fisheries in offshore federal waters and found extensive overlap, as licensed lobstermen presently harvest 98.3% of the Jonah crab landed from federal waters. Massachusetts, Maine, and New Hampshire also tie Jonah crab harvest to lobster licenses. The lobster fishery is managed under effort controls that address whale entanglement issues. By linking the harvest of cancer crab to the existing measures of lobster management plan, managers could potentially avoid increasing trap numbers, additional costs to states for plan development and enforcement, and determining resource allocation for the cancer crab fishery.

Management Questions

- Should the FMP require a license for the commercial harvest of cancer crab?
- For jurisdictions with a lobster fishery, should the FMP require a lobster license in order to commercially harvest cancer crabs or should the fishery be licensed separately?
- Should the directed fishery be limited to those vessels using lobster or traps authorized by the lobster management plan?

- Should harvest by trap fishing vessels that are using crab traps not bearing lobster trap tags be restricted?
- Should trip limits be established? If so, should the historic harvesters using vessels deploying lobster traps be given a more liberal trip limit than other gears?
- Should states require a recreational license to harvest cancer crab?
- Should harvest for bait purposes be included under a recreational or commercial license?
- Are there other licensing requirements that should be considered?

**ISSUE 5:
WHAT TYPES OF
DATA COLLECTION
SHOULD BE
PRIORTIZED TO
MANAGE THE
FISHERY?**

Background

Data collection for cancer crabs varies from state to state and survey to survey.

Management Questions

- What types of data collection programs should be initiated to monitor the commercial and recreational fishery?
- What types of fisheries independent data should be collected by the states to help increase understanding of stock status and biology of cancer crabs?
- Should fishermen be required to report harvest if used for bait purposes?

**ISSUE 6:
IS EMERGENCY
ACTION NEEDED TO
MANAGE THE
FISHERY IN THE
INTERIM?**

Background

The FIP recommended that the Commission take emergency action to implement management measures for Jonah crab based on increasing concern of the current and growing market for smaller female Jonah crabs. The FIP requested the Commission consider implementing an interim measure prohibiting the possession of female Jonah crab (with a 0.5-1% enforcement tolerance). Measures contained in a Jonah crab FMP could go into effect as early as 2016, at which point the long-term reproductive capacity might already be seriously compromised.

Management Questions

- Should emergency action be taken prior to the finalization of an FMP in order to address concerns of the harvest of small female cancer crabs?
- If emergency actions are implemented, what should they be?
- If emergency actions are implemented, when should they begin?

***ISSUE 7:
RECOMMENDATIONS
FOR FEDERAL
WATERS?***

Background

There are currently no regulations in federal waters (3-200 miles) for cancer crab fisheries.

Management Questions

- Should management in federal waters be consistent with state waters fisheries?
- What recommendations should the FMP make for federal waters harvest of Cancer crabs?

***OTHER
ISSUES***

The public may comment on other issues for consideration in the development of the Draft Fishery Management Plan for Cancer Crabs?

- What other issue(s) should be considered in the Draft Cancer Crab FMP?

Literature Cited

Fishery Improvement Project: Johan Crab Fishery Briefing for the Atlantic States Marine Fisheries Commission. April 21, 2014.

Rhode Island Department of Environmental Management, 2012. 2013 Management Plan for the Crustacean Fishery Sector.

National Marine Fisheries Service Office of Science and Technology. Domestic Fisheries Database: Annual Landings. Available at: <http://www.st.nmfs.gov/>



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmf.org

MEMORANDUM

July 29, 2014

To: American Lobster Management Board
From: American Lobster Technical Committee
Re: American Lobster Addendum XVII Evaluation

Summary

Based on the analysis presented, the required reduction by LCMA, with the exception of LCMA 6 (CT evaluation only), were either not achieved or were achieved mainly as a result of declining stock abundance / effort.

Background

Per Addendum XVII all Lobster Conservation Management Areas (LCMAs) within Southern New England (SNE) were required to reduce exploitation by 10% in order to address rebuilding. The reference base years for evaluating the reduction are 2007 – 2009. The Technical Committee (TC) previously reviewed proposals submitted by the LMCAs to ensure they met the criteria established by the American Lobster Management Board (Board) within Addendum XVII. The TC met via conference call on July 10th to evaluate if the approved measures have met the 10% reduction requirement. The management measures approved by the Board are as follows:

LCMA 2

- Mandatory V-notching and immediately release of legal sized egg-bearing female lobsters effective June 1, 2012
- V notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The v notch should be made by means of a sharp blade bladed instrument, at least ¼ inch and not greater than a ½ inch in depth and tapering to a sharp point.

LCMA 3

- Minimum gauge increases to 3 ¹⁷/₃₂ inches effective January 1, 2013

LCMA 4

- Mandatory V-notching and immediately release of egg-bearing female lobsters effective July 1, 2012
- V notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The v notch should be made by means of a sharp blade bladed instrument, at least ¼ inch and not greater than a ½ inch in depth and tapering to a sharp point.
- A season closure to the landing of lobsters from February 1st through March 31st.

- During the February 1st to March 31st closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season.

LCMA 5

- Mandatory V-notching and immediately release of egg-bearing female lobsters effective January 1, 2013
- V notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The v notch should be made by means of a sharp blade bladed instrument, at least ¼ inch and not greater than a ½ inch in depth and tapering to a sharp point.
- A season closure to the landing of lobsters from February 1st through March 31st.
- During the February 1st to March 31st closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season.

LCMA 6

- A seasonal closure from September 8th to November 28th
- A two week gear removal and two week gear replacement grace period during the closed season, and no lobster traps can be baited more than 1 week prior to season reopening.

Evaluation

It is not possible for the TC to calculate exploitation to determine if there was a 10% reduction without running the full assessment model for SNE. The TC also has no means to calculate LCMA level estimates of abundance and exploitation for all of the LCMA's. This would require fishery independent relative abundance indices and fishery dependent landings data collected on the same spatial scale (by LCMA), and this currently does not exist for all SNE LCMA's. As such, the TC used nominal landings as a proxy for exploitation. The TC notes that there are many issues with using landings as a proxy for exploitation. The evaluation was done on a state-by-state basis and then the respective states were grouped to evaluate the overall effect by LCMA.

Massachusetts

- Implemented the mandatory V-notching and immediately release of legal sized egg-bearing female lobsters effective June 1, 2012 in Area 2. Implemented a minimum gauge increases to 3 ¹⁷/₃₂ inches in LMA 3 effective January 1, 2013. The Massachusetts report was based only on the state waters of Area 2, as there is no information or sampling conducted in Area 3.
- In comparison to the reference years, landings in 2013 declined by 12.4%. To calculate relative exploitation, catch in pounds was converted to catch in numbers. Based on that analysis, there was a 77% decline in exploitation.
- There has been a dramatic decline in fishing effort (trap hauls) and active permits since the late 1990's. Although the current active fishers are reporting higher catches, there are fewer people participating in the fishery.
- The ventless trap and trawl surveys have seen a dramatic decline through 2007 and then have been low and stable since 2008.

- Successful V-notching programs rely on high encounter rates of egg-bearing females. In LCMA 2 the encounter rate of egg-bearing females was not high enough to ensure substantial v-notching rates due to decreased effort observed in this fishery.

TC Consensus: Massachusetts did meet 10% reduction based on landings, however it is very likely that this was not due to implementation of the V-notching program, but rather due to substantial decline in fishing effort. The V-notching program in LCMA 2 is likely not the best management tool for this area because it relies on fairly high levels of fishing effort to encounter and notch a substantial number of egg-bearing females. Managing effort, including latent effort, would be a better approach.

Rhode Island

- Implemented the mandatory V-notching and immediately release of legal sized egg-bearing female lobsters effective June 1, 2012 in Area 2. Implemented a minimum gauge increases to 3 ¹⁷/₃₂ inches effective January 1, 2013 in Area 3. The Rhode Island report was based only on the state waters of Area 2, as there is no information or sampling conducted in Area 3. However only 22% of catch came from Area 2 in 2012.
- Relative to the reference years, landings have declined by 25%.
- Most of the effort focused in offshore waters. There will not be sea sampling in LCMA 3 in the future.
- There has been a 30-48% reduction in the ventless trap abundance index, a 95% reduction in the fall trawl survey index, and 75% reduction in spring trawl survey abundance index relative to reference years.
- V-notching rates during the reference period were 19.39% and in 2013 had decreased to 0.2%.

TC Consensus: Rhode Island met 10% reduction requirement, based on landings. The TC finds the reduction was not due to the implementation of the V-notching program in LCMA 2, but due to decline in effort. The TC was unable to evaluate the effect of the gauge increase in LCMA 3.

Connecticut

- Implemented a seasonal closure from September 8th to November 28th in LCMA 6 fishery
- Landings in 2013 were 68% lower than 2009. The seasonal closure reduced landings, but overall landings have also dropped.
- Effects of the closures were likely seen in 2012 as fishermen knew the closure was imminent. Additionally, many of the fishermen didn't put their gear back in after the closures, which further reduced landings.
- Average license numbers dropped from 239 (average 2007-2009) to 161 (2013). The number of active fished traps decreased from 67,000 to 30,000 between 2009 and 2012.
- When you have a declining stock, a seasonal closure may be an effective way to implement a reduction in landings while reducing active and possibly latent effort.
- CT fishermen have been losing market share over time. With the seasonal closure, the fishery was compressed and this could have marginal benefits in gaining back market share.

TC Consensus: Connecticut achieved a greater than 10% reduction in landings, most of which could be attributed to implementation of the seasonal closure but also due to decreased market demand and abundance.

New York

- Evaluation unavailable due to issues with landings data.

New Jersey

- Implemented a minimum gauge increases to $3\frac{17}{32}$ inches effective January 1, 2013 in LCMA 3. Implemented a seasonal closure from February 1 – March 31 and V-notching program in LCMAs 4 and 5.
- In LCMA 3, a 42% reduction in catch was achieved, but likely due to the loss of one of the three main fishing boats.
- In LCMA 4, landings increased by 3.26% in comparison to the reference base years.
- In LCMA 5, a 33% reduction was achieved.
- Effort in LCMA 3 and 5 has decreased over time, while effort in LCMA 4 has remained relatively constant.

TC Consensus: The required reduction was achieved in LCMAs 3 and 5, but was not achieved in LCMA 4. Implementation of the seasonal closure and V-notching program had mixed success. In LCMA 3, the reduction was likely due to loss of one of the three main LCMA 3 fishermen. For LCMAs 4 and 5, the TC recommends that the LCMT should review the seasonal closure timing. For example, the TC notes that the original proposal in LCMA 4 was a seasonal closure from April 29 – May 31, when the average 2007-2009 landings were 10% of the annual landings.

Maryland

- Implemented V-notching and closed season (February 1st through March 31st) in LCMA 5.
- Overall landings have increased since reference period. February and March account for less than 1% of landings (average 2007-2013).
- CPUE and days fished have gone up since 2001, but there are a minimal number of participants (less than 7,000 traps fished).

TC Consensus: MD did not achieve the 10% reduction. Landings have actually increased since the reference period. However, Maryland has less than 1% of the coastwide lobster landings and this increase had a very limited impact on the SNE stock.

LCMA Evaluation

- LCMA 2 evaluation was based on information from Massachusetts and Rhode Island. Based on the analysis presented, the required reduction was met, but likely not due to the implemented management measures.
- LCMA 3 evaluation did not include information from Massachusetts. Based on the Rhode Island and New Jersey analysis presented, the required reductions were achieved, but likely not due to the implemented management measures.

- LCMA 4 evaluation did not include information from New York. Based on the New Jersey analysis presented, the required reductions were not achieved.
- LCMA 5 evaluation was based on information from New Jersey and Maryland. Based on the analysis presented the required reductions were not achieved.
- LCMA 6 evaluation did not include information from New York. Based the Connecticut analysis presented, the required reduction was met and much of the reduction could be attributed to the management measures.

M14-51

Area 2 and Outer Cape Area Limited Access Program and Trap Transfer Program Final Federal Rule
Summary of New Regulations
Publication Date: Monday, April 7

Area 2 and Outer Cape Area Limited Access Program

The final rule adopts criteria for qualifying Federal lobster permits for Area 2 and the Outer Cape Area and for allocating traps to those qualified permits. The qualification and allocation criteria are the same as those adopted by the states as set forth in the Commission's Lobster Plan.

Monday, April 7: Rule publishes in Federal Register. All Federal lobster permit holders sent a one-page bulletin to let them know that within 30 days NMFS will be accepting applications for Area 2 and Outer Cape Area eligibility.

End of April: NMFS will send each Federal lobster permit holder a letter indicating whether or not we were able to make a preliminary determination on their eligibility. Those who "pre-qualify" only have to sign the form and send it in. Others will need to provide documents that support the eligibility criteria.

About May 7 - November 3: Application submission period.

May 1, 2014 – April 30, 2015: 2014 Federal fishing year. Any Federal lobster permit holder can elect to fish in Area 2 or the Outer Cape Area through the end of the fishing year while we process the applications.

May 1, 2015: Those who qualify for Area 2 and the Outer Cape Area may fish in those areas with their approved allocations, adjusted for any traps transferred during the first year of transferability in 2014. Those who don't qualify will not be able to elect those areas beginning May 1, 2015.

Trap Transfer Program

The final rule also adopts the Trap Transfer Program to allow Federal lobster permit holders with qualified allocations for Area 2, Offshore Area 3, and the Outer Cape Area to transfer traps with other Federal lobster permit holders.

Trap Transfer Time Period: The rule does not specify the dates for transferability for 2014, although NMFS plans to implement it during this year, once the database is ready and that the state and federal timeframe matches up. Revised allocations based on trap transfers become effective May 1, 2015.

June 2014: After consulting with the states and the Commission, NMFS will publish a Federal Register notice that declares the dates for the Trap Transfer Program.

Program Elements

The final rule adopts the following measures:

Non-qualifier Buy-in- If a Federal lobster permit holder doesn't qualify for Area 2, Area 3, or the Outer Cape Area, he/she may buy a partial trap allocation for those areas from a qualified permit holder.

Multi-area Trap History – those who purchase traps with history in multiple areas may retain that history.

Allocation Alignment – if a dual permit holder's state and Federal trap allocations for an area don't match, the permit holder must select the lowest of the allocations in order to transfer traps.

Transfer Tax – a 10-percent transfer tax will be assessed on all partial allocation transfers. Full business transfers (sale of the entire permit) will not have a transfer tax.

10-trap increments – trap transfers may be done in 10-trap increments.

Area 1 and Trap Transferability – permit holders with a transferrable allocation for Area 2, 3, or the Outer Cape who also have Area 1 eligibility, will lose their Area 1 eligibility if they sell part of their transferrable trap allocation. They can buy Area 2, 3, or Outer Cape traps and maintain their Area 1 eligibility.

Director's Appeal – allows state fishery directors to appeal on behalf of those who are not qualified under the Federal program but qualify under their state program.

Clerical Appeal – those who aren't qualified for the Outer Cape or Area 2 may appeal if they believe NMFS made a clerical error in its determination.

Military/Medical Hardship Appeal – Area 2 only. Those with proven medical or military issues that kept them from fishing during the qualifying years (2001-2003) may use either 1999 or 2000 as their qualifying year.

Outer Cape Area Closure – the Outer Cape Area will be closed to lobster trap fishing from January 15-March 15 each year.

have spent building out channel 46 facilities into its current service.

DATES: This rule is effective May 7, 2014.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Adrienne.Denysyk@fcc.gov, Media Bureau, (202) 418–2651.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 14–1, adopted March 19, 2014, and released March 19, 2014. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (<http://fjallfoss.fcc.gov/ecfs/>). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, <http://www.bcpweb.com>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,
Chief, Video Division, Media Bureau.

Final rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Indiana is amended by removing channel 46 and adding channel 48 at South Bend.

[FR Doc. 2014–07713 Filed 4–4–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 080219213–4259–02]

RIN 0648–AT31

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: With this final rule, NMFS implements new Federal American lobster regulations that will control lobster trap fishing effort by limiting access into the lobster trap fishery in two Lobster Conservation Management Areas. Additionally, this action will implement an individual transferable trap program in three Lobster Conservation Management Areas. The trap transfer program will allow Federal lobster permit holders to buy and sell all or part of a permit's trap allocation, subject to certain restrictions. The limited entry and trap transfer programs respond to recommendations for Federal action in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster.

DATES: Effective May 7, 2014.

Applicability Dates: Applications for Area 2 and the Outer Cape Area lobster trap fishery eligibility are due November 3, 2014. Eligibility decisions will become effective no earlier than the start of the 2015 Federal lobster fishing year, which begins May 1, 2015. NMFS will file a separate notice indicating when the Trap Transfer Program will begin. Implementation of the Trap Transfer

Program at § 697.27 is contingent upon the completion of a database currently under development by the Atlantic States Marine Fisheries Commission. Once the database is complete, NMFS will notify the public and inform Federal lobster permit holders how to enroll into the program. Although the timing may allow permit holders to buy and sell transferable traps during the 2014 calendar year, those transfers will become effective no earlier than the start of the 2015 Federal lobster fishing year, which begins May 1, 2015.

ADDRESSES: Copies of the American Lobster Final Environmental Impact Statement (FEIS), including the Regulatory Impact Review (RIR) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this regulatory action, are available upon written request to Peter Burns, Fishery Policy Analyst, Sustainable Fisheries Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281–9144. The documents are also available online at <http://www.nero.noaa.gov/sfd/lobster>.

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to the mailing address listed above and by email to OIRA_Submission@omb.eop.gov, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Policy Analyst, phone (978) 281–9144.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These regulations modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*), and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission), and (2) consistent with the national standards

in section 301 of the Magnuson-Stevens Act.

Background

The American lobster resource and fishery is managed by the states and Federal Government within the framework of the Commission. The role of the Commission is to facilitate cooperative management of interjurisdictional fish stocks, such as American lobster. The Commission does this by creating an ISFMP for each managed species or species complex. These plans set forth the management strategy for the fishery and are based upon the best available information from the scientists, managers, and industry. The plans are created and adopted at the Commission Management Board level—e.g., the Commission's Lobster Board created the Commission's Lobster Plan—and provide recommendations to the states and Federal Government that, in theory, allow all jurisdictions to independently respond to fishery conditions in a unified, coordinated way. NMFS is not a member of the Commission, although it is a voting member of the Commission's species management boards. The Atlantic Coastal Act, however, requires the Federal Government to support the Commission's management efforts. In the lobster fishery, NMFS has historically satisfied this legal mandate by following the Commission's Lobster Board recommendations to the extent possible and appropriate.

The Commission has recommended that trap fishery access be limited in all Lobster Conservation Management Areas (Areas). The recommendations are based in large part on Commission stock assessments that find high lobster fishing effort as a potential threat to the lobster stocks. Each time the Commission limits access to an area, it recommends that NMFS similarly restrict access to the Federal portion of the area. NMFS received its first limited access recommendation in August 1999, when the Commission limited access to Areas 3, 4, and 5 in Addendum I. NMFS received its most recent limited access recommendation in November 2009, when the Commission limited access to Area 1 in Addendum XV. NMFS has already completed rules that limit access to Areas 1, 3, 4, and 5. This final rule responds to the Commission's limited access recommendations for Area 2 and the Outer Cape Area. It also responds to the Commission's recommendation to implement a Trap Transfer Program in Areas 2, 3, and the Outer Cape Area. The specific Commission recommendations, and

NMFS' response to those recommendations, are the subject of this final rule.

NMFS published a proposed rule for this action on June 12, 2013 (78 FR 35217). We received public comments from seven different entities in response to the proposed rule, and all the comments, generally, supported the measures in the proposed rule. In addition to the comments submitted in response to the proposed rule, two entities submitted comments in response to another Federal lobster action outside of the proposed rule comment period, but because some of those comments are relevant to trap transferability and other measures under consideration in this action, NMFS has considered them in the preparation of this final rule. Overall, NMFS received 17 comments submitted by 8 different commenters. All comments and responses are set forth later in this final rule (see Comments and Responses).

This final rule implements the following measures.

1. Outer Cape Area Limited Access Program

NMFS will limit access into the Outer Cape Area in a manner consistent with the Commission's recommendations. NMFS will qualify individuals for access into the Outer Cape Area based upon verifiable landings of lobster caught by traps from the Outer Cape Area in any one year from 1999–2001.

NMFS will also allocate Outer Cape Area traps according to a Commission regression analysis formula that calculates effective trap fishing effort based upon verifiable landings of lobster caught by traps from the Outer Cape Area in any one year from 2000–2002. The use of the regression formula removes the possibility that someone will benefit from simply reporting more traps than were actually fished.

NMFS will accept two types of appeals to its Outer Cape Area Limited Access Program. The first appeal is a Clerical Appeal. The second is a Director's Appeal.

The Clerical Appeal will allow NMFS to correct clerical and mathematical errors that sometimes inadvertently occur when applications are processed. It is not an appeal on the merits, and will involve no analysis of the decision maker's judgment. Accordingly, the appeal will not involve excessive agency resources to process. Requests for Clerical Appeals must be made by the applicant directly to NMFS.

The Director's Appeal will allow states to petition NMFS for comparable trap allocations on behalf of Outer Cape Area applicants denied by NMFS. The

appeal will only be available to Outer Cape Area applicants for whom a state has already granted access. The state will be required to explain how NMFS' approval of the appeal would advance the interests of the Commission's Lobster Plan. The rationale for this appeal is grounded in the desire to remedy regulatory disconnects. NMFS knows that states have already made multiple separate decisions on qualification, allocation, and at least in some instances, trap transfers for the state portion of dually permitted fishers. The Director's Appeal will help prevent the potential damage that such a mismatch between state and Federal data could create. Requests for Director's Appeals must be made by the director of a state fishery management agency to NMFS. Requests for Director's Appeals will not be accepted directly from applicants.

The final rule also adopts the Commission's 2-month winter trap haul-out recommendation. The 2-month closure will take place January 15 through March 15. The 2-month closure will require the removal of all traps from Outer Cape Area waters from January 15 through March 15. The 2-month closure date aligns with Massachusetts' 2-month closure dates.

2. Area 2 Limited Access Program

NMFS will limit access into Area 2 in a manner consistent with the Commission's recommendations. NMFS will qualify individuals for access into Area 2 based upon verifiable landings of lobster caught by traps from Area 2 from 2001–2003. NMFS will also allocate traps according to a Commission formula that calculates effective trap fishing effort based upon landings during 2001, 2002, and 2003.

NMFS will also restrict allowable landings to those from ports in states that are either in or adjacent to Area 2, i.e., Massachusetts, Rhode Island, Connecticut, and New York. The Commission, in Addendum VII, found that the location of Area 2 prevented fishers from far away ports from actively fishing in Area 2. NMFS agrees with the Commission's conclusion.

For the Area 2 Limited Access Program only, NMFS will also adopt the Commission's recommended Hardship Appeal. Specifically, if an Area 2 fisher had been incapable of fishing during the 2001–2003 fishing years due to documented medical issues or military service, NMFS will allow that individual to appeal the qualification decision on hardship grounds, allowing the individual to use landings from 1999 and 2000 as the basis for qualification. NMFS will also allow a

Director's Appeal and a Clerical Appeal, as described above.

3. Timeline for Outer Cape and Area 2 Limited Access Program

Federal lobster permit holders may submit applications for Area 2 and Outer Cape Area eligibility during a 6-month period beginning May 7, 2014, and ending November 3, 2014. NMFS will review the applications and notify applicants of their eligibility and trap allocations during the 2014 Federal fishing year, and those decisions will take effect at the start of the 2015 Federal fishing year, on May 1, 2015. All Federal lobster permit holders may elect Area 2 and/or the Outer Cape Area on their 2014 Federal lobster permit and fish with traps in these areas during the 2014 Federal fishing year, which begins May 1, 2014, and ends April 30, 2015. However, starting May 1, 2015, only those with qualified permits may designate and fish in Area 2 and/or the Outer Cape Area.

This final rule requires that all qualification applications for the Area 2 and Outer Cape Area limited access program must be submitted by November 3, 2014. Late applications will not be considered.

4. Individual Transferable Trap Program (ITT, Trap Transfer Program)

NMFS will implement an optional Trap Transfer Program for Areas 2, 3, and the Outer Cape Area in a manner consistent with the Commission's recommendations. The Program will allow qualified permit holders to sell portions of their trap allocation to other Federal lobster permit holders. Buyers can purchase traps up to the area's trap cap, with 10 percent of the transferred allocation debited and retired from the fishery as a conservation tax. The Trap Transfer Program affords buyers and sellers the flexibility opportunity to scale their businesses to optimum efficiency.

Under the Trap Transfer Program, NMFS will allow a dual state and Federal permit holder to purchase Federal trap allocation from any other dual Federal lobster permit holder. NMFS will require that the transferring parties' state/Federal allocation be synchronized at the end of the transaction. A dual permit holder can purchase a Federal allocation from an individual in another state, as well as an equal state-only allocation from a third individual in his or her own state for the purpose of matching the purchaser's state and Federal trap allocations. Any participants holding both state and Federal lobster permits ("dual permit holders") with different trap allocations

must agree to abide by the lower of the two trap allocations to take part in the program. In this way, permit holders will not be obliged to forfeit their higher trap allocation, but they will not be able to participate in the Trap Transfer Program if they choose to retain it. This will synchronize the dual permit holder's allocations at the initial opt-in time, thus greatly facilitating the tracking of the transferred traps. As trap allocations are transferred, a centralized Trap Transfer Database accessible by all jurisdictions will keep track of trap transfers, thus ensuring that all jurisdictions are operating with the same numbers at the beginning and end of every trap transfer period. The centralized Trap Transfer Database is created by the Atlantic Coastal Cooperative Statistics Program (ACCSP) and is a critical, foundational prerequisite to the Trap Transfer Program.

The timeline to submit an application for the Trap Transfer Program for its first year will be announced in a separate **Federal Register** notice once NMFS is assured that the Commission's Trap Tag Database is fully functional.

Comments and Responses

NMFS received 17 comments relevant to this action. During the proposed rule comment period from June 12, 2013, through July 29, 2013, NMFS received multiple comments from seven persons or entities, which are broken down as follows: One from a Massachusetts lobster fisher; one from a Rhode Island lobster fisher; one from a New Jersey lobster fisher; one from the Rhode Island Lobstermen's Association; one from the Atlantic Offshore Lobstermen's Association; one from the Maine Lobstermen's Association; and one from the Atlantic States Marine Fisheries Commission. All seven of these commenters supported the proposed rule. In addition to the comments received in direct response to the proposed rule, NMFS received a second comment letter from the Commission and a comment from a Board member who is the Director of the Connecticut Department of Environmental Protection. Both submissions were sent in response to a separate NMFS lobster action and received after the proposed rule comment period had closed. However, because the proposed rule comment period did not coincide with any of the Commission's regularly scheduled Lobster Management Board meetings, the Board was not able to meet as a group and discuss the proposed rule until after the comment period ended. With respect to this timing, and given the relevance of these

comments to the final rule measures, the comments were considered in the development of this action, and NMFS' responses are provided in this section. The specific comments and responses are as follows.

Comment 1: Two industry associations, the Commission, and one individual lobster fisher commented in support of a 10-percent allocation tax on full business transfers. A full business transfer refers to the transfer of a Federal lobster fishing permit and all of its trap allocation to another vessel. The Commission suggested that the transfer tax on full business transfers could result in fewer vertical lines in the water, which could benefit right whales, as well as assist in the rebuilding of the Southern New England (SNE) lobster stock.

Response: NMFS will not require a 10-percent trap allocation reduction on full business transfers at this time. The Commission's Lobster Plan is presently not designed to accommodate such a measure. The measure presupposes that the transferring lobster permit holder will have an allocation to debit by 10 percent. While that is the case in most lobster management areas (those for which qualified permit holders are allocated a number of traps based on their fishing history), it is not true for Area 1, which is by far the largest lobster area both in terms of participants and business transfers conducted. Area 1 has only a trap cap, and anyone with a Federal lobster permit that qualified for Area 1 may fish up to 800 traps in Area 1; therefore, there is no trap allocation to debit. NMFS' proposed rule specifically asked for comment on this issue, and neither Maine nor the Commission asked NMFS to convert the Area 1 trap cap to an individual allocation. Nor did Maine indicate that it would change its trap cap in state waters to an individual trap allocation, which would be necessary to ensure consistency and prevent regulatory disconnects between Maine and NMFS. See response to Comment 5 for additional discussion of this issue.

Comment 2: One lobster fisher commented that failure to implement a full business transfer tax might lead to manipulation of a transfer to avoid the tax. The individual suggested taxing full business transfers only in the areas where transferability occurred.

Response: NMFS disagrees. Lobster permits are not area specific. Federal permit holders can choose to fish in any or all areas for which they are qualified. Permit holders change designations year-to-year; e.g., a permit holder might designate Areas 2 and 3 one year, Area 1 the next year, and non-trap (mobile

gear) fishing the third. This ability to choose multiple areas and change them year-to-year highlights the interconnectedness of the areas and why management measures should not be considered in the vacuum of a single area. Limiting permit holders to a single area—in this instance, to separate out Area 1 fishers so that a transfer tax can occur in other areas—might simplify management and reduce opportunities to manipulate the system, but it would also restrict lobster business flexibility. On balance, NMFS has determined that the potential benefits of such a measure do not outweigh the cost in reduced flexibility.

Comment 3: One lobster fisher and one industry association commented that transfer taxes, such as a 10-percent tax on full business transfers, were a useful tool to prevent the activation of latent effort. A different association and different lobster fisher, however, suggested that past trap cuts and the future Addendum XVIII trap cuts created a relatively lean industry such that a significant activation of latent effort was unlikely.

Response: NMFS does not expect this final rule to increase effort and, therefore, a tax on full business transfers is not necessary to prevent the activation of latent effort. Further, existing trap caps and the 10-percent trap transfer tax provide additional assurance that effort will not increase, as does the Commission's Addendum XVIII trap cuts that the states have implemented and which NMFS proposed (see Advanced Notice of Proposed Rulemaking (78 FR 51131, August 20, 2013)). NMFS discussed the issue of latent trap activation and trap transferability in detail in its proposed rule responses to Comments 7, 13, and 14 (78 FR 35217, June 12, 2013) and those responses remain relevant.

Comment 4: Two people commented in opposition to taxing full business transfers. One of the individuals stated that an owner should be able to transfer a permit in and out of Confirmation of Permit History and among vessels owned by the person without the allocation being taxed. The other individual commented that the taxing of full business transfers could have unintended consequences insofar as an operative definition of "business" is unknown and might be interpreted to encompass transfers that industry would not want covered, such adding immediate family members as co-owners or incorporating the business.

Response: This final rule does not tax full business transfers.

Comment 5: One association supported NMFS' proposed Trap

Transfer Program, but expressed concern that Program participants from Area 1 would have to forfeit their Area 1 permits. The association suggested that Area 1 permit holders be excluded from implementation of this initial phase of the Trap Transfer Program, but that NMFS allow for future change to the rule in the event that Area 1 adopts permit-based allocations instead of the current trap cap.

Response: This final rule implements the Trap Transfer Program as proposed. Federal lobster permits are not assigned specific fishing areas; fishers with permits can fish with traps in any area for which they have qualified, or fish with non-trap gear anywhere in the EEZ. As such, there is no such thing as a separate Federal "Area 1 permit." Further, the final rule does not automatically disqualify Area 1 participants upon entry into the Trap Transfer Program. Permit holders can purchase allocation and remain qualified for Area 1 and many may choose to do so (e.g., Area 1 individuals with a small Area 3 allocation may seek additional Area 3 allocation in order to designate Areas 1 and 3 on their license without the Most Restrictive Rule making such a designation economically unfeasible). Area 1 qualifiers would, however, forfeit their Area 1 eligibility if they choose to sell traps. As discussed in the response to Comment 1, there is presently no way to debit Area 1 traps and prevent an expansion of fishing effort other than to altogether restrict that person from fishing in Area 1 in such a circumstance. On balance, NMFS asserts the Program benefits to Area 1 trap buyers outweigh the negatives to Area 1 trap sellers. Selling traps is optional and may, in some circumstances, represent the best course of action for an Area 1 business. The rule allows Area 1 qualifiers to weigh the consequences, analyze what is best for them, and act accordingly.

Comment 6: One business association and one lobster fisher opposed the proposed rule's treatment of multi-area trap history, commenting that transferred allocation should retain its history and that trap transfer recipients should be allowed to fish in any area for which that trap allocation qualified. A different association supported the proposed rule, commenting that the recipient of allocation with multi-area trap history should be required to choose a single area, but that the allocation's multi-area history be retained in the lobster database. The Commission wrote in favor of allowing those who purchase traps with multi-area history to fish the traps in all the areas for which they are qualified.

Response: This final rule allows recipients of trap allocations with multi-area history to retain and use that trap history to fish in multiple areas. This is a change from the proposed rule, which proposed that transfer recipients of multi-area allocation had to forever assign a single area to that allocation. The change provides lobster businesses with greater flexibility to potentially fish in multiple areas. The proposed version followed Commission Addendum XII, which recommended paring down a multi-area trap allocation to a single area. Addendum XII's recommendation was predicated on a perceived need to keep things simple for the Trap Tag Database. Since that time, however, the ACCSP's Lobster Trap Transfer Database subcommittee indicated that it can develop a database that can track multi-area trap allocation history. With that new development, the Commission rescinded its Addendum XII recommendation on August 6, 2013, when it approved Addendum XXI. Addendum XXI incorporates into the Lobster Plan a provision to allow the declaration of multi-area history for transferred traps. To be compatible with Addendum XXI, the final rule withdraws this proposed requirement and retains the status quo; i.e., trap fishers can fish traps in all the areas for which the trap has qualified.

Comment 7: Commenters universally supported the need for a centralized database that can keep track of all permit allocations and transfers. These commenters generally indicated that the database needs to be fully functional and tested before transferability can begin. One association went so far as to state that transferability cannot be expected to progress without it.

Response: NMFS agrees and has repeatedly stated at Commission Lobster Board meetings that a fully developed and properly functioning trap allocation database is a necessary prerequisite to any trap transfer program.

Comment 8: One lobster fisher commented that, although the database needs to be fully functioning prior to the start of a trap transfer program, the database should not be allowed to hold up the implementation of trap transferability and that NMFS be forceful in making sure the database is completed and tested on time.

Response: NMFS agrees that the database must be fully functional prior to the start of the Trap Transfer Program and understands that the industry wants the Trap Transfer Program in place as soon as possible.

NMFS will begin the qualification and allocation process for Federal lobster permits in Area 2 and the Outer Cape

Area. The final rule also sets forth the Trap Transfer Program. When the completion and release date of the database is known, NMFS will file a subsequent notice that will establish the timeline and effective dates for the Trap Transfer Program.

Comment 9: One lobster fisher commented that the Addendum XVIII trap cuts will potentially be devastating to industry and that they need the Trap Transfer Program to mitigate the trap cut impacts.

Response: This final rule establishes the Trap Transfer Program; however, the effective date for this program has been postponed pending the completion of the Trap Transfer Database. The proposed trap cuts are the subject of a separate rulemaking action, and NMFS intends to coordinate the timing of the Trap Transfer Program to allow fishermen to utilize it as a means of mitigating the potential economic effects of the proposed trap cuts. NMFS has no plans to implement the trap cuts prior to full implementation of the Trap Transfer Program.

Comment 10: Commenters universally supported the Trap Transfer Program and urged that it be implemented as soon as possible.

Response: NMFS agrees and intends to implement the Trap Transfer Program as soon as it is reasonable and practicable.

Comment 11: One association commented that trap cuts should precede transferability so that “inactive traps don’t get reactivated.”

Response: One potential benefit to having trap cuts precede transferability is that the trap cuts would remove effort—including potentially latent effort—before it could be transferred. However, NMFS does not expect the activation of latent effort to be a significant issue in this matter (see response to Comment 3). Given that latent effort is not expected to be significant, NMFS is implementing the Trap Transfer Program in this action; any trap reductions will be implemented through a separate rulemaking.

Comment 12: One association said that trap cuts should happen after transferability; a different commenter offered that cutting traps during transferability was also a viable option.

Response: NMFS is establishing the Trap Transfer Program through this action, to be effective as soon as practicable. Under a separate rulemaking action, NMFS will analyze various options for the implementation of the trap cuts in consideration of the Trap Transfer Program.

Comment 13: A number of commenters suggested that NMFS extend the trap tag expiration date and delay the issuance of trap tags beyond the new fishing year so that new trap allocations, trap cuts, and the next trap tag cycle can become linked.

Response: NMFS disagrees, and this final rule takes no steps to extend the trap tag expiration date or to delay the issuance of trap tags. Variables such as the trap tag ordering dates (February for Federal permit holders, December for Massachusetts, and other months for other states) and differing start dates for the fishing year (May 1 for Federal permit holders, January 1 or July 1 for the states) illustrate the tremendous logistical challenge that exists to begin a new program in a coordinated fashion. However, NMFS does not consider extending the trap tag expiration date to be necessary. Most commenters’ desire to hurry transferability and/or to alter variables such as trap tag issuance is so lobster fishers will not be forced to endure trap cuts while waiting for the NMFS Trap Transfer Program to be finalized. Addendum XVIII states that trap cuts cannot be enacted until NMFS implements its transferability plan. The final rule anticipates that date to be the start of the 2015 Federal fishing year, which will provide sufficient time to account for trap cuts and process transferred trap allocation.

Comment 14: Numerous commenters supported allowing buyers to purchase allocation above an area trap cap, which would be unfishable, but which could be drawn upon and activated if trap cuts lowered a fisher’s allocation below the cap.

Response: This concept—referred to as “trap banking” in earlier Commission documents—was approved for Area 2 in Addendum XXI in August 2013, and for Area 3 in Addendum XXII in October 2013. NMFS plans to consider trap banking under a separate future rulemaking. NMFS analyzed the issue preliminarily in its FEIS and concluded that implementing the Trap Transfer Program without trap banking will not undermine the Trap Transfer Program, nor would it necessarily prevent trap banking from being added to the Program in the future if the Commission decided to recommend such.

Comment 15: One association and one lobster fisher commented in support of increasing the Area 3 trap cap to 2,000 traps. The Commission’s Lobster Board adopted the 2,000 trap cap for Area 3 in Addendum XIV to the Lobster Plan on May 5, 2009, and perpetuated this measure when it approved Addendum XXI on August 6, 2013. Addendum XXI adopted a 5-year trap cap reduction

schedule for Area 3, starting at 2,000 traps. Consequently, the Commission recommended that NMFS align with the Area 3 trap cap to coincide with the 2,000-trap cap in the Lobster Plan.

Response: This final rule will not change the Area 3 trap cap in the Federal regulations, which is currently set at 1,945 traps. The FEIS for this action did not analyze the change in the trap cap for Area 3, and NMFS is analyzing this measure in concert with the trap reductions for Area 2 and Area 3, as well as the other measures adopted by the Commission in Addenda XVII and XVIII, which were intended to address the recruitment failure in the SNE lobster stock. NMFS asserts that the adoption of the 2,000-trap cap should be assessed within the context of the 5-year trap cap reductions under Addendum XVIII, which are outside the scope of this rulemaking.

Comment 16: The Connecticut Department of Environmental Protection recommended that the trap transfer process be conducted in a manner that allows for the fair participation of all citizens, and should be done in an open forum and in conjunction with the Commission’s Trap Transfer Database.

Response: NMFS intends for the Trap Transfer Program to be open and accessible. The Program, however, is new, and participant behavior and response is unknowable at this point. NMFS does not want to introduce variables that could engineer market behavior in response to a problem that may not exist. NMFS will monitor its Trap Transfer Program and agrees with the commenter that the agency should, and will, work with the Commission to investigate ways to make available transferable trap allocations known and accessible to participants.

Comment 17: The Commission agreed that all Federal lobster permit holders be allowed to purchase transferable trap allocations for Areas 2, 3, and the Outer Cape Area.

Response: NMFS agrees and adopted this measure as part of the Trap Transfer Program to allow those Federal lobster permit holders who do not initially qualify for the trap fishery in these areas to obtain access through the purchase of transferable traps.

Changes From the Proposed Rule

NMFS made some minor changes to the final rule to allow for more consistency with the Commission’s Plan and to facilitate the administrative effectiveness in carrying out the new measures.

The proposed rule would have restricted the buyer of a trap with a multi-area history to electing only one

management area in which to fish that trap, with the history in the other areas retired permanently. Instead, this final rule continues the status quo, which allows a Federal lobster permit holder to elect any and all areas for which the transferred traps have history. NMFS did not receive any comments to suggest that the retention of multi-area trap history be disallowed, and members of the industry wrote in support of retention of multi-area trap history.

The proposed rule suggested that trap transferability would begin 150 days after the publication of the final rule. However, the completion date of the Commission's Trap Transfer Database remains uncertain. Therefore, although this final rule establishes the Trap Transfer Program, the exact dates for the administrative transfer of traps (trap transfer period) will be announced in a subsequent **Federal Register** notice once NMFS has full assurance that the database is ready to track and administer trap transfers by dual permit holders. Depending on the availability of the database, Federal lobster permit holders may be able to transfer traps beginning in the fall of 2014, with those transactions taking effect on May 1, 2015.

Finally, NMFS made minor changes to the regulatory text in § 697.19(b) through (f) to clarify that Federal lobster vessels with trap gear designations for Areas 2, 3, 4, 5, and the Outer Cape Area are limited to the number of traps allocated by the Regional Administrator and, although this allocation may vary, in no case shall it exceed the trap limit.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the American lobster fishery and that it is consistent with the provisions of the Atlantic Coastal Act, the National Standards of the Magnuson-Stevens Act, and other applicable laws.

NMFS prepared an FEIS for this action. The FEIS was filed with the Environmental Protection Agency on December 13, 2013. A notice of availability was published on December 20, 2013 (78 FR 77121). In approving this action, NMFS issued a record of decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

A FRFA was prepared for this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to

the IRFA, and NMFS' responses to those comments, and a summary of the analysis completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of All Changes Made in the Final Rule as a Result of Such Comments

None of the public comments we received regarding this rulemaking action raised any significant or new issues that resulted in NMFS changing course with respect to the major elements of the proposed rule. We received a total of 17 comments from 8 different commenters, and all generally supported the implementation of a limited access program for the Area 2 and Outer Cape Area and the Trap Transfer Program. None of the comments raised any significant issues with the IRFA or its supporting analyses. For a complete description of the comments received and NMFS's responses to those comments, see the **COMMENTS AND RESPONSES** section of this preamble.

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

The regulated entities affected by this action include small entities engaged in the commercial lobster trap fishery. On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries, effective July 22, 2013 (78 FR 37398). That final rule increased the small entity size standard based on gross sales for finfish fishing from \$4 million to \$19 million, shellfish fishing from \$4 million to \$5 million, and other marine fishing from \$4 million to \$7 million. Pursuant to the RFA, and prior to SBA's June 20, 2013, final rule, a FRFA analysis was conducted for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action because all Federal lobster permit holders remain categorized as small entities under both the old and new SBA small business size standards.

This final rule would potentially affect any fishing vessel using trap gear that holds a Federal lobster permit. Despite the increase in the threshold for the SBA size standard for commercial

fishing, all operating units in the commercial lobster fishery are considered small businesses for the purposes of this FRFA. According to dealer records no single lobster vessel would exceed \$4 million in gross sales. In 2012, there were a total of 3,047 Federal lobster permits, of which 2,750 were active. The remaining 297 were in Confirmation of Permit History status and, therefore, inactive. Of those active permits in 2012, 575 were issued a non-trap only lobster permit, 1,860 were issued a trap only lobster permit, and 315 were issued both a non-trap and trap gear designation. Some individuals own multiple operating units, so it is possible that affiliated vessels would be classified as a large entity under the SBA size standard. However, the required ownership documentation submitted with the permit application was not adequate to reliably identify affiliated ownership. Therefore, all operating units in the commercial lobster fishery are considered small entities for purposes of analysis.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). A PRA analysis, including a revised Form 83i and supporting statement, have been reviewed and approved under OMB control number 0648-0673. There are five types of respondents characterized in the PRA analysis. Group 1 applicants are those for whom NMFS has data on hand to show that their permits meet the eligibility criteria for one or both of the Outer Cape Area and Area 2. These permit holders will still need to apply by submitting an application form to NMFS agreeing with the NMFS assessment of their eligibility based on the state data. Group 2 applicants are the subset of Group 1 pre-qualifiers who do not agree with the NMFS pre-determination of the areas for which they are eligible and/or the corresponding trap allocations. These applicants will be required to submit the application form, but would also need to provide additional documentation to support their disagreement with NMFS' assessment of their permits' eligibility. Group 3 applicants are those Federal lobster permit holders for whom there are no state data available to show that their permits meet the eligibility criteria for either Area 2 or the Outer Cape Area and who, consequently, have no trap allocation for either area based on

NMFS's review of the state-supplied data. Permit holders in this group may still apply for eligibility, but must submit, along with their application forms, documentation to support their claim of eligibility and trap allocation for the relevant areas. Group 4 applicants are those who apply for access to either Area 2 and/or the Outer Cape Area, are deemed ineligible (a subset of Groups 2 and 3), and appeal the decision based on a military, medical, or technical issue. Group 5 applicants consist of those who fall under the Director's Appeal.

Description of the Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

NMFS took several steps to minimize the burden of this action on small entities. First, we deferred the implementation of the Trap Transfer Program until the Commission's Trap Transfer Database is proven to be ready to track the transfers. The database is critical to the effective implementation of the Program and critical to allowing the necessary communication between NMFS and the states to be sure that the transfers are administered properly. Allowing transferability to begin prior to the completion of the database would have increased the likelihood of problems in the tracking of the transfers, which could inconvenience permit holders and severely complicate the trap transfer process. Further, the Program will give ample time for permit holders to plan for their trap transfer transactions. It will give time for trap buyers to locate trap sellers, negotiate a price, make an agreement, and have that agreement affirmed by the affected states and NMFS so that the new allocations can be easily effectuated at the start of the 2015 Federal fishing year.

Second, NMFS will allow all Federal lobster permit holders to maintain their ability to elect to fish with traps in Area 2 and the Outer Cape Area during the entire 2014 fishing year while NMFS makes qualification and allocation decisions on applications for these areas. This will allow for a more seamless implementation of the new eligibility and allocation decisions, effective at the start of the 2015 Federal fishing year. If NMFS tried to activate qualification and allocation decisions during the 2014 fishing year, after fishermen declared their areas, were issued trap tags, and issued state licenses, it would cause confusion amongst the fishermen and the affected state and Federal agencies and could

complicate enforcement of trap limits and other lobster management measures.

NMFS will alleviate the burden on permit holders by attempting to align with allocative and eligibility decisions that the states have already made on dual permit holders. Since a dual permit holder's Federal and state fishing history are one and the same, NMFS will accept the state's decision as a valid form of eligibility. Those who have been qualified by their state will be notified by NMFS that information exists to suggest that they qualify, which will substantially reduce the burden on applicants who would otherwise need to provide documents in support of the eligibility criteria.

Recognizing that some permit holders have already transferred traps or may have different allocations than what NMFS can acknowledge, we incorporated a Director's Appeal provision into the qualification and allocation process. In the event that an allocation decision cannot be adopted by NMFS, the applicant's state fisheries director can appeal on his or her behalf and declare why allowing the applicant to qualify or have a certain allocation will benefit the industry and resource. In the event that a permit holder's state and Federal allocations do not align, the permit holder may opt to maintain the higher of the two allocations, but he or she would be prohibited from transferring traps.

Small Business Regulatory Enforcement and Fairness Act

Section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as "small entity compliance guides." The agency will 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 was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the small entity compliance guide will be sent to all Federal lobster permit holders. The small entity compliance guide and this final rule will be available upon request and will be posted on the Greater Atlantic Regional Fisheries Office Web site at <http://www.nero.noaa.gov/sfd/lobster>.

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0673. Public reporting burden for this action is estimated as follows, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information:

- For Group 1 applicants to the Outer Cape and/or Area 2 Limited Access Program—2 min per response;
- For Group 2 and 3 applicants to the Outer Cape and/or Area 2 Limited Access Program—22 min per response;
- For Group 4 applicants to the Outer Cape and/or Area 2 Limited Access Program—30 min per response;
- For Group 5 applicants to the Outer Cape and/or Area 2 Limited Access Program—20 min per response; and
- For Trap Transfer Requests—10 min per response.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by email to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to the 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.

List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: March 31, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

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

- 2. In § 697.4, revise paragraph (a)(7)(ii), remove paragraphs (a)(7)(vii) through (xi), and add new paragraphs (a)(7)(vii) and (viii) to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) * * *
 (7) * * *

(ii) Each owner of a fishing vessel that fishes with traps capable of catching lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. The ability to declare into Lobster Conservation Management Areas 1, 2, 3, 4, 5, and/or the Outer Cape Management Area, is first contingent upon a one-time initial qualification. The Area 3, 4, and 5 qualification programs are concluded and the Area 1, 2, and Outer Cape Area qualification programs are set forth in paragraphs (a)(7)(vi) through (a)(7)(viii) of this section.

* * * * *

(vii) *Participation requirements for EEZ Nearshore Outer Cape Area (Outer Cape Area).* To fish for lobster with traps in the EEZ portion of the Outer Cape Area, a Federal lobster permit holder must apply for access in an application to the Regional Administrator. The application process is set forth as follows:

(A) *Qualification criteria.* To initially qualify into the EEZ portion of the Outer Cape Area, the applicant must establish with documentary proof the following:

(1) That the applicant possesses a current Federal lobster permit;

(2) That the applicant landed lobster caught in traps from the Outer Cape Area in either 1999, 2000, or 2001. Whichever year used shall be considered the qualifying year for the purposes of establishing the applicant's Outer Cape Area trap allocation;

(B) *Trap allocation criteria.* To receive a trap allocation for the EEZ portion of the Outer Cape Area, the qualified applicant must also establish with documentary proof the following:

(1) The number of lobster traps fished by the qualifying vessel in 2000, 2001, and 2002; and

(2) The total pounds of lobster landed in 2000, 2001, and 2002.

(C) *Trap allocation formula.* The Regional Administrator shall allocate traps for use in the Outer Cape Area based upon the applicant's highest level of Effective Traps Fished during the qualifying year. Effective Traps Fished shall be the lower value of the maximum number of traps reported fished for that qualifying year compared to the predicted number of traps that is required to catch the reported poundage of lobsters for that year as set forth in the Commission's allocation formula identified in Addendum XIII to

Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster.

(D) *Documentary proof.* To satisfy the Outer Cape Area Qualification and Trap Allocation Criteria set forth in paragraphs (a)(7)(vii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that will allow NMFS to identify the Federal lobster permit in its database, which will at a minimum include: The applicant's name and address; vessel name; and permit number.

(2) As proof of traps fished in the Outer Cape Area and lobsters landed from the Outer Cape Area in 2000, 2001, or 2002, the applicant must provide the documentation reported to the state of the traps fished and lobsters landed during any of those years, as follows:

(i) *State records.* An applicant must provide documentation of his or her state reported traps fished and lobster landings in 2000, 2001, or 2002. The Regional Administrator shall presume that the permit holder was truthful and accurate when reporting to his or her state the traps fished and lobster landed in 2000, 2001, and 2002, and that the state records of such are the best evidence of traps fished and lobster landed during those years.

(ii) *State decision.* An applicant may provide his or her state's qualification and allocation decision to satisfy the documentary requirements of this section. The Regional Administrator shall accept a state's qualification and allocation decision as prima facie evidence in support of the Federal qualification and allocation decision. The Regional Administrator shall presume that the state decision is appropriate, but that presumption is rebuttable and the Regional Administrator may choose to disallow the use of the state decision if the state decision was incorrect or based on factors other than those set forth in this section. This state decision may include not only the initial state qualification and allocation decision, but may also incorporate state trap transfer decisions that the state allowed since the time of the initial allocation decision.

(iii) *States lacking reporting.* An applicant may provide Federal vessel trip reports, dealer records, or captain's logbook as documentation in lieu of state records if the applicant can establish by clear and convincing evidence that the involved state did not

require the permit holder to report traps or landings during 2000, 2001, or 2002.

(E) *Application period.* Applicants will have 180 days to submit an application. The time period for submitting an application for access to the EEZ portion of the Outer Cape Area begins on May 7, 2014 (application period start date) and ends November 3, 2014. Failure to apply for Outer Cape Management Area access by that date shall be considered a waiver of any future claim for trap fishery access into the Outer Cape Area.

(F) *Appeal of denial of permit.* Any applicant having first applied for initial qualification into the Outer Cape Area trap fishery pursuant to this section, but having been denied access or allocation, may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing. Appeals may be submitted in the following two situations:

(1) *Clerical Appeal.* The grounds for Clerical Appeal shall be that the Regional Administrator erred clerically in concluding that the vessel did not meet the criteria in paragraph (a)(7)(vii) of this section. Errors arising from oversight or omission such as ministerial, mathematical, or typographical mistakes would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error. If the appealing applicant does not clearly and convincingly prove that an error occurred, the appeal must be denied.

(2) *Director's Appeal.* A state's marine fisheries agency may appeal on behalf of one of its state permit holders. The only grounds for a Director's Appeal shall be that the Regional Administrator's decision on a dual permit holder's Federal permit has created a detrimental incongruence with the state's earlier decision on that permit holder's state permit. In order to pursue a Director's Appeal, the state must establish the following by a preponderance of the evidence:

(i) *Proof of an incongruence.* The state must establish that the individual has a state lobster permit that the state has qualified for access with traps into the Outer Cape Area, as well as a Federal lobster permit that the Regional Administrator has denied access or restricted the permit's trap allocation into the Outer Cape Area. The state must establish that the incongruent permits were linked during the year or years used in the initial application

such that the fishing history used in Federal and state permit decisions was the same.

(ii) *Proof of detriment.* The state must provide a letter supporting the granting of trap access for the Federal permit holder. In the support letter, the state must explain how the incongruence in this instance is detrimental to the Outer Cape Area lobster fishery and why granting the appeal is, on balance, in the best interests of the fishery overall. A showing of detriment to the individual permit holder is not grounds for this appeal and will not be considered relevant to the decision.

(G) *Appellate timing and review.* All appeals must be submitted to the Regional Administrator in writing and reviewed as follows:

(1) *Clerical Appeals timing.* Applicants must submit Clerical Appeals no later than 45 days after the date on the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator in writing of his or her intent to appeal within the 45 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted.

(2) *Director's Appeals timing.* State Directors must submit Director's Appeals on behalf of their constituents no later than 180 days after the date of the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 180 days of the date of the Notice of Denial will preclude any further appeal. The Director may notify the Regional Administrator in writing of his or her intent to appeal within the 180 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 180-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadline will not be accepted.

(3) *Agency response.* Upon receipt of a complete written appeal with

supporting documentation in the time frame allowable, the Regional Administrator will then appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(H) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish with traps in the Outer Cape Area during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in the Outer Cape Area during the pendency of the appeal. The Regional Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial, or 15 days after the date on the notice of appellate denial, whichever occurs first.

(viii) *Participation requirements for EEZ nearshore lobster management area 2 (Area 2).* To fish for lobster with traps in the EEZ portion of Area 2, a Federal lobster permit holder must apply for access in an application to the Regional Administrator. The application process is as follows:

(A) *Qualification criteria.* To initially qualify into the EEZ portion of Area 2, the applicant must establish with documentary proof the following:

(1) That the applicant possesses a current Federal lobster permit;

(2) That the applicant landed lobster caught in traps from Area 2 in 2001, 2002, or 2003. Whichever year used shall be considered the qualifying year for the purposes of establishing the applicant's Area 2 trap allocation;

(B) *Trap allocation criteria.* To receive a trap allocation for the EEZ portion of Area 2, the qualified applicant must also establish with documentary proof the following:

(1) The number of lobster traps fished by the qualifying vessel in the qualifying year; and

(2) The total pounds of lobster landed during that qualifying year.

(C) *Trap allocation formula.* The Regional Administrator shall allocate traps for use in Area 2 based upon the applicant's highest level of Effective Traps Fished during the qualifying year. Effective Traps Fished shall be the lower value of the maximum number of

traps reported fished for that qualifying year compared to the predicted number of traps that is required to catch the reported poundage of lobsters for that year as set forth in the Commission's allocation formula identified in Addendum VII to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster.

(D) *Documentary proof.* To satisfy the Area 2 Qualification and Trap Allocation Criteria set forth in paragraphs (a)(7)(viii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that will allow NMFS to identify the Federal lobster permit in its database, which will at a minimum include: The applicant's name and address; vessel name; and permit number.

(2) As proof of traps fished in Area 2 and lobsters landed from Area 2 in 2001, 2002, or 2003, the applicant must provide the documentation reported to the state of the traps fished and lobsters landed during any of those years as follows:

(i) *State records.* An applicant must provide documentation of his or her state reported traps fished and lobster landings in 2001, 2002, or 2003. The landings must have occurred in a state adjacent to Area 2, which the Regional Administrator shall presume to be limited to Massachusetts, Rhode Island, Connecticut, and/or New York. The Regional Administrator shall presume that the permit holder was truthful and accurate when reporting to his or her state the traps fished and lobster landed in 2001, 2002, and 2003 and that the state records of such are the best evidence of traps fished and lobster landed during those years.

(ii) *State decision.* An applicant may provide his or her state's qualification and allocation decision to satisfy the documentary requirements of this section. The Regional Administrator shall accept a state's qualification and allocation decision as prima facie evidence in support of the Federal qualification and allocation decision. The Regional Administrator shall presume that the state decision is appropriate, but that presumption is rebuttable and the Regional Administrator may choose to disallow the use of the state decision if the state decision was incorrect or based on factors other than those set forth in this section. This state decision may include not only the initial state qualification

and allocation decision, but may also incorporate state trap transfer decisions that the state allowed since the time of the initial allocation decision.

(iii) *States lacking reporting.* An applicant may provide Federal vessel trip reports, dealer records, or captain's logbook as documentation in lieu of state records if the applicant can establish by clear and convincing evidence that the involved state did not require the permit holder to report traps or landings during 2001, 2002, or 2003.

(E) *Application period.* Applicants will have 180 days to submit an application. The time period for submitting an application for access to the EEZ portion of Area 2 begins on May 7, 2014 (application period start date) and ends November 3, 2014. Failure to apply for Area 2 access by that date shall be considered a waiver of any future claim for trap fishery access into Area 2.

(F) *Appeal of denial of permit.* Any applicant having first applied for initial qualification into the Area 2 trap fishery pursuant to this section, but having been denied access, may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing. Appeals may be submitted in the following three situations:

(1) *Clerical Appeal.* The grounds for Clerical Appeal shall be that the Regional Administrator clerically erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(viii) of this section. Errors arising from oversight or omission, such as ministerial, mathematical, or typographical mistakes, would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error. If the appealing applicant does not clearly and convincingly prove that an error occurred, the appeal must be denied.

(2) *Medical or Military Hardship Appeal.* The grounds for a Hardship Appeal shall be limited to those situations in which medical incapacity or military service prevented a Federal lobster permit holder from fishing for lobster in 2001, 2002, and 2003. If the Federal lobster permit holder is able to prove such a hardship, then the individual shall be granted the additional years of 1999 and 2000 from which to provide documentary proof in order to qualify for and fish traps in Area 2. In order to pursue a Hardship Appeal, the applicant must establish the

following by a preponderance of the evidence:

(i) *Proof of medical incapacity or military service.* To prove incapacity, the applicant must provide medical documentation from a medical provider, or military service documentation from the military, that establishes that the applicant was incapable of lobster fishing in 2001, 2002, and 2003. An applicant may provide his/her state's qualification and allocation appeals decision to satisfy the documentary requirements of this section. The Regional Administrator shall accept a state's appeals decision as prima facie evidence in support of the Federal decision on the appeal. The Regional Administrator shall presume that the state decision is appropriate, but that presumption is rebuttable and the Regional Administrator may choose to disallow the use of the state decision if the state decision was incorrect or based on factors other than those set forth in this section.

(ii) *Proof of Area 2 trap fishing in 1999 and 2000.* To prove a history of Area 2 lobster trap fishing in 1999 and/or 2000, the applicant must provide documentary proof as outlined in paragraph (a)(7)(viii)(D) of this section.

(3) *Director's Appeal.* A state's marine fisheries agency may appeal on behalf of one of its state permit holders. The only grounds for a Director's Appeal shall be that the Regional Administrator's decision on a dual permit holder's Federal permit has created a detrimental incongruence with the state's earlier decision on that permit holder's state permit. In order to pursue a Director's Appeal, the state must establish the following by a preponderance of the evidence:

(i) *Proof of an incongruence.* The state must establish that the individual has a state lobster permit, which the state has qualified for access with traps into Area 2, as well as a Federal lobster permit, which the Regional Administrator has denied access or restricted the permit's trap allocation into Area 2. The state must establish that the incongruent permits were linked during the year or years used in the initial application such that the fishing history used in Federal and state permit decisions was the same.

(ii) *Proof of detriment.* The state must provide a letter supporting the granting of trap access for the Federal permit holder. In the support letter, the state must explain how the incongruence in this instance is detrimental to the Area 2 lobster fishery and why granting the appeal is, on balance, in the best interests of the fishery overall. A showing of detriment to the individual

permit holder is not grounds for this appeal and will not be considered relevant to the decision.

(G) *Appellate timing and review.* All appeals must be submitted to the Regional Administrator in writing and reviewed as follows:

(1) *Clerical Appeals timing.* Applicants must submit Clerical Appeals no later than 45 days after the date on the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator in writing of his or her intent to appeal within the 45 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted.

(2) *Medical or Military Hardship Appeals timing.* Applicants must submit Medical or Military Hardship Appeals no later than 45 days after the date on the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator in writing of his or her intent to appeal within the 45 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted.

(3) *Director's Appeals timing.* State Directors must submit Director's Appeals on behalf of their constituents no later than 180 days after the date of the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 180 days of the date of the Notice of Denial will preclude any further appeal. The Director may notify the Regional Administrator in writing of his or her intent to appeal within the 180 days and

request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 180-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadline will not be accepted.

(4) *Agency response.* Upon receipt of a complete written appeal with supporting documentation in the time frame allowable, the Regional Administrator will appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(H) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish with traps in Area 2 during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in Area 2 during the pendency of the appeal. The Regional Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial or 15 days after the date on the notice of appellate denial, whichever occurs first.

* * * * *

■ 3. In § 697.7, add paragraph (c)(1)(xxx) to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(xxx) *Outer Cape Area seasonal closure.* The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from January 15 through March 15.

(A) Lobster fishing with traps is prohibited in the Outer Cape Area during this seasonal closure. Federal trap fishers are prohibited from possessing or landing lobster taken from the Outer Cape Area during the seasonal closure.

(B) All lobster traps must be removed from Outer Cape Area waters before the start of the seasonal closure and may not be re-deployed into Outer Cape Area waters until after the seasonal closure

ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Outer Cape Area waters during this seasonal closure. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Outer Cape Area waters during this seasonal closure unless the vessel is transiting through the Outer Cape Area pursuant to paragraph (c)(1)(xxx)(D) of this section.

(C) The Outer Cape Area seasonal closure relates only to the Outer Cape Area. The restrictive provisions of §§ 697.3 and 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Outer Cape Area designation and another Lobster Management Area designation on their Federal lobster permit would not have to similarly remove their lobster gear from the other designated management areas.

(D) *Transiting Outer Cape Area.* Federal lobster permit holders may possess lobster traps on their vessel in the Outer Cape Area during the seasonal closure only if:

(1) The trap gear is stowed; and

(2) The vessel is transiting the Outer Cape Area. For the purposes of this section, transiting shall mean passing through the Outer Cape Area without stopping to reach a destination outside the Outer Cape Area.

(E) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Outer Cape Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(1) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(2) That all lobsters caught in the subject traps will be immediately returned to the sea.

(F) The Regional Administrator may condition the authorization described in paragraph (c)(1)(xxx)(E) as appropriate in order to maintain the overall integrity of the closure.

* * * * *

■ 4. Revise § 697.19 to read as follows:

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

(a) *Area 1 trap limits.* The Area 1 trap limit is 800 traps. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 800 lobster traps in Area 1.

(b) *Area 2 trap limits.* The Area 2 trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 2 by the Regional Administrator. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(c) *Area 3 trap limits.* The Area 3 trap limit is 1,945 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(d) *Area 4 trap limits.* The Area 4 trap limit is 1,440 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 4 by the Regional Administrator. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(e) *Area 5 trap limits.* The Area 5 trap limit is 1,440 traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 5 by the Regional Administrator. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(f) *Outer Cape Area.* The Outer Cape Area trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into the Outer Cape Area by the Regional Administrator. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(g) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ management area.* A vessel owner who elects to fish in more than one EEZ Management Area is restricted to the lowest trap limit of those areas and may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any of the elected management areas.

(h) *Conservation equivalent trap limits in New Hampshire state waters.* Notwithstanding any other provision, any vessel with a Federal lobster permit

and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(i) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

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

(k) *EEZ Management Area 5 trap waiver exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

■ 5. Add § 697.27 to read as follows:

§ 697.27 Trap transferability.

(a) Federal lobster permit holders may elect to participate in a program that allows them to transfer trap allocation to other participating Federal lobster permit holders, subject to the following conditions:

(1) *Participation requirements.* To be eligible to participate in the Federal Trap Transfer Program:

(i) An individual must possess a valid Federal lobster permit; and

(ii) If the individual is dually permitted with both Federal and state lobster licenses, the individual must agree to synchronize his or her state and Federal allocations in each area for which there is an allocation. This synchronization shall be set at the lower of the state or Federal allocation in each area. This provision does not apply to Areas 1 and 6 as neither area have a Federal trap allocation.

(iii) Individuals participating in the Lobster Management Area 1 trap fishery may participate in the Trap Transfer Program, but doing so may result in

forfeiture of future participation in the Area 1 trap fishery as follows:

(A) Area 1 fishers may accept, receive, or purchase trap allocations up to their Area 1 trap limit identified in § 697.19 and fish with that allocation both in Area 1 and the other area or areas subject to the restrictive provisions of § 697.3 and § 697.4(a)(7)(v).

(B) Area 1 fishers with trap allocations in Areas 2, 3, and/or the Outer Cape Area may transfer away or sell any portion of that allocation, but, in so doing, the Area 1 fisher shall forfeit any right to fish in Area 1 with traps in the future.

(2) *Trap allocation transfers.* Trap allocation transfers will be allowed subject to the following conditions:

(i) *State/Federal alignment.*

Participants with dual state and Federal permits may participate in the Trap Transfer Program each year, but their state and Federal trap allocations must be aligned as required in paragraph (a)(1)(ii) of this section at the start and close of each trap transfer period.

(ii) *Eligible traps.* Buyers and sellers may only transfer trap allocations from Lobster Management Areas 2, 3, and the Outer Cape Area.

(iii) *Debiting remaining allocation.*

The permit holder transferring trap allocations shall have his or her remaining Federal trap allocation in all Lobster Conservation Management Areas debited by the total amount of allocation transferred. This provision does not apply to Areas 1 and 6, as neither area have a Federal trap allocation. A seller may not transfer a trap allocation if, after the transfer is debited, the allocation in any remaining Lobster Conservation Management Area would be below zero.

(iv) *Crediting allocations for partial trap transfers.* In a partial trap transfer, where the transfer is occurring independent of a Federal lobster permit transfer, the permit holder receiving the transferred allocation shall have his or her allocation credited as follows:

(A) *Trap retirement.* All permit holders receiving trap allocation transfers shall retire 10 percent of that transferred allocation from the fishery for conservation. This provision does not pertain to full business transfers where the transfer includes the transfer of a Federal lobster permit and all traps associated with that permit.

(B) *Multi-area trap allocation history.* To the extent that transferred trap allocations have been granted access into multiple management areas, the recipient may elect any and all management areas for which the traps have demonstrated history.

(C) All trap allocation transfers are subject to whatever trap allocation cap exists in the involved lobster management area. No participant may receive a transfer that, when combined with existing allocation, would put that permit holder's trap allocation above the involved trap caps in § 697.19.

(v) In all allocation transfers, the buyer's and seller's initial allocations shall be calculated as being the allocation that the buyer and seller would otherwise have on the last day of the fishing year.

(vi) Trap allocations may only be transferred in 10-trap increments.

(vii) Trap allocation transfers must be approved by the Regional Administrator before becoming effective. The Regional Administrator shall approve a transfer upon a showing by the involved permit holders of the following:

(A) The proposed transfer is documented in a legible written agreement signed and dated by the involved permit holders. The agreement must identify the amount of allocation being transferred as well as the Federal lobster permit number from which the allocation is being taken and the Federal lobster permit number that is receiving the allocation. If the transfer involves parties who also possess a state lobster license, the parties must identify the state lobster license number and state of issuance.

(B) That the transferring permit holder has sufficient allocation to transfer and that the permit holder's post-transfer allocation is clear and agreed to. In determining whether seller has sufficient allocation to transfer, the Regional Administrator will calculate the seller's pre-transfer and post-transfer allocations. The pre-transfer allocation shall be the amount of the seller's allocation as it would exist on the last day of the fishing year. The post-transfer allocation shall be the pre-transfer allocation minus the total amount of traps being transferred prior to application of the 10-percent trap retirement set forth in paragraph (a)(2)(iv)(A) of this section.

(C) That the permit holder receiving the transfer has sufficient room under any applicable trap cap identified in § 697.19 to receive the transferred allocation and that the recipient's post-transfer allocation is clear and agreed to. In determining whether the buyer has sufficient room to receive allocation, the Regional Administrator will calculate the buyer's pre-transfer and post-transfer allocations. The pre-transfer allocation shall be the amount of the buyer's allocation as it would exist on the last day of the fishing year. The post-transfer allocation shall be the pre-

transfer allocation plus the total amount of traps being transferred minus 10 percent of the transferred allocation that shall be retired pursuant to the provisions of (a)(2)(iv)(A) of this section.

(3) *Trap transfer period.* The timing of the Trap Transfer Program is as follows:

(i) Federal lobster permit holders must declare their election into the program in writing to the NMFS Permit Office. Electing into the Trap Transfer Program is a one-time declaration, and the permit holder may participate in the program in later years without needing to re-elect into the program year after year. Federal permit holders may elect

into the program at any time in any year, but their ability to actively transfer traps will be limited by the timing restrictions identified in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) All trap transfer requests must be made in writing before September 30 each year, and if approved, will become effective at the start of the next fishing year. The Regional Administrator shall attempt to review, reconcile and notify the transferring parties of the disposition of the requested transfer before December 31 each year. Transfers are not valid until approved by the Regional Administrator.

(iii) *Year 1.* Notwithstanding paragraph (a)(3)(ii) of this section, the timing of the first year of the Trap Transfer Program is linked to the completion of the Commission's Trap Tag Database. NMFS will analyze the Trap Tag Database and when NMFS finds that the database is capable of tracking transfers for multiple jurisdictions, then NMFS will file a notice alerting the public of the date of when the Trap Transfer Program will begin.

(b) [Reserved]

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prohibition on CQEs' transferring and holding blocks of QS of less than a minimum size may contribute to their low participation in the CQE Program. Given these factors, the Council and NMFS determined it was appropriate to relieve the prohibitions on CQEs' transferring or holding small blocks of QS.

The Council adopted Amendment 96 on April 6, 2013. Amendment 96 would remove the restriction on CQEs' transferring and holding small blocks of QS and allow all CQEs to transfer any size block of sablefish QS to hold for use by eligible community members. The objectives of Amendment 96 are to provide CQE communities in the GOA with increased opportunity to transfer and hold QS, and sustain participation of CQE community residents in the IFQ fisheries.

In proposing Amendment 96, the Council and NMFS considered the current participation of CQE and non-CQE QS holders in the IFQ fishery, and the potential changes in access to QS, effects on the QS market, and social and economic tradeoffs. Given the reasons for low participation in the CQE Program described above, the Council and NMFS determined it is unlikely that CQEs would transfer the maximum amount of QS made available by Amendment 96. Thus, small block halibut QS would continue to be available to non-CQE participants in the IFQ sablefish fishery. The Council and NMFS determined that removing the small block restriction from the CQE Program could improve the ability of CQEs to obtain the most affordable blocks of QS without negatively impacting the ability of non-CQE fishery participants to obtain the similar size blocks of QS.

An RIR/IRFA was prepared for Amendment 96 that describes the CQE Program, the purpose and need for this action, the management alternatives evaluated to address this action, the economic and socioeconomic effects of the alternatives, and the potential adverse economic impacts on small entities directly regulated by the proposed rule (see **ADDRESSES**).

Amendment 96 and its proposed implementing regulations are designed to comply with the Magnuson-Stevens Act, the national standards, and other applicable law. The proposed amendment and implementing regulations particularly address National Standard 8, which provides that conservation and management programs shall, consistent with the conservation requirements of the Act, take into account the importance of fishery resources to communities in

order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

The IFQ Program for Pacific halibut is implemented under the authority of the Northern Pacific Halibut Act of 1982. The Council does not have a halibut fishery management plan. The Council and Secretary, however, consider the impacts of all the IFQ management measures on fishery-dependent communities. If Amendment 96 is approved, then regulations affecting the halibut and sablefish IFQ Program would be implemented in one rule. Amendment 96 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the GOA FMP, and other applicable laws.

Public comments are being solicited on proposed Amendment 96 to the GOA FMP through the end of the comment period stated in this notice of availability (see **DATES**). A proposed rule that would implement Amendment 96 will be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments, whether specifically directed to the amendment or the proposed rule, must be received, not just postmarked or otherwise transmitted, by 5 p.m., A.l.t., on the last day of the comment period (see **DATES**). Comments received by the end of the comment period will be considered in the approval/disapproval decision on Amendment 96. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 96.

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

Dated: July 22, 2014.

Alan D. Risenhoover,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. 2014-17556 Filed 7-24-14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 130705590-4600-02]

RIN 0648-BD45

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we publish this proposed rule to request public comment on potential changes to Federal American lobster regulations for Lobster Conservation Management Areas 2, 3, 4, and 5, including trap reductions in Areas 2 and 3, and broodstock measures in Areas 2, 3, 4, and 5. The proposed measures aim to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England lobster stock. This action is necessary to ensure fishery regulations for the lobster fishery in Federal waters remain consistent with the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Comments must be received on or before August 25, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0110, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0110](http://www.regulations.gov/), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on American Lobster Proposed Rule."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record

and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:
Allison Murphy, Sector Policy Analyst,
(978) 281-9122.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The proposed regulations would modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) (16 U.S.C. 5101 *et seq.*), which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate fishery management council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, from 3 to 200 nautical miles (nm) offshore. The regulations must be: (1) Compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission; and (2) consistent with the National

Standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

The purpose of the proposed action is to manage the American lobster fishery in a manner that maximizes resource sustainability, recognizing that Federal management occurs in consort with state management, and thus, that compatibility between state and Federal measures is crucial to the overall success of American lobster management. To achieve this purpose, we are responding to recently-approved state management measures to address poor stock conditions and persistent recruitment failure of the Southern New England (SNE) American lobster stock.

Background

The American lobster fishery is managed by the Commission under Amendment 3 to the ISFMP for American Lobster. Since 1997, the Commission has coordinated the efforts of the states and Federal Government toward sustainable management of the American lobster fishery. We manage the portion of the fishery conducted in Federal waters from 3 to 200 miles offshore, based on management recommendations made by the Commission.

The American lobster management unit is divided between three lobster stocks and seven Lobster Conservation Management Areas. Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the

Commission adopted Addendum XVII to Amendment 3 of the ISFMP in February of 2012. The measures in Addendum XVII are intended to reduce fishing exploitation to the SNE lobster stock by 10 percent. To further address stock rebuilding of the SNE lobster stock, Addendum XVIII was adopted in August 2012, to reduce latent effort in the trap fishery and scale the fishery to the diminished size of the SNE stock, through a series of annual trap reductions in Areas 2 and 3. For trap limits to be effective in reducing harvest and rebuilding the stock, latent effort must be addressed to prevent this effort from coming back into the fishery as the stock grows and catch rates increase. Copies of the Addenda are available on the Commission’s Web site at: <http://www.asmfj.org>.

Proposed Measures

To achieve a 10-percent reduction in fishing exploitation of the SNE American lobster stock under Addendum XVII, the Commission recommended several effort control measures for Areas 2, 3, 4, 5, and 6 to protect broodstock and reduce the amount of American lobsters harvested from these Areas. These measures were reviewed by the Commission’s scientific Technical Committee, which found that these measures would likely achieve the desired 10-percent reduction in exploitation. This rule proposes to implement the Commission’s recommended measures, including: Minimum carapace length increases; mandatory v-notching of egg-bearing female lobsters; and seasonal fishery closures. Table 1 contains the specific measures adopted by the Commission and proposed for Federal implementation.

TABLE 1—ADDENDUM XVII MANAGEMENT MEASURE CHANGES

Management measures	Area 2	Area 3	Area 4	Area 5
V-Notching *	Mandatory for legal-sized egg-bearing females.	n/a	Mandatory for legal-sized egg-bearing females.	Mandatory for legal-sized egg-bearing females.
New Minimum Size	n/a	3 ¹⁷ / ₃₂ in (8.97 cm)	n/a	n/a.
Seasonal Closure	n/a	n/a	February 1–March 31	February 1–March 31.

* If v-notching is deemed insufficient to meet the conservation objectives, additional seasonal closures may be adopted by the Commission.

While the harvest of lobsters from Areas 4 and 5 is proposed to be prohibited from February 1 through March 31, annually, we propose to allow additional time to remove and set gear during the closures. Permit holders will have a 2-week period (i.e., through February 14) to remove all lobster traps from the water. In addition, permit holders may begin to set lobster traps 1

week prior to the end of the area closure (i.e., March 25). We are not proposing measures recommended by the Commission for Area 6 (mandatory v-notching and a seasonal closure) because Area 6 is contained entirely within state waters, and is therefore outside of Federal jurisdiction.

Under Addendum XVIII, the Commission approved trap reductions

for Areas 2 and 3, following separate trap reduction schedules. Consistent with the Commission’s ISFMP and in response to the Commission’s recommendations for complementary management measures to address the needs of the SNE stock, we propose to reduce qualified Area 2 trap allocations for Federal lobster permit holders by 25 percent on April 30, 2015, the last day

of fishing year (FY) 2014. Area 2 allocations would then be reduced by 5 percent at the end of each subsequent FY for 5 years, as prescribed by the Commission. Similarly, we propose to

reduce Area 3 trap allocations by 5 percent on April 30, 2014, the last day of FY 2014. Area 3 allocations would then be reduced by 5 percent at the end of each subsequent FY for 4 years, as

prescribed by the Commission. Table 2 includes a schedule of trap reductions, and the resulting trap allocations based on an initial trap allocation of 800 traps.

TABLE 2—AREA 2 AND 3 TRAP REDUCTION SCHEDULE AND EXAMPLE ALLOCATIONS

Effective year	Area 2 reductions (percent)	Area 2 example allocation	Area 3 reductions	Area 3 example allocation
FY 2014 (present) (percent)	NA	800	NA	800
End of FY 2014 (Year 1)	25	600	5	760
End of FY 2015 (Year 2)	5	570	5	722
End of FY 2016 (Year 3)	5	542	5	686
End of FY 2017 (Year 4)	5	515	5	652
End of FY 2018 (Year 5)	5	490	5	620
End of FY 2019 (Year 6)	5	466	NA	NA

Depending on the timing of these actions and the readiness of the Commission’s Trap Transfer Database, Federal permit holders could transfer traps during the 2014 fishing year, with transferable allocations accounting for the first year of the trap cuts. The resulting allocations based on the first-year reductions and any trap transfers would become effective at the start of FY 2015, or May 1, 2015.

Related Actions and Implementation Options

In addition to these upcoming measures, we recently published a final rule (79 FR 19015; April 7, 2014), based on Commission recommendations, establishing a limited access program in two lobster conservation management areas, Area 2 and the Outer Cape Area, and implementing a lobster Trap Transfer Program in Areas 2 and 3, and the Outer Cape Area. Because the Trap Transfer Program may ease economic impacts of trap reductions and provide

added additional business flexibility, we propose to implement trap reductions at the same time as the Trap Transfer Program, as recommended by the Commission. Based on the analysis included in the associated draft Environmental Assessment, the order of implementation affects the resulting trap allocations. Table 3 includes an example of the resulting trap allocations for an Area 2 permit currently allocated 800 traps following the scheduled 25-percent reduction and transfer in of 200 additional traps.

TABLE 3—RESULTING YEAR 1 TRAP ALLOCATIONS BASED ON THE ORDER OF REDUCTIONS AND TRANSFERS

	Scenario 1 (preferred)	Scenario 2
Initial Allocation	800 traps	800 traps.
Step 1:	25% trap reduction	Unable to transfer in traps, already at maximum.
Resulting Allocation	600 traps	800 traps.
Step 2	Trap transfer allowed, purchased 200 traps	25% trap reduction.
Final Allocation in Year 1	800 traps	600 traps.

Note that NMFS would cut 200 traps in either scenario, but that only in Scenario 1 would fishers have the potential to immediately mitigate the trap-cut impacts using trap transfers. Under Scenario 1, where trap reductions are scheduled for all allocations just prior to trap transfers, the permit holder’s potential allocation (assuming participation in the Trap Transfer Program) would result in significantly more traps than under Scenario 2, where trap transfers would not be allowed if the permit holder is at the maximum trap limit prior to trap reductions. We propose to schedule trap reductions to be effective at 11:59 p.m. on April 30, 2015, just ahead of trap transfers that have been negotiated and approved during FY 2014, but which will not become effective until 12:01 a.m. on May 1, 2015, consistent with

Scenario 1. Permit holders would be able to transfer traps, based on the first round of trap cuts, during the 2014 fishing year, and the revised allocations resulting from the transfers of cut allocations would become effective at the start of the 2015 Federal fishing year on May 1, 2015. We are specifically requesting comment on this approach.

The effectiveness of the proposed trap cuts is dependent upon and impacted by the availability of the Trap Transfer Program identified in our recent final rule (79 FR 19015; April 7, 2014). Specifically, both industry and the Commission indicated that a trap transfer program was a necessary precursor to any trap cut program so that lobster fishers could replace their cut traps with transferred traps. In order to maintain lobster business viability, industry and the Commission sought to

have trap cuts and trap transferability occur contemporaneously so that businesses did not have to fish at cut levels for an extended time period while waiting for trap transfers to take effect. The timing of the trap cuts and trap transfer programs, therefore, is critical.

The timing of the recently approved Trap Transfer Program has not yet been set and will be dependent upon the completion and effectiveness of the Commission’s Trap Tag Database. If the Database is not completed and ready until fall 2014 (the Area 2 and Outer Cape Cod qualification and allocation program will not be completed until then and thus, we will not be able to populate the Database with final trap allocations until then), then trap transfers will not be able to be completed until sometime after that. This will compress the time schedule

within which to complete trap transfers and may impact the ability of buyers and sellers to conduct trap transfers in anticipation of the trap cuts that this rule proposes to occur at the close of the FY 2014. Given the novelty of the Trap Transfer Program, it is unclear how much time will be needed for trap sellers and buyers to meet and propose transfers, for Federal and state agencies to meet, reconcile, and approve the proposed transfers, and for permits and trap tag orders to reflect the approved transfer. Consequently, it might prove challenging for all permit holders to participate and complete their desired trap transfer transactions in this first year, which might take on added importance given the proposed trap reductions on April 30, 2015. Therefore, we request comment on the proposed April 30, 2015, trap cut date and whether alternative dates, including later dates, such as a 1-year delay, might better advance lobster management objectives.

Comments and Responses

To help determine the scope of issues to be addressed and to identify significant issues related to this action, we solicited written comments on an advanced notice of proposed rulemaking (ANPR), published on August 20, 2013 (78 FR 51131). The comment period closed on September 19, 2013. In addition to requesting comment on the Commission's measures, we requested comment on the timing of American lobster actions currently under development.

In total, four letters were submitted in response to the ANPR, three of which were applicable to these proposed measures and are responded to below. The fourth letter was not applicable to the proposed measures and is not discussed further.

Comment 1: The Atlantic Offshore Lobstermen's Association (AOLA), the Commission, and Connecticut Department of Environmental Protection (CT DEP) all commented in support of management measures being proposed.

Response: We agree that implementing mandatory v-notching, a minimum carapace size increase, and seasonal closures will help to address the low level of abundance and persistent recruitment failure of the SNE American lobster stock. In addition, trap reductions are proposed to address rebuilding of the lobster stock by scaling the fishery to size of the SNE stock. For these reasons, we are proposing the full suite of measures approved by the Commission in Addenda XVII and XVIII.

Comment 2: The AOLA expressed their support for maintaining economic flexibility, noting that trap reductions and the Trap Transfer Program should be implemented "on an identical time schedule."

Response: We agree that trap reductions and the Trap Transfer Program should be implemented at the same time to mitigate any potential negative effects of trap reductions, and maintain a viable fleet, but functionally, one needs to be implemented before the other, even if mere moments before the other, simply to better account for and administer trap transfers. We are proposing to implement trap reductions to all Area 2 and 3 allocations for the end of FY 2014 (April 30, 2015, at 11:59 p.m.), followed by any trap transfers, consistent with the process discussed in our recent final rule (79 FR 19015; April 7, 2014), but would like comment on the order of implementation.

Comment 3: The CT DEP recommended that the trap transfer process be conducted in a manner that allows for the fair participation of all citizens and should be done in an open forum and in conjunction with a fully functional Trap Transfer Database.

Response: As explained in our recent final rule (79 FR 19015; April 7, 2014), NMFS intends to implement an open and accessible Trap Transfer Program to all eligible lobster permit holders. The Program, however, is new and we cannot predict participant behavior and response at this point. NMFS does not want to introduce variables that would engineer market behavior in response to a problem that may not exist. NMFS intends to monitor its Trap Transfer Program and agrees with the commenter that the agency should work with the Commission to investigate ways to make available transferable trap allocations known and accessible to participants.

Classification

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

This proposed rule does not contain policies with federalism implications as defined in E.O. 13132. The proposed measures are based upon the American Lobster ISFMP that was created by and is overseen by the states. The proposed measures are a result of Addenda XVII and XVIII, which was approved by the states, recommended by the states through the Commission for Federal adoption, and is 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 proposed measures would not pre-empt state law and would do nothing to directly regulate the states.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The proposed management measures would affect small entities engaged in several different aspects of the lobster fishery. The affected entities include Federal lobster permit holders fishing in SNE, specifically Areas 2, 3, 4 and 5.

Description of the Reasons Why Action By NMFS Is Being Considered

Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the Commission adopted Addenda XVII and XVIII to Amendment 3 of the ISFMP, approving a combination of trap cuts and broodstock measures. The Commission Lobster Board's Plan Development Team has confirmed that the affected states have already issued regulations that are compliant with Addendum XVII measures. To the extent practicable, we aim to implement regulations consistent with Commission recommendations, and those promulgated by our partner states.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England (SNE) lobster stock. The legal basis for the proposed action is the ISFMP for American lobster and promulgating regulations at 50 CFR part 697.

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

The RFA requires agencies to assure that decision makers consider disproportionate and/or significant adverse economic impacts of their proposed regulations on small entities. This section provides an assessment and discussion of the potential economic impacts of the proposed action, as required of the RFA.

The IRFA is designed to assess the impacts that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize adverse impacts. Under the RFA, an agency does not need to conduct an IRFA or Final Regulatory Flexibility Analysis (FRFA) if a certification can be made that the proposed rule, if adopted, will not have a significant adverse economic impact on a substantial number of small entities.

The purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of the various alternatives contained in the proposed rulemaking and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the regulatory documents and applicable statutes.

The recent addition of vessel owner information to the permit data allows us to better define fishing “businesses.” The vessel ownership data identifies all the individual people who own fishing vessels. Vessels can be grouped together according to common owners, which can then be treated as a fishing business, for purposes of RFA analyses. Revenues summed across all vessels in the group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business. Ownership data are available for the potentially impacted by the proposed action from 2010 onward.

The RFA recognizes and defines three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established (and recently modified) for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). Designations of large and small entities were attached based on each entity’s three-year average

landings. For entities landing a plurality of revenue in shellfish (NAICS 111412), the threshold for “large” is \$5.0 million. For entities landing a plurality of revenue in finfish (NAICS 111411), the threshold for “large” is \$19.0 million. The number of directly regulated entities for purposes of analyzing the economic impacts and describing those that are small businesses is selected based on permits held. Since this proposed regulation applies only to the businesses which hold permits in 4 areas managed by the conservation measures being amended, only those business entities are evaluated. Business entities that do not own vessels with directly regulated permits are not described.

There are 379 distinct entities identified as directly regulated entities in this action, those that held permits in Areas 2, 3, 4 or 5, or some combination. There were 373 entities that were classified as “small,” while the remaining 6 were classified as “large.” All 6 of the large businesses were designated as shellfish. Until further guidance is provided, for RFA analyses, business entities are classified into the SBA defined categories based on which activity, in the most recent year, produced the greatest gross revenue. An advantage of this approach is that entities are defined as large or small one time for the duration of a year, maintaining action to action consistency. As far as determining whether a business is large or small, once its major activity is determined (based on 2012) the average total revenue from all activities over the most recent three years (2010–2012) is applied against the appropriate threshold.

Of the 373 small entities, 180 are considered a shellfish business, 121 are considered a finfish business, 3 are considered a for-hire business, and 69 could not be identified as either because even though they had a lobster permit (in Areas 1, 2, 3 or 4) they had no earned revenue from fishing activity. Because they had no revenue in the last 3 years, they would be considered small by default, but would also be considered as latent effort.

The entity definition used by the Social Sciences Branch uses only unique combinations of owners. That is, entities are not combined if they have a shared owner. Section 3 of the SBA defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or

firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

TABLE 4—ESTIMATE OF THE NUMBER OF SMALL ENTITIES

Entity type	Number of entities	Average entity revenue
Shellfish	180	\$429,000.
Finfish	121	\$363,000.
No revenue ...	69	0.
For-hire	3	confidential.
Total	373	

Table 4 describes the number of regulated small entities and all known revenue from all fishing related activity. Many of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50-percent of gross sales from sales of lobster, we are able to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, we find that of the 373 small regulated entities, 180 of them are lobster-dependent.

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a “confirmation of history” (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a permit for a replacement vessel based on the qualifying vessel’s fishing and permit history at a subsequent time. The ownership data based on the permits held does not contain information on CPH permits. A total of 23 CPH’s exist for lobster Areas 2, 3, and 4: 8 for Area 1, 9 for Area 3, and 6 for Area 4. One CPH qualifies for a permit in Area 2 and 3, while one CPH qualifies in all 3 of these areas.

While considering the number of affected entities, it is also worth noting that the vast majority of permit holders are either dually permitted (i.e., issued both a federal and state permit) or otherwise subject to a state’s lobster regulations. Accordingly, most all Federal permit holders will be required to comply with the proposed measures

even if NMFS does not implement these measures. In other words, these federal permit holders will be obligated to comply with these measures and responsibilities attendant to their state permit regardless of whether these same measures are also required under their Federal permit.

Descriptions of Significant Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities

Due to the expected high rate of dual permitting and that the states are already compliant with broodstock measures, the majority of Federal vessels must already abide by these requirements, and therefore have already been impacted. For those vessels not dually permitted, broodstock measures can be expected to have a limited economic impact to permit holders. Because the proposed regulations are consistent with Commission recommendations and current state regulations, developing alternative measures would likely create inconsistencies and regulatory disconnects with the states and would therefore, likely worsen potential economic impacts. Therefore, no alternatives to broodstock measures are considered.

Because the Trap Transfer Program may ease economic impacts of trap reductions and provide added additional business flexibility, we propose to implement trap reductions at roughly the same time, or as close as possible, as the Trap Transfer Program, as recommended by the Commission. In other words, we have timed the trap reductions so that fishers will be able to activate their transferred traps moments after their allocation is reduced. In this way, fishers will not have to fish with reduced traps while waiting for their transferred traps to become allocated. This could mitigate the impacts of the trap reductions because fishers would be able to transfer traps based on their reduced allocation, prior to the cuts becoming effective. They could buy traps before the cuts take effect and minimize the impacts to their businesses resulting from the trap reductions. To further mitigate trap reductions, a permit holder could also choose to tend his or her remaining traps more often in an attempt to harvest more lobsters and recover income lost from the trap reductions. When considered in conjunction with trap transferability, permit holders remaining in the fishery may be able to transfer in traps up to their original trap cap (i.e., transfer in traps to make up for traps lost through trap reductions).

Though this will require capital, the ability to acquire additional traps may help another set of permit holders compensate for trap reductions. Finally, the permit holders who elect to leave the fishery and transfer out traps will be compensated immediately by those fishers purchasing traps.

Given the novelty of trap transferability, it is unclear how much time will be needed for trap sellers and buyers to meet and propose transfers, for Federal and state agencies to meet, reconcile, and approve the proposed transfers, and for permits and trap tag orders to reflect the approved transfer. Consequently, it might prove challenging for all permit holders to participate and complete their desired trap transfer transactions in this first year, which might take on added importance given the proposed trap reductions on April 30, 2015. On the other hand, a delay could exacerbate the condition of the poor stock which could also result in losses in revenue over time. Therefore, we are requesting comment on the proposed April 30, 2015, trap cut date and whether alternative dates, including later dates, such as a 1-year delay, might better advance lobster management objectives. Should the Commission and our state partners suggest a delay and/or alternative approach, we would develop an alternative formally analyzing these impacts. At present, however, such an alternative fails to accomplish the stated objectives of the rule insofar as unilateral divergence from the Commission's recommendations would create regulatory disconnects with the states and potentially undermine the Lobster Plan.

As discussed in greater detail in the EA, we considered, but rejected two other alternatives, where trap reductions are theoretically approved out-of-sync (i.e., either 5–6 months before or 5–6 months after) with trap transfers. Under either of these scenarios, some permit holders would be prevented from participating in the Trap Transfer Program following trap cuts, resulting in potential loss of economic opportunity, until additional traps could be required. For permit holders whose business model is predicated on fishing at the trap cap, they would be forced to fish at reduced and presumably unprofitable levels for nearly half the fishing year. Because these alternatives may increase economic impacts, the measures proposed in this action are the alternatives which minimize any significant economic impact.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Duplication, Overlap or Conflict With Other Federal Rules

This action does not duplicate, overlap, or conflict with any other Federal Laws.

List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: July 21, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR, part 697 is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

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

■ 2. In § 697.2, the definitions of “Federal Area 1 Limited Access Program,” “Federal Area 2 Limited Access Program,” “Federal Area 3 Limited Access Program,” “Federal Area 4 Limited Access Program,” “Federal Area 5 Limited Access Program,” and “Federal Outer Cape Area Limited Access Program” are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Federal Area 1 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 1 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 2 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 2 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 3 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 3 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 4 Limited Access Program means the limited access program restricts trap fishing in Area 3

to those federal lobster permits with qualified and allocated Area 4 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 5 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 5 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Outer Cape Cod Area Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Outer Cape Cod Area traps, as identified in these regulations at § 697.4(a)(7)(ii).

* * * * *

■ 3. In § 697.7, revise paragraphs (c)(1)(xxx) and (c)(3)(iii), to read as follows:

§ 697.7 Prohibitions

* * * * *

(c) * * *

(1) * * *

(xxx) *Seasonal Closures* The following areas are closed seasonally to lobster fishing.

(A) *Outer Cape Area seasonal closure.* The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from January 15 through March 15.

(1) Lobster fishing with traps is prohibited in the Outer Cape Area during this seasonal closure. Federal trap fishers are prohibited from possessing or landing lobster taken from the Outer Cape Area during the seasonal closure.

(2) All lobster traps must be removed from Outer Cape Area waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Outer Cape Area waters during this seasonal closure. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Outer Cape Area waters during this seasonal closure unless the vessel is transiting through the Outer Cape Area pursuant to paragraph (c)(1)(xxx)(A)(4) of this section.

(3) The Outer Cape Area seasonal closure relates only to the Outer Cape Area. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Outer Cape Area designation and another Lobster Management Area designation on their Federal lobster permits would not have

to similarly remove their lobster gear from the other designated management areas.

(4) *Transiting Outer Cape Area.* Federal lobster permit holders may possess lobster traps on their vessels in the Outer Cape Area during the seasonal closure only if:

(i) The trap gear is stowed; and

(ii) The vessel is transiting the Outer Cape Area. For the purposes of this section, transiting shall mean passing through the Outer Cape Area without stopping to reach a destination outside the Outer Cape Area.

(5) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Outer Cape Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

(B) *Area 4 seasonal closure.* The Federal waters of Area 4 shall be closed to lobster fishing from February 1 through March 31.

(1) Lobster fishing is prohibited in Area 4 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 4 during the seasonal closure.

(2) All lobster traps must be removed from Area 4 waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Area 4 waters during this seasonal closure. The following exceptions apply to the Area 4 seasonal closure:

(i) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 4 traps during this grace period is prohibited from possessing on board any lobster

regardless of the area from which the lobster may have been harvested.

(ii) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 4 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (ii) or is transiting through Area 4 pursuant to paragraph (c)(1)(xxx)(B)(5) of this section.

(4) The Area 4 seasonal closure relates only to Area 4. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 4 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(5) *Transiting Area 4.* Federal lobster permit holders may possess lobster traps on their vessels in Area 4 during the seasonal closure only if:

(i) The trap gear is stowed; and

(ii) The vessel is transiting the Area 4. For the purposes of this section, transiting shall mean passing through Area 4 without stopping, to reach a destination outside Area 4.

(6) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 4 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

(C) *Area 5 seasonal closure.* The Federal waters of Area 5 shall be closed to lobster fishing from February 1 through March 31.

(1) Lobster fishing is prohibited in Area 5 during this seasonal closure. Federal lobster permit holders are

prohibited from possessing or landing lobster taken from Area 5 during the seasonal closure.

(2) All lobster traps must be removed from Area 5 waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Area 5 waters during this seasonal closure. The following exceptions apply to the Area 5 seasonal closure:

(i) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(ii) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 5 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 5 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (ii) or is transiting through Area 5 pursuant to paragraph (c)(1)(xxx)(C)(5) of this section.

(4) The Area 5 seasonal closure relates only to Area 5. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 5 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(5) Transiting Area 5. Federal lobster permit holders may possess lobster traps on their vessels in Area 5 during the seasonal closure only if:

- (i) The trap gear is stowed; and
(ii) The vessel is transiting the Area 5. For the purposes of this section, transiting shall mean passing through Area 5 without stopping, to reach a destination outside Area 5.

(6) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 5 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

* * * * *

(c) * * *

(3) * * *

(iii) The possession of egg-bearing female lobsters in violation of the requirements set forth in § 697.20(d), 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 sizes 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.

* * * * *

■ 4. In § 697.19, revise paragraphs (b) through (k) and add (l) to read as follows:

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

* * * * *

(b) Area 2 trap limits. The Area 2 trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 2 by the Regional Administrator, as part of the Federal Area 2 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(c) Area 3 trap limits. The Area 3 trap limit is 1,945 traps. Federally permitted

lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator, as part of the Federal Area 3 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(d) Area 4 trap limits. The Area 4 trap limit is 1,440 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 4 by the Regional Administrator, as part of the Federal Area 4 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(e) Area 5 trap limits. The Area 5 trap limit is 1,440 traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 5 by the Regional Administrator, as part of the Federal Area 5 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(f) Outer Cape Area. The Outer Cape Area trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into the Outer Cape Area by the Regional Administrator, as part of the Federal Outer Cape Cod Area Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(g) Trap Cuts. Trap allocations shall be reduced in the following Areas as set forth below:

(1) Area 2 allocations shall be reduced according to the following schedule:

Table with 2 columns: Effective year of trap reduction, Area 2 reductions (percent). Rows include dates from April 30, 2015 to April 30, 2020 with corresponding reduction percentages.

(2) Area 3 allocations shall be reduced according to the following schedule:

Table with 2 columns: Effective year of trap reduction, Area 3 reductions (percent). Rows include dates from April 30, 2015 to April 30, 2016 with corresponding reduction percentages.

Effective year of trap reduction	Area 3 reductions (percent)
April 30, 2017, 11:59 p.m.	5
April 30, 2018, 11:59 p.m.	5
April 30, 2019, 11:59 p.m.	5

(h) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ management area.* A vessel owner who elects to fish in more than one EEZ Management Area is restricted to the lowest cap limit of the areas and may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(i) *Conservation equivalent trap limits in New Hampshire state waters.*

Notwithstanding any other provision, any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(j) *Trap Tag Requirements for vessels fishing with lobster traps.* All lobster traps in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Federal lobster permit holders are eligible to receive Area 1 trap tags only if the Regional Administrator has qualified the permit to fish in Area 1 as part of the Federal Area 1 Limited Entry Program. Federal lobster permit holders are eligible to receive Area 2, 3, 4, 5 and/or Outer Cape Cod Area trap tags only if the Regional Administrator has allocated those traps as part of the Federal Area 2, 3, 4, 5 and/or Outer Cape Cod Area Limited Access Program. Any vessel with a Federal lobster permit may not possess, deploy,

or haul back lobster traps in any portion of any lobster management area that do not have a valid, federally recognized trap tag permanently attached to the trap bridge or central cross-member.

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

(l) *EEZ Management Area 5 trap waiver exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

* * * * *

■ 5. In § 697.20, revise paragraphs (a)(5) through (a)(8), (b)(5) and (b)(6), (d)(1) and (d)(2), (g)(3) and (g)(4), and remove paragraphs (b)(7) and (b)(8) and (g)(5) through (g)(8) to read as follows:

* * * * *

§ 697.20 Size, harvesting and landing requirements.

(a) * * *

(5) Through April 30, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3½ inches (8.89 cm).

(6) Through April 30, 2015, the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3½ inches (8.89 cm).

(7) Effective May 1, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3¹⁷/₃₂ inches (8.97 cm).

(8) Effective May 1, 2015, the minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3¹⁷/₃₂ inches (8.97 cm).

* * * * *

(b) * * *

(5) 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 6¾ inches (17.15 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 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(d) * * *

(1) Any berried female lobster harvested in or from the EEZ must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42° 30' North latitude, it must be v-notched before being returned to sea immediately.

(2) Any berried female lobster harvested or possessed by a vessel issued a Federal limited access lobster permit must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42°30' North latitude, it must be v-notched before being returned to sea immediately.

* * * * *

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

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Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmf.org

MEMORANDUM

July 28, 2014

To: American Lobster Management Board
From: Kate Taylor, Senior FMP Coordinator
Re: Consistency between federal and Commission regulations

In April 2014, NMFS published a final rule on implementation of a limited entry program in Area 2 and Outer Cape Cod (OCC) as well as a trap transfer program to allow Federal lobster permit holders with qualified allocations for Areas 2, 3, and OCC to transfer traps with other Federal lobster permit holders. While the majority of the measures implemented are based on Commission recommendations and consistent with the Commission's plan, there are a few measures which are either not consistent with the Commission's plan or the Commission's plan does not address the issue.

Conservation tax of full business transfers

Under the final federal rule, a 10-percent transfer tax will be assessed on all partial allocation transfers while full business transfers (sale of the entire permit) will not have a transfer tax. Under the Commission's plan both partial and full business transfers are subject to the 10-percent transfer tax. Initially when the proposed rule was published the Commission expressed concerns in not implementing the 10% conservation tax for full business transfers. The Board recognizes that LCMA 1 does not currently have transferability due to the flat trap cap of 800 traps and therefore there is no mechanism in place to deduct traps from an Area 1 allocation. The Board requested that NMFS re-consider their proposed rule as the conservation tax is an important tool to help recover the Area 2, 3 and OCC lobster stocks and the reduction in traps provides a benefit to the Atlantic right whale by reducing the number of vertical lines in the water.

Conservation tax increments

Under the final federal rule, trap transfers may be processed in 10-trap increments. The Commission's plan does not include language on trap transfer increments.

Dual Permit Transfers

Under the Trap Transfer Program, NMFS will allow a dual state and Federal permit holder to purchase Federal trap allocation from any other dual Federal lobster permit holder. A dual permit holder can purchase a Federal allocation from an individual in another state, as well as an equal state-only allocation from a third individual in his or her own state for the purpose of matching the purchaser's state and Federal trap allocations. Any dual permit holders with different trap allocations must agree to abide by the lower of the two trap allocations to take part in the trap transfer program. Under the Commission's plan, a dual permit holder is restricted to transferring traps only to another dual permit holder from the same state. The Commission was supportive of this allowance in the proposed rule.

Additional item for Board review

Section 3.1.4 (Aggregated Ownership Cap or Ownership Accumulation Limits) of Addendum XXI specifies that:

Under this addendum, an entity may not own more than 1600 traps (800 active and 800 banked traps). However, those individuals who had more than two (2) permits in December 20003 may retain the number they had at that time, but may not own or share ownership of any additional permits.

The above underlined language was neither included in the draft for Board review nor the public comment document and was mistakenly included in the final text of this section.

Section 3.1.4 of Addendum XXI replaces Section 4.2.1.2 (*Monopoly Clauses*) of Addendum VII, which limits the number of permits any single entity/company could own to two (2) with an exception for a group or permit holders. Ownership is defined as having any interest in a lobster permit/business. The goal of the Aggregate Ownership Cap is to reduce the possibility of one entity exerting significant control over the market and keep as many individuals and as much cultural and geographic distribution within the fishery as possible. Through Addendum XXI there is no need to limit permits since the measures in the plan focus on controlling and reducing traps. This language could be removed through a Technical Addendum or the normal Addendum process.

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