

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 649 and 697

[Docket No. 990105002-9002-01; I.D. 110598D]

RIN 0648-AH41

**American Lobster Fishery; Exclusive Economic Zone From Maine Through North Carolina**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS solicits comments on proposed regulations to implement proposed management measures for the American lobster fishery in the Exclusive Economic Zone (EEZ) from Maine through North Carolina. The intent of these regulations is, in combination with state regulations governing the American lobster fishery in non-Federal waters, to end overfishing and rebuild stocks of American lobsters. NMFS proposes to withdraw approval of the Fishery Management Plan for the American Lobster Fishery (FMP), to remove existing regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) which implement that FMP, and to implement the existing management measures and a variety of new measures including designation of lobster management areas, restrictions on fishing gear and tagging requirements for lobster traps, under regulations issued under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). The proposed regulations are compatible with the recommendations we received from the Atlantic States Marine Fisheries Commission (Commission).

**DATES:** Comments on the proposed rule must be received by February 10, 1999.

**ADDRESSES:** Comments on the rule should be sent to, and copies of supporting documents, including a Draft Environmental Impact Statement/Regulatory Impact Review (DEIS/RIR) and an Initial Regulatory Flexibility Analysis (IRFA), are available from the Director, State, Federal and Constituent Programs Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Comments regarding burden estimates should be sent to: the Office of Information and Regulatory Affairs,

Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

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

**SUPPLEMENTARY INFORMATION:** NMFS proposes to withdraw approval of the American Lobster FMP, to remove existing regulations issued under the Magnuson-Stevens Act, and to issue new regulations under the ACFCMA to implement existing management measures and a variety of new measures. American lobster, *Homarus americanus*, from the Magnuson-Stevens Act to the ACFCMA by withdrawing approval of the lobster fishery management plan (48 FR 36368) at the same time as this rule would be implemented. Since the majority of the lobster fishery (approximately 80 percent) takes place in state waters, regulatory action in the EEZ (3 nautical miles [nm] to 200 nm from shore) alone, even a total moratorium on harvesting lobsters, would not end overfishing of the resource without implementation of effective management measures by state jurisdictions. Adequate state lobster conservation measures, therefore, are essential to end overfishing of American lobster. It is clear to the agency that it is not possible to meet the requirements of the Magnuson-Stevens Act without full cooperation of states with lobster fisheries, and thus a cooperative management partnership under the ACFCMA is preferable. Accordingly, NMFS is proposing Federal lobster conservation measures in the EEZ under the authority of the ACFCMA. Section 804(b) of ACFCMA authorizes the Federal government to implement regulations to govern fishing in the EEZ that are compatible with the effective implementation of a Commission American Lobster Interstate Fishery Management Plan (ISFMP) and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. Given limitations on NMFS to manage the lobster resource throughout its range, NMFS has determined that this approach is the best option to encourage and expedite partnership in state and Federal jurisdictional waters in a time frame that minimizes the potential for a stock collapse of the resource and has the best potential for complying with national standards of the Magnuson-Stevens Act.

The Commission approved Amendment 3 to the American Lobster ISFMP in December 1997. The goal of Amendment 3 is to have a healthy lobster resource and a management

regime that provides for a sustained harvest of lobsters, maintains appropriate opportunities for participation, and provides for cooperative development of conservation measures by all stakeholders. Amendment 3 includes recommended measures in Federal waters as well as in state waters (specific measures are described later in this proposed rule), and it establishes a procedure whereby fishermen, including some who fish exclusively in Federal waters, may make recommendations for further management measures to meet predefined targets designed to end overfishing and to facilitate stock rebuilding.

The Magnuson-Stevens Act requires NMFS to develop plans to end overfishing and rebuild overfished stocks. NMFS has identified lobster as overfished throughout its range. This finding has been confirmed by an independent review panel convened by NMFS and the Commission. Therefore, NMFS is required by the Magnuson-Stevens Act to develop a plan by June 1999 to end overfishing of lobsters and rebuild the lobster fishery within 10 years. The regulations in this proposed rule, together with a process for working with the Commission to devise future measures, constitute a proposed plan to meet this mandate.

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

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

#### Status of Stock

The most recent NMFS assessment of the lobster stock concluded that it is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96-13, dated September, 1996). There has been a dramatic increase in fishing effort since the 1970s. Fishing is now removing a large proportion of lobsters before they have had a chance to spawn even once, and the average size of lobsters landed

continues to drop. Although landings have been high in recent years, there is a risk that the stocks could collapse. Such a risk could be reduced if fishing mortality were reduced.

The major signs of risk to the resource and to the fishery are:

1. The landings of lobsters, throughout the range, are becoming increasingly dependent on animals that have just reached minimum size. Most females at this size have not yet had a chance to spawn.

2. Extremely high exploitation of lobsters (exceeding 70 percent of the legal sized animals) continues to lessen the benefits of the current conservation measures, since relatively few live long enough to be protected.

3. Although abundance is currently high in some areas, this is due, in part, to favorable environmental conditions that are enhancing survival. If these conditions deteriorate, the resource cannot be expected to support the high level of harvesting that currently exists.

4. The overall size composition of the resource is becoming dominated by small, not fully mature animals. As a result, the population is predominantly relying on first time spawners to create successive generations. In addition to the low egg production of first time spawners, there is evidence that the eggs they produce are less viable, and the survival of the larvae produced is lower than those produced by larger spawners.

The lobster stock is considered to be overfished because the number of eggs produced each year is less than 10 percent of the number that would have been produced if the stock were not fished. The goal of the stock rebuilding program is not to increase the number of harvestable lobsters—that portion of the population is currently at an all-time high. Rather, the goal is to increase egg production. The more eggs produced, the greater the margin of safety for the population if environmental conditions become unfavorable for the survival of juvenile lobsters to marketable size and the greater the likelihood of rebuilding. In other words, increasing egg production will reduce the risk that a stock will collapse and increase the chances of rebuilding the resource. The Commission has developed a schedule to rebuild egg production that calls for increases in the level of egg production each year until 2005.

### The Fishery

The sale of lobsters in 1997 was valued at \$268 million—27 percent of the region's entire revenue from commercial fishing. The lobster fishery takes place from North Carolina to Maine. It is primarily a cold water

fishery, however. Over half of all lobsters from the northeast are landed in Maine. Approximately 20 percent are landed in Massachusetts. Rhode Island, Long Island Sound and George's Bank are other areas with significant lobster fisheries. Most lobsters (over 80 percent) are taken in state waters, which extend from the coast to three miles from shore. The offshore fishery, particularly that using trap gear, has developed only in the past ten to fifteen years.

Lobster fishing has increased dramatically since the 1970s. Effort is now at an all-time high. For example, in Maine, it has been reported that the number of traps per boat has doubled in the last 30 years. Each trap now remains in the water about 30 percent longer than in 1970 before being hauled.

This is a year-round fishery in the United States. Traps are set even in summer and fall, when the lobsters are molting. Harvesters depend heavily on lobsters within one molt of the legal size (3¼ inches or 8.26 cm carapace length). In recent years, 85 percent or more of landings have been composed of animals in this size range.

The fishery also takes place in Canadian waters, but the Canadian fishery is closed during the molting season. There are limits on the numbers of traps that can be set, on the total allowable catch, and on the number of lobster licenses issued.

Virtually all lobsters (approximately 97 percent) are taken in lobster traps. Small numbers of lobsters are also taken in trawls, gillnets, and by divers.

### Lobster Conservation Measures Already in Place

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

1. A moratorium on new entrants into the fishery through December 31, 1999,
2. A prohibition on the possession of lobsters bearing eggs or from which eggs have been removed ("scrubbed") by any means,
3. A prohibition on the possession of lobster meat and detached tails, claws or other parts of lobster,
4. A prohibition on the possession of V-notched lobsters (female lobsters that have carried eggs and are marked with a V-shaped cut in the tail),
5. A requirement to install a biodegradable "ghost" panel for traps (to eventually allow lobsters to exit from a lost trap),
6. A minimum carapace size of 3¼ inches (8.26 cm),
7. A requirement to install escape vents on traps of at least 5¾ inches by

1⅞ inches (14.6 cm by 4.8 cm) to allow undersized lobsters to exit,

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

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

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

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

NMFS proposes to continue all of these measures, as well as new measures described herein, but to implement them by regulations issued under authority of the ACFCMA instead of the Magnuson-Stevens Act. Accordingly, the lobster regulations currently codified at 50 CFR part 649 would be removed and replaced with regulations to be codified at under 50 CFR part 697.

Management measures in state waters vary by state. At a minimum, states must comply with the requirements of the Commission, but additional management measures have been taken by a number of states, including limiting entry into the fishery and further restrictions on fishing effort. The current Commission lobster management measures require that state jurisdictions:

1. Set a minimum carapace size of 3¼ inches (8.26 cm);
2. Prohibit the possession of lobsters bearing eggs and lobsters from which eggs have been removed;
3. Prohibit fishermen from possessing of lobster meat, tails or other parts;
4. Require that traps have escape vents;
5. Require that traps have biodegradable "ghost" panels; and
6. Prohibit spearing lobsters.

NMFS published a DEIS/RIR on March 17, 1998, (63 FR 14922) that presented several alternative lobster management measures for both the trap and the non-trap sector of the fishery, in order to meet the mandate of the Magnuson-Stevens Act. The DEIS/RIR recognized the problem associated with meeting the Sustainable Fisheries Act (SFA) requirements, given that approximately 80 percent of the American lobster fishery occurs in state waters and is subject primarily to state, not Federal, management measures. Thirteen public hearings were held in

nine states from Maine to North Carolina to discuss these alternatives and any other ideas about lobster management. Public comments were received from March 20 to May 19, 1998. Overall public comment on these alternatives indicated strong support for the plan embodied by the Commission's Amendment 3 and little support for other measures upon which NMFS sought comments.

The DEIS/RIR included three alternatives specific to the non-trap (mobile gear) fishery. The non-trap fishery alternatives included: taking no action; implementing a possession limit of 100 lobsters per day and a maximum of 500 lobsters per trip; or, implementing a possession limit of 500 lobsters per trip, regardless of trip length. The analysis concluded that a landing limit of 100/day and 500/trip would cap landings from the non-trap sector at current levels and ensure no future expansion of the non-trap sector.

#### Measures Proposed by Commission

The states, through adoption of Amendment 3 to the Commission's American Lobster ISFMP, recognized the need to end overfishing and rebuild stocks of American lobster. New requirements in state waters, approved in December 1997, include a prohibition in all waters on the possession of "V-notched" lobsters throughout the species range and a limit to landings by non-trap fishermen of 100 lobsters per day, up to a maximum of 500 lobsters per trip of 5 or more days. In addition, the following measures would be applicable to all states and areas along the Atlantic coast.

1. All commercial fishermen would have to have a permit to land or possess lobster.

2. All lobster traps would have to contain at least one escape vent with a minimum size of  $5\frac{3}{4}$  inches by  $1\frac{1}{16}$  inches (14.6 cm by 4.9 cm).

3. Traps could not exceed 22,950 cubic inches (376,082 cubic cm), except offshore, where the maximum trap size would be 30,100 cubic inches (493,249 cubic cm).

The Commission Plan will identify additional measures, with the opportunity for consideration of alternatives having equal or greater conservation benefits, to achieve the resource rebuilding objectives of the American Lobster ISFMP. The Commission has also identified specific management measures for some regions. This area management approach is being developed with industry participation on seven individual lobster conservation management teams (LCMT) established by the Commission.

Except for Area 6 (Long Island Sound), each of these areas include some Federal waters. For the coordinates of the Commission lobster management areas, see § 697.31 of the proposed regulations. The Commission area-specific management measures currently include:

#### Area 1, Inshore Gulf of Maine

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

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

#### Area 2, Inshore Southern New England

A plan to cap and then reduce the maximum number of traps per vessel was submitted by the Area 2 LCMT. It is currently under review by the Commission.

#### Area 3, Offshore Waters (Entirely in Federal Waters)

The Commission recommends that NMFS implement a limit of 2000 traps per vessel beginning January 1, 1999. A plan prepared by the Area 3 LCMT is currently under review by the Commission.

#### Areas 4, 5 and 6, Long Island and South

The need for trap reductions or other measures to rebuild the stock will be investigated. Plans submitted by Area 4 and Area 6 LCMTs are currently under review by the Commission. A plan is expected to be submitted by the Area 5 LCMT in the near future.

#### Outer Cape Cod Lobster Management Area

The same trap limits required in Area 1 will apply, but there will be no maximum size limitation.

The Commission also recommended several measures not directly related to the trap fishery. For example, it recommended a prohibition on spearing lobsters by making it illegal to possess any lobster that has a shell that has been pierced by a spear. The Commission also recommended that NMFS continue the moratorium on issuing new permits to fish for lobster in Federal waters and a mandatory reporting requirement. The current moratorium will expire on December 31, 1999.

#### The NMFS Proposed Plan

NMFS proposes to retain all current Federal measures for the management of the lobster fishery, but to implement those measures by regulations issued under the authority of the ACFCMA instead of by the currently regulations issued under the authority of the

Magnuson-Stevens Act. In addition, NMFS proposes the following new measures designed to implement the Commission's American Lobster ISFMP. Note that some measures would apply to all Federal permit holders while others would apply only in specific areas.

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

2. Designation of Lobster Management Areas. In order to be compatible with the Amendment 3, NMFS proposes to adopt the boundaries of the lobster management areas specified by the Commission. The coordinates marking the perimeter of the areas can be found in the proposed regulations in § 697.31.

3. Lobster management area designation for vessels fishing with traps. NMFS proposes that owners of vessels that elect to use traps must inform NMFS each year of the lobster management areas they will set trap gear in. A permit holder may set traps in more than one area, but if any nearshore areas are elected (Areas 1, 2, 4, 5, 6 or the Outer Cape Lobster Management Area), then Area 3, the offshore area, may not also be elected in that year or any subsequent year. If a permit holder elects to fish in Area 3, that person may not fish in any other designated lobster management area except where Areas 2 and 3 overlap. The most restrictive of either Area 2 or Area 3 regulations (including trap limits) will apply when fishing in this overlap area. Once a vessel owner has designated one or more of the nearshore management areas, the vessel would be required to fish only in those areas. Permit holders electing to fish in EEZ Offshore Management Area 3 will have one opportunity to change to one or more of the EEZ nearshore management areas, but thereafter would be prohibited from re-electing Offshore Management Area 3. The reason for these provisions is that different trap limits and maximum trap sizes are proposed for Area 3 than for the nearshore areas. A person receiving the

higher number of traps and trap tags would not be allowed to set gear in the near-shore areas. At the same time, there may be a conservation benefit to keeping effort in Area 3 from expanding. This provision would slow the movement of fishermen from the near-shore areas into Area 3, and may prevent an expansion of effort on the offshore brood stock.

4. Near-shore area trap limits. In order to cap effort in the near-shore areas, NMFS proposes that Federal permit holders electing to fish in Areas 1, 2, the Area 2/3 overlap, 4, 5, 6 and in the Outer Cape Lobster Management Area be limited to a maximum of 1000 traps in 1999 and to 800 traps in the year 2000. Further trap limits may be required in the future if the egg-rebuilding schedule is not met by these limits or other conservation equivalent measures. The purpose of this measure is to ensure that the conservation benefits that might be achieved by other measures are not lost by further expansion of fishing effort in the near-shore areas. Although many of the states are adopting similar limits, measures in this rule would only apply to Federal permit holders. Alternative and/or additional management measures other than those pertaining to trap limits will be considered in Federal waters in accordance with Commission recommendations and procedures identified in § 697.36 of this proposed rule.

5. Near-shore area maximum trap size. One way to increase fishing effort without increasing the number of traps in the water is to increase the size of those traps. The larger the trap, the more lobsters it can hold. To minimize this, NMFS proposes to prohibit Federal permit holders from setting traps in the near-shore areas that are larger than 22,950 cubic inches (376,082 cubic centimeters).

6. Area 1 maximum carapace size. For Federal permit holders fishing in Area 1, NMFS proposes that there be a maximum harvestable size, in order to have compatible measures with the Commission's ISFMP recommendation. The Commission did not approve a maximum carapace size for any other management area. Lobsters with a carapace size greater than 5 inches (12.7 cm) could not be retained in Area 1, or by fishermen who elect Area 1 as one of their designated management areas. The carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace (the unsegmented shell of the lobster). The purpose of this measure is to protect large females that are capable

of producing many eggs. This measure will provide increasing conservation benefits as the number of larger individuals increases in the American lobster population.

7. Off-shore area trap limits and maximum trap size. NMFS proposes that Federal permit holders electing to fish in Area 3 be limited to no more than 2000 traps in 1999 and no more than 1800 traps in 2000. Further reductions of this trap limit may be required in the future if the egg-rebuilding schedule is not met by these limits. In addition, NMFS proposes that traps set in Area 3 be no larger than 30,100 cubic inches (493,249 cc). A higher maximum number of traps and larger maximum trap size are proposed for Area 3 to offset the additional costs and time required for fishing offshore. Alternative and/or additional management measures will be considered in Federal waters in accordance with Commission recommendations and procedures identified in § 697.36 of this proposed rule.

8. Trap tag allocations. As a way to enforce the trap limits proposed for each lobster management area, NMFS proposes to require that each trap set by a Federal permit holder have a trap tag attached to the trap bridge or central cross-member. Lobster fishermen would be required to purchase tags from NMFS or a NMFS-authorized distributor. Each permit holder would be allowed to purchase tags, up to the maximum number of traps allowed in his or her area, plus ten percent to cover in-season loss. Those persons fishing in near-shore areas would be allowed to purchase up to 1100 tags in 1999 and 880 tags in 2000. Those persons fishing in Area 3 would be allowed to purchase up to 2200 tags in 1999 and 1980 tags in 2000. The cost per tag is expected to be approximately \$0.14. Tags will only be valid for one year and must be replaced each year. Tags may not be sold, transferred or given away. The requirement to affix a tag to each trap would be in lieu of the current requirement that gear be marked with a vessel's official number, Federal permit or tag number, or other specified form of identification.

9. State/Federal Coordination. NMFS may consider alternative tagging programs with cooperating states through appropriate formal agreements.

10. Non-trap harvest restrictions. NMFS proposes similar regulations pertaining to non-trap landing limits as currently exist. Under the proposed rule, it would be unlawful for a vessel that takes lobster by a method other than traps to possess, retain on board, or

land, in excess of 100 lobsters, for each lobster day-at-sea, or part of a lobster day-at-sea, up to a maximum of 500 lobsters for any one trip, unless otherwise restricted.

11. Modifications to the plan. This is not a static plan. NMFS will specify additional fishery measures as necessary to meet the egg rebuilding schedule established by the Commission. Some of the measures that might be considered are (1) continued reductions in fishing effort (e.g., number of traps fished) and (2) increases in the minimum harvestable size. NMFS will consult with the Commission in the identification of measures.

ACFCMA requires that Federal regulations be consistent with the national standards of the Magnuson-Stevens Act. National Standard 1 requires NMFS to develop conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield for each fishery. The degree to which the current management strategy under the Commission plan will achieve ISFMP objectives and ensure maximum sustainable yield on a stock by stock basis will be further assessed by state and NMFS fishery experts through scientific peer review, currently scheduled for early 1999. If NMFS believes that measures to meet the egg-rebuilding schedule which forms the basis of the Commission plan are not sufficient to end overfishing and rebuild stocks of American lobster, it will seek public comment on additional or substitute measures to achieve that.

In addition, section 304(c) of the SFA requires the establishment of a stock rebuilding plan for all overfished stocks. On September 30, 1997, NMFS issued its list of overfished fisheries, which includes the American lobster fishery. NMFS, in consultation with the Commission, will afford special attention to a refined evaluation of the relative contributions of egg production, stock biomass, and population size composition toward meeting stock rebuilding objectives. The ISFMP's rebuilding schedule calls for a threefold increase in lobster egg production in the Gulf of Maine from 1999-2005. The ISFMP also calls for a sixfold increase in egg production on Georges Bank and South and a fourfold to fivefold increase in the southern Cape Cod-Long Island Sound region over the same time period. The rebuilding schedules correspond to a substantial decrease in fishing mortality rate and an increase in yield per recruit. If achieved, the higher levels of egg production should improve the outlook for stock rebuilding, resulting in

positive conservation and economic benefits.

National Standard 2 requires that management measures be based upon the best scientific information available. The information base for these management measures incorporate the most current peer-reviewed information available on the stock status of the American lobster. This information confirms the overfished status of the resource and supports a reduction of fishing effort to minimize the potential for a stock collapse.

National Standard 3 requires, as practicable, that an individual stock be managed as a unit throughout its range, and that interrelated stocks be managed as a unit or in close coordination. Three stock areas for American lobster have been defined: (1) The Gulf of Maine; (2) the Southern Cape Cod to Long Island Sound; and (3) the Georges Bank and south to Cape Hatteras. The three stocks would be managed, throughout the range of the population from Maine to North Carolina, through an area management approach in coordination with state jurisdictional management through the Commission's American Lobster ISFMP.

National Standard 4 requires that conservation and management measures not discriminate between residents of different states. The proposed regulations for the EEZ were developed in consultation with the Commission and the lobster industry and take into account the social and economic distinction between the nearshore and offshore EEZ fisheries. The regulations strive to maintain historical participation levels in the U.S. American lobster fishery.

National Standard 5 requires that, where practicable, conservation and management measures promote efficiency in the utilization of fishery resources. The excess of fishing gear is the primary reason for the overfished condition of the American lobster resource. The increase in the number of lobster traps in recent years has likely reduced the net income of most lobster fishermen. The capping and reduction of fishing effort provides a means to reduce excessive levels of fishing gear and to improve economic efficiency. Continued reductions in fishing effort, however, will likely reduce gross revenues by more than 5 percent, or require significant changes in business operations for a substantial number of individual entities for at least some portion of the stock rebuilding period. The primary intent of the trap reduction schedule is to afford the necessary level of resource protection to prevent

overfishing, and promote rebuilding, of the American lobster population.

National Standard 6 requires that conservation and management measures take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The proposed regulations take into account the variations in fisheries, fishery resources, and catches between the nearshore and offshore EEZ fisheries through the differential trap limits for the trap gear sector and through a possession limit designed to maintain historical participation by the non-trap fishery. The proposed higher trap limit for Federal permit holders in the offshore EEZ fishery is based upon the historical character and economics of that industry sector. Additionally, adaptive management measures enable future consideration of state/Federal collaboration efforts, in consultation with the lobster industry, to accommodate specific industry needs on an area by area basis.

National Standard 7 requires that, where practicable, conservation and management measures minimize costs and avoid unnecessary duplication. The implementation of a lobster trap tag program and a gear requirement to increase the minimum escape vent size in lobster traps, for example, will increase industry costs. These measures and their associated cost would assist in ending overfishing and uncontrolled increases in numbers of traps used by vessel operators. Additional requirements relating to mandatory reporting for Federal permit holders would be addressed by NMFS and state fishery management agencies during the development of the Commission's Atlantic Coastal Cooperative Statistics Program in a manner to avoid unnecessary duplication between state and Federal reporting requirements.

National Standard 8 requires that, consistent with fishery conservation requirements, conservation and management measures take into account the importance of fishery resources to fishing communities. There would likely be some initial negative effects on fishing communities. However, the rebuilding of stocks would benefit fishing communities throughout the Atlantic coast historical range for American lobster. Sustained participation of communities and consideration of economic impacts would be facilitated by industry participation through the ISFMP's area management provisions. Data currently available cannot fully describe levels of fishing effort in the EEZ. However, the provisions associated with the management action would allow, in

collaboration with the Commission and state fishery agencies, consideration of alternative conservation-equivalent management measures on an area by area basis to meet industry needs and help alleviate any adverse impact management measures might otherwise have on fishing communities.

National Standard 9 requires that, to the extent practicable, conservation and management measures minimize bycatch. Bycatch has not been identified as a significant issue in the ISFMP for American lobster. The proposed action would have no anticipated adverse impacts on bycatch in the EEZ lobster fishery.

National Standard 10 requires that, to the extent practicable, conservation and management measures promote the safety of human life at sea. Reduction in number of lobster traps used by fishermen may result in more frequent tending (reduced soak time) of lobster gear by individual fishermen, but the specific effects of the potential regulations on fishing activities are unknown.

#### Classification

This proposed rule is published under the authority of the ACFMA. Paragraphs (A) and (B) of section 804(b)(1) of the ACFMA authorize the Secretary of Commerce (Secretary) to issue regulations in the EEZ that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. This authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has preliminarily determined that these actions are consistent with the national standards of the Magnuson-Stevens Act. The AA, before making the final determinations, will take into account the data, views, and comments received during the comment period.

NMFS prepared a DEIS/RIR for this action; a notice of availability was published on March 27, 1998 (63 FR 14922). The DEIS analyzed six different alternatives for the lobster trap fishery. The trap fishery alternatives included: taking no action; implementing measures in Federal waters recommended by the Commission; implementing additional nearshore/offshore trap limits with a buffer zone; implementing a four-tier nearshore/offshore trap limit; implementing nearshore fixed trap limits in combination with offshore limits based on historical participation; and prohibiting lobster fishing in Federal waters. The analysis concluded that

Federal action in the EEZ alone is not likely to stop overfishing, rebuild lobster egg production, or meet Federal management requirements to do so. Only cooperative state and Federal action would rebuild the lobster stocks.

The DEIS/RIR also analyzed three alternatives for the non-trap (mobile gear) fishery. The non-trap fishery alternatives included: taking no action; implementing a possession limit of 100 lobsters per day or a maximum of 500 lobsters per trip; and implementing a possession limit of 500 lobsters per trip, regardless of trip length. The analysis concluded that a landing limit of 100/day and 500/trip would cap landings from the non-trap sector at current levels and ensure no future expansion of the non-trap sector.

NMFS prepared an IRFA, supplemented by the preamble to this proposed rule, that describes the impact this proposed rule, if adopted, would have on small entities. Virtually all participants in the lobster fishery are considered to be small entities. Consequently, management measures in the proposed rule affect small entities only, and all analyses of such effects are necessarily analyses of effects on small entities. Since management alternatives differ between the non-trap (mobile gear) and trap (fixed gear) groups, the analysis was performed separately for each gear group.

The proposed action for the trap sector would initially cap and then reduce fishing effort (gear in the water), in addition to other management measures. These measures would apply to all the small entities in the trap sector. NMFS's analysis indicates that these measures could result in a reduction of gross annual revenues of at least 5 percent, or an increase in compliance costs of at least 5 percent, for at least 20 percent of the affected small entities. In addition, it is possible that these measures will cause at least 2% of the affected small entities to cease operations. Therefore, the potential action is determined to have a significant economic impact on a substantial number of small Federally permitted lobster trap vessels. The ISFMP, however, through its area management approach, identifies and addresses socio-economic impacts among the industry sectors on an area by area basis. In the ISFMP, the management unit for American lobster (state and Federal waters from Maine to North Carolina) was subdivided into seven areas, and Lobster Conservation Management Teams (LCMT's) were established for each of these areas. These LCMT's, comprised of lobster industry members, make

recommendations for management measures to meet predefined targets designed to end overfishing. Industry recommended LCMT measures, implemented on an area by area basis after review and approval by the Commission, will mitigate adverse economic impacts to area participants by allowing for variable regulations by area, depending on the fishing practices and unique fishery characteristics for each management area. This approach, with industry participation, strives to alleviate adverse economic impacts to the extent possible.

NMFS found no significant impact on small entities for the non-trap sector, primarily because the majority of these vessels do not rely on lobster as their principal source of income. A copy of this analysis is available from NMFS (see ADDRESSES).

Alternatives considered and their impacts have been discussed here.

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

This rule contains collection-of-information requirements subject to the PRA. The following are proposed new collection-of-information requirements that have been submitted to OMB for approval.

The estimated time per individual response is shown.

1. Revision of existing gear (trap) marking requirements (1 minute);
2. Lobster management area designation, request for trap tags, and preparing payment for trap tags (5 minutes);
3. Reporting lost trap tags and requesting replacement trap tags (3 minutes);
4. Requests for additional trap tags (2 minutes); and
5. Extend observer coverage to include the American lobster fishery (2 minutes).

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

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

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

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

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

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

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

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

#### List of Subjects in 50 CFR Parts 649 and 697

Fisheries, Fishing.

Dated: January 8, 1999.

**Rolland A. Schmitt**,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR part 649 is proposed to be removed and 50 CFR part 697 is proposed to be revised to read as follows:

#### **PART 649—[REMOVED]**

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

##### **Subpart A—General Provisions**

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

##### **Subpart B—Management Measures**

- 697.20 Harvesting and landing requirements.  
697.21 Gear identification and marking, escape vent, maximum trap size, trap tagging and ghost panel requirements.  
697.22 Experimental fishing exemption.  
697.23 Restricted gear areas.

##### **Subpart C—Egg Production Rebuilding Schedule and Adaptive Management Adjustments to Management Measures**

- 697.30 Purpose and scope.  
697.31 Egg production rebuilding schedule lobster management areas.  
697.32 Management area designations.  
697.33 Trap allocations.  
697.34 Trap tag allocations.  
697.35 Non-trap trap harvest restrictions.  
697.36 Adjustment to management measures.

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

##### **Subpart A—General Provisions**

###### **§ 697.1 Purpose and scope.**

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

###### **§ 697.2 Definitions.**

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

*American lobster* or lobster means *Homarus americanus*.

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

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

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

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

*BRD* means bycatch reduction device.

*Carapace length* is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

*Certified BRDs* mean any BRD, as defined in part 622, Appendix D of this title: Specifications for Certified BRDs.

*Charter or head boat* means any vessel carrying fishing persons or parties for a per capita fee or for a charter fee.

*Commercial purposes* means for the purpose of selling or bartering all or part of the fish harvested.

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

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

*CPH* means Confirmation of Permit History.

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

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

*De minimis state* means any state where the landings are so low that the Commission's Fisheries Management Board has exempted that state from some of its regulatory responsibilities

under an Interstate Fishery Management Plan.

*Dive vessel* means any vessel carrying divers for a per capita fee or a charter fee.

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

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

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

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

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

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

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

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

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

*Lobster permit* means a Federal limited access American lobster permit.

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

*Management area* means each of the geographical areas identified for management purposes under the ISFMP.

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

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

*Point Judith Light* means the aid to navigation light located at Point Judith,

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

*Retain* means to fail to return any species specified under § 696.7 of this chapter to the sea immediately after the hook has been removed or after the species has otherwise been released from the capture gear.

*Scrubbing* is the intentional removal of eggs from a berried female.

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

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

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

*Trap* means any structure or other device, other than a net, that is placed on the ocean bottom and is designed for or is capable of, catching lobsters.

*V-notched American lobster* means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail toward the viewer), or any female American lobster that is mutilated in a manner that could hide or obliterate such a mark.

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

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

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

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

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

part, as if the regulations in this part were issued under the Magnuson-Stevens Act.

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

(c) The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to: weakfish fishing and American lobster fishing. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

#### § 697.4 Vessel permits.

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

(1) *Eligibility.* To be eligible to apply for a Federal limited access lobster permit a vessel must have been issued either a Federal limited access lobster permit for the preceding year, be replacing a vessel that was issued a Federal limited access lobster permit for the preceding year or be replacing a vessel issued a confirmation of permit history.

(2) *Application/renewal restrictions.* All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued as specified in paragraph (a)(6) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(3) *Qualification restriction.* Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a Federal limited access lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is eligible for the permit or a CPH under paragraph (a)(4) of this section.

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

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

(6) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (o) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form means the qualifying vessel that has been sunk, destroyed, or

transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (c) of this section.

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

(8) *Management area designation restrictions.* A vessel may not change management area designation during the fishing year, except as provided in § 697.32. Prior to the start of the fishing year, vessel owners will have one opportunity to request a change in management area designation by submitting an application to the Regional Administrator prior to the start of the fishing year and within 45 days of issuance of the previous designation. After that date, the vessel must remain in the management area elected for the remainder of the fishing year.

(b) *Condition.* Vessel owners who apply for a Federal limited access American lobster permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(c) *Vessel permit application.* Applicants for a Federal limited access American lobster permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Administrator at least 30 days before the date on which the applicant desires to have the permit made effective.

Eligibility requirements are specified in paragraph (a)(1) of this section. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section.

(d) *Information requirements.* In addition to applicable information required to be provided by paragraph (c)

of this section, an application for a Federal limited access American lobster permit must contain at least the following information, and any other information required by the Regional Administrator: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; lobster fishing area declaration; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative.

(e) *Fees.* The Regional Administrator may charge a fee to recover the administrative expense of issuing a Federal limited access American lobster permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The NOAA Finance Handbook can be obtained from the Regional Administrator, NMFS (see Table 1 to § 600.502 of this chapter). The fee may not exceed such costs and will be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

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

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

(ii) The application was not received by the Regional Administrator by the deadlines set forth in paragraph (a)(2) of this section; or

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

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

(g) *Expiration.* A Federal limited access American lobster permit will expire upon the renewal date specified in the permit.

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

(i) *Reissuance.* Reissued permits, for an otherwise valid permit, may be issued by the Regional Administrator when requested in writing by the owner or authorized representative, stating the need for reissuance, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the vessel and owner/or person to which it is issued.

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

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

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

(n) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

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

#### § 697.5 Operator permits.

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

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree, as a condition of this permit, that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 697.4(a). The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in off loading. If a requirement of this part

and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two recent (no more than one year old) color passport-size photographs.

(e) *Fees.* See § 697.4(e).

(f) *Issuance.* See § 697.4(f).

(g) *Expiration.* See § 697.4(g).

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

(i) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent (no more than one year old) color passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

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

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

(l) *Alteration.* See § 697.4(l).

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

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement

related permit sanctions and denials are found at subpart D of 15 CFR part 904.

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

#### § 697.6 Dealer permits.

(a) All American lobster dealers must have been issued, and have in their possession, a valid permit issued under this section.

(b) *Dealer application.* See § 697.5(b).

(c) *Information requirements.*

Applications must contain at least the following information and any other information required by the Regional Administrator: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares, must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one partner, names of all partners having more than a 25 percent interest; and name and signature of all partner or partners authorized must be included with the application.

(d) *Fees.* See § 697.4(e).

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

(f) *Expiration.* See § 697.4(g).

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

(h) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

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

(j) *Change in application information.* See § 697.5(k).

(k) *Alteration.* See § 697.4(l).

(l) *Display.* See § 697.5(m).

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

(n) *Sanctions.* See § 697.4(n).

#### § 697.7 Prohibitions.

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

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

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

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

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

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

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

(ii) The east by a straight line connecting points 35°03.5' N. lat., 75°11.8' W. long. (20 nm off Cape Hatteras) and 33°21.1' N. lat., 77°57.5' W. long., (about 30 nm off Cape Fear on the extension of the North Carolina/South Carolina state line into the EEZ).

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

(iv) On the west by state waters.

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

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

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

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

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

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

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

(c) *American lobster.* In addition to the prohibitions specified in § 600.725 of this chapter, the following prohibitions apply. It is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 to do any of the following:

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

(2) Retain on board, land, or possess any American lobster or parts thereof in

violation of the mutilation standards specified in § 697.20(c).

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

(4) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed. No person may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

(5) Retain on board, land, or possess any V-notched female American lobster throughout the range of the stock.

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

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

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

(9) Fish for, land, or possess American lobsters, unless the operator of the vessel has been issued an operator's permit under § 697.5, and the permit is on board the vessel and is valid.

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

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

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

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

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

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

(2) The possession of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 697.20(b), will be *prima facie* evidence that such American lobsters 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.

(e) *American lobster*. In addition to the prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraph (c) of this section, the following prohibitions apply. It is unlawful for any person to do any of the following:

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

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

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

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

(iv) The American lobsters were harvested by a recreational fishing vessel.

(2) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under § 697.4, or the American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters;

(3) To be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ,

or issued a Federal limited access American lobster permit under § 697.4(a), without having been issued and possessing a valid operator's permit under § 697.5.

(4) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from or harvested by a fishing vessel issued a Federal limited access American lobster permit, unless in possession of a valid dealer's permit issued under § 697.6.

(5) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a valid Federal limited access American lobster permit under § 697.4, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters.

(6) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

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

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

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

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

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

(12) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) on a fishing vessel with lobster trap gear on board during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(13) Deploy or fail to remove lobster trap gear in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) during

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

#### § 697.8 Vessel identification.

(a) *Vessel name and official number*. Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

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

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

(b) *Numerals*. Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner*. The owner of each vessel subject to this part shall ensure that—

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

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

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

#### § 697.9 Facilitation of enforcement.

See § 648.15 of this chapter.

#### § 697.10 Penalties.

See § 600.735 of this chapter.

#### § 697.11 Civil procedures.

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

**§ 697.12 At-sea sea sampler/observer coverage.**

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

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

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

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

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

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

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

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

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

as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

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

(7) Allow the sea sampler/observer to inspect and copy any of the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

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

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

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

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

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

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

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

**Subpart B—Management Measures****§ 697.20 Harvesting and landing requirements.**

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

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

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit, is 3¼ inches (8.26 cm).

(3) The maximum carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 1, as defined in § 697.31 (a)(1), is 5 inches (12.7 cm). Any vessel fishing in or permitted to fish in the EEZ Nearshore Management Area 1 must comply with the 5 inch (12.7 cm) maximum carapace length requirement regardless of where the lobsters are harvested.

(4) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any

whole live American lobster that is smaller than the minimum size specified in paragraph (b) in this section.

(c) *Mutilation.* (1) Prior to offloading from the vessel no person may remove meat or any body appendage from any American lobster harvested in or from the EEZ, or have in possession on board any American lobster part other than whole lobsters.

(2) Prior to offloading from the vessel no owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove meat or any body appendage from any American lobster, or have in possession on board any American lobster part other than whole lobsters.

(d) *Berried females.* (1) Any berried female harvested in or from the EEZ must be returned to the sea immediately.

(2) Any berried female harvested or possessed by a vessel issued a Federal limited access American lobster permit must be returned to the sea immediately.

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

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

(e) *Scrubbing.* (1) No person may intentionally remove extruded eggs attached to the abdominal appendages from any female American lobster.

(2) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may intentionally remove extruded eggs attached to the abdominal appendages from any female American lobster.

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

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

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

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

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

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

(a) *Identification.* All lobster gear deployed or possessed in the EEZ, or deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit, and not permanently attached to the vessel, must be marked with a trap tag (as specified in § 697.34) marked with the Federal permit number assigned by the Regional Administrator.

(b) *Gear configuration.* In the EEZ, lobster trap trawls are to be configured as follows:

(1) Lobster trap trawls of three or fewer traps must be configured with a single buoy.

(2) Lobster trap trawls consisting of more than three traps must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster trap trawl must be configured with a radar reflector only. Standard tetrahedral corner radar reflectors of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed. (A copy of a diagram showing a standard tetrahedral corner radar reflector is available upon request to the Office of the Regional Administrator, see Table 1 to § 600.502 of this title.)

(3) No American lobster trap trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from radar reflector to radar reflector.

(c) *Trap tagging.* (1) Each owner of a vessel issued a valid permit under § 697.4 and fishing with traps for American lobster in the EEZ must properly tag all lobster traps as specified under § 697.34. The Regional Administrator may, by agreement with state agencies, recognize trap tags issued by those agencies endorsed for fishing for lobster in the EEZ, provided that such tagging programs accurately identify persons who fish in the EEZ, and that the Regional Administrator can either individually, or in concert with the state agency, act to suspend the permit or license for EEZ fishing for any violation under this part.

(2) Alternate state EEZ tagging programs may be established through a letter of agreement between the Regional Administrator and the director of the state marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate EEZ tagging program and the mode and frequency of provision of that

information to the Regional Administrator. The Regional Administrator will, in cooperation with the state director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ tagging program is in force for their state before applying for a Federal permit under § 697.4.

(d) *Escape vents.* All American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) The specifications for escape vents are as follows:

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

(ii) Two circular portals with unobstructed openings not less than  $2\frac{7}{16}$  inches (6.19 cm) in diameter.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this rule, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraphs (d)(1)(i) and (ii) of this section.

(e) *Ghost panel.* Lobster traps not constructed entirely of wood must contain a ghost panel.

(1) The specifications for ghost panels are as follows:

(i) The opening to be covered by the ghost panel must be rectangular and must not be less than  $3\frac{3}{4}$  inches (9.53 cm) by  $3\frac{3}{4}$  inches (9.53 cm).

(ii) The panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than  $\frac{3}{16}$  inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than  $\frac{3}{32}$  inch (0.24 cm) in diameter.

(iii) The door of the trap may serve as the ghost panel, if fastened with a material specified in paragraph (e)(1)(ii) of this section.

(iv) The ghost panel must be located in the outer parlor(s) of the trap and not in the bottom of the trap.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and

specify, through a technical amendment of this rule, any other design, mechanism, material, or other parameter that serves to create an escape portal not less than  $3\frac{3}{4}$  inches (9.53 cm) by  $3\frac{3}{4}$  inches (9.53 cm).

(f) *Maximum trap size.* American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4 shall have a volume not to exceed the following specifications;

(i) *EEZ Nearshore Management Area*—22,950 cubic inches (376,081 cubic centimeters) as measured on the outside portion of the trap, exclusive of the runners, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6), or the Area  $\frac{2}{3}$  Overlap; or

(ii) *EEZ Offshore Management Area*—30,100 cubic inches (493,249 cubic centimeters) as measured on the outside portion of the trap, exclusive of the runners, if deployed or possessed by a person or vessel permitted to fish in EEZ Offshore Management Area 3.

(g) *Enforcement action.* Unidentified, unmarked, untagged, unvented, or improperly vented American lobster traps, or any lobster traps subject to the requirements and specifications of § 697.21, which fail to meet such requirements and specifications may be seized and disposed of in accordance with the provisions of part 219 of this title.

**§ 697.22 Experimental fishing exemption.**

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

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

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

(2) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part,

except those explicitly relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption. Exempted experimental fishing activity shall be authorized pursuant to and consistent with § 600.745 of this chapter.

**§ 697.23 Restricted gear areas.**

(a) Resolution of lobster gear conflicts with fisheries managed under the Magnuson-Stevens Act shall be done under provisions of § 648.55 of this chapter.

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

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

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

**INSHORE BOUNDARY**

Point to 120	Latitude	Longitude
69 .....	40°07.9' N.	68°36.0' W.
70 .....	40°07.2' N.	68°38.4' W.
71 .....	40°06.9' N.	68°46.5' W.
72 .....	40°08.7' N.	68°49.6' W.
73 .....	40°08.1' N.	68°51.0' W.
74 .....	40°05.7' N.	68°52.4' W.
75 .....	40°03.6' N.	68°57.2' W.
76 .....	40°03.65' N.	69°00.0' W.
77 .....	40°04.35' N.	69°00.5' W.
78 .....	40°05.2' N.	69°00.5' W.
79 .....	40°05.3' N.	69°01.1' W.
80 .....	40°08.9' N.	69°01.75' W.
81 .....	40°11.0' N.	69°03.8' W.
82 .....	40°11.6' N.	69°05.4' W.
83 .....	40°10.25' N.	69°04.4' W.

**INSHORE BOUNDARY—Continued**

Point to 120	Latitude	Longitude
84 .....	40°09.75' N.	69°04.15' W.
85 .....	40°08.45' N.	69°03.6' W.
86 .....	40°05.65' N.	69°03.55' W.
87 .....	40°04.1' N.	69°03.9' W.
88 .....	40°02.65' N.	69°05.6' W.
89 .....	40°02.00' N.	69°08.35' W.
90 .....	40°02.65' N.	69°11.15' W.
91 .....	40°00.05' N.	69°14.6' W.
92 .....	39°57.8' N.	69°20.35' W.
93 .....	39°56.65' N.	69°24.4' W.
94 .....	39°56.1' N.	69°26.35' W.
95 .....	39°56.55' N.	69°34.1' W.
96 .....	39°57.85' N.	69°35.5' W.
97 .....	40°00.65' N.	69°36.5' W.
98 .....	40°00.9' N.	69°37.3' W.
99 .....	39°59.15' N.	69°37.3' W.
100 .....	39°58.8' N.	69°38.45' W.
102 .....	39°56.2' N.	69°40.2' W.
103 .....	39°55.75' N.	69°41.4' W.
104 .....	39°56.7' N.	69°53.6' W.
105 .....	39°57.55' N.	69°54.05' W.
106 .....	39°57.4' N.	69°55.9' W.
107 .....	39°56.9' N.	69°57.45' W.
108 .....	39°58.25' N.	70°03.0' W.
110 .....	39°59.2' N.	70°04.9' W.
111 .....	40°00.7' N.	70°08.7' W.
112 .....	40°03.75' N.	70°10.15' W.
115 .....	40°05.2' N.	70°10.9' W.
116 .....	40°02.45' N.	70°14.1' W.
119 to 181 ..	40°02.75' N.	70°16.1' W.

**OFFSHORE BOUNDARY**

Point to 69	Latitude	Longitude
120 .....	40°06.4' N.	68°35.8' W.
121 .....	40°05.25' N.	68°39.3' W.
122 .....	40°05.4' N.	68°44.5' W.
123 .....	40°06.0' N.	68°46.5' W.
124 .....	40°07.4' N.	68°49.6' W.
125 .....	40°05.55' N.	68°49.8' W.
126 .....	40°03.9' N.	68°51.7' W.
127 .....	40°02.25' N.	68°55.4' W.
128 .....	40°02.6' N.	69°00.0' W.
129 .....	40°02.75' N.	69°00.75' W.
130 .....	40°04.2' N.	69°01.75' W.
131 .....	40°06.15' N.	69°01.95' W.
132 .....	40°07.25' N.	69°02.0' W.
133 .....	40°08.5' N.	69°02.25' W.
134 .....	40°09.2' N.	69°02.95' W.
135 .....	40°09.75' N.	69°03.3' W.
136 .....	40°09.55' N.	69°03.85' W.
137 .....	40°08.4' N.	69°03.4' W.
138 .....	40°07.2' N.	69°03.3' W.
139 .....	40°06.0' N.	69°03.1' W.
140 .....	40°05.4' N.	69°03.05' W.
141 .....	40°04.8' N.	69°03.05' W.
142 .....	40°03.55' N.	69°03.55' W.
143 .....	40°01.9' N.	69°03.95' W.
144 .....	40°01.0' N.	69°04.4' W.
146 .....	39°59.9' N.	69°06.25' W.

**INSHORE BOUNDARY**

Point to 1	Latitude	Longitude
49 .....	40°02.75' N. ....	70°16.1' W.
50 .....	40°00.7' N. ....	70°18.6' W.
51 .....	39°59.8' N. ....	70°21.75' W.
52 .....	39°59.75' N. ....	70°25.5' W.

**OFFSHORE BOUNDARY—Continued**

Point to 69	Latitude	Longitude
147 .....	40°00.6' N.	69°10.05' W.
148 .....	39°59.25' N.	69°11.15' W.
149 .....	39°57.45' N.	69°16.05' W.
150 .....	39°56.1' N.	69°20.1' W.
151 .....	39°54.6' N.	69°25.65' W.
152 .....	39°54.65' N.	69°26.9' W.
153 .....	39°54.8' N.	69°30.95' W.
154 .....	39°54.35' N.	69°33.4' W.
155 .....	39°55.0' N.	69°34.9' W.
156 .....	39°56.55' N.	69°36.0' W.
157 .....	39°57.95' N.	69°36.45' W.
158 .....	39°58.75' N.	69°36.3' W.
159 .....	39°58.8' N.	69°36.95' W.
160 .....	39°57.95' N.	69°38.1' W.
161 .....	39°54.5' N.	69°38.25' W.
162 .....	39°53.6' N.	69°46.5' W.
163 .....	39°54.7' N.	69°50.0' W.
164 .....	39°55.25' N.	69°51.4' W.
165 .....	39°55.2' N.	69°53.1' W.
166 .....	39°54.85' N.	69°53.9' W.
167 .....	39°55.7' N.	69°54.9' W.
168 .....	39°56.15' N.	69°55.35' W.
169 .....	39°56.05' N.	69°56.25' W.
170 .....	39°55.3' N.	69°57.1' W.
171 .....	39°54.8' N.	69°58.6' W.
172 .....	39°56.05' N.	70°00.65' W.
173 .....	39°55.3' N.	70°02.95' W.
174 .....	39°56.9' N.	70°11.3' W.
175 .....	39°58.9' N.	70°11.5' W.
176 .....	39°59.6' N.	70°11.1' W.
177 .....	40°01.35' N.	70°11.2' W.
178 .....	40°02.6' N.	70°12.0' W.
179 .....	40°00.4' N.	70°12.3' W.
180 .....	39°59.75' N.	70°13.05' W.
181 to 119 ..	39°59.3' N.	70°14.0' W.

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

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

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

## INSHORE BOUNDARY—Continued

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

## OFFSHORE BOUNDARY

Point to 49	Latitude	Longitude
1	39°59.3' N.	70°14.0' W.
2	39°58.85' N.	70°15.2' W.
3	39°59.3' N.	70°18.4' W.
4	39°58.1' N.	70°19.4' W.
5	39°57.0' N.	70°19.85' W.
6	39°57.55' N.	70°21.25' W.
7	39°57.5' N.	70°22.8' W.
8	39°57.1' N.	70°25.4' W.
9	39°57.65' N.	70°27.05' W.
10	39°58.58' N.	70°27.7' W.
11	40°00.65' N.	70°28.8' W.
12	40°02.2' N.	70°29.15' W.
13	40°01.0' N.	70°30.2' W.
14	39°58.58' N.	70°31.85' W.
15	39°57.05' N.	70°34.35' W.
16	39°56.42' N.	70°36.8' W.
21	39°58.15' N.	70°48.0' W.
24	39°58.3' N.	70°51.1' W.
25	39°58.1' N.	70°52.25' W.
26	39°58.05' N.	70°53.55' W.
27	39°58.4' N.	70°59.6' W.
28	39°59.8' N.	71°01.05' W.
29	39°58.2' N.	71°05.85' W.
30	39°57.45' N.	71°12.15' W.
31	39°57.2' N.	71°15.0' W.
32	39°56.3' N.	71°18.95' W.
33	39°51.4' N.	71°36.1' W.
34	39°51.75' N.	71°41.5' W.
35	39°50.05' N.	71°42.5' W.
36	39°50.0' N.	71°45.0' W.
37	39°48.95' N.	71°46.05' W.
38	39°46.6' N.	71°46.1' W.
39	39°43.5' N.	71°49.4' W.
40	39°41.3' N.	71°55.0' W.
41	39°39.0' N.	71°55.6' W.
42	39°36.72' N.	71°58.25' W.
43	39°35.15' N.	71°58.55' W.
44	39°34.5' N.	72°00.75' W.
45	39°32.2' N.	72°02.25' W.
46	39°32.15' N.	72°04.1' W.
47	39°28.5' N.	72°06.5' W.
48 to 70	39°29.0' N.	72°09.25' W.

(d) *Restricted Gear Area III.*—(1) *Duration.*—(i) *Mobile Gear.* From June

16 through November 26, no fishing vessel with mobile gear or person on a

fishing vessel with mobile gear may fish, or be, in Restricted Gear Area III (as

defined in paragraph (d)(2) of this section) unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From January 1 through April 30, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear

Area III as defined in paragraph (d)(2) of this section.

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

INSHORE BOUNDARY

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

OFFSHORE BOUNDARY

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

INSHORE BOUNDARY—Continued

Point to 49	Latitude	Longitude
184 .....	40°11.05' N.	70°45.8' W.
185 .....	40°12.75' N.	70°55.05' W.
186 .....	40°10.7' N.	71°10.25' W.
187 .....	39°57.9' N.	71°28.7' W.
188 .....	39°55.6' N.	71°41.2' W.
189 .....	39°55.85' N.	71°45.0' W.
190 .....	39°53.75' N.	71°52.25' W.
191 .....	39°47.2' N.	72°01.6' W.
192 to 70 ....	39°33.65' N.	72°15.0' W.

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

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

INSHORE BOUNDARY

Point	Latitude	Longitude
193 .....	40°13.60' N.	68°40.60' W.
194 .....	40°11.60' N.	68°53.00' W.

INSHORE BOUNDARY—Continued

Point	Latitude	Longitude
195 .....	40°14.00' N.	69°04.70' W.
196 .....	40°14.30' N.	69°05.80' W.
197 .....	40°05.50' N.	69°09.00' W.
198 .....	39°57.30' N.	69°25.10' W.
199 .....	40°00.40' N.	69°35.20' W.
200 .....	40°01.70' N.	69°35.40' W.
201 .....	40°01.70' N.	69°37.40' W.
202 .....	40°00.50' N.	69°38.80' W.
203 .....	40°01.30' N.	69°45.00' W.
204 .....	40°02.10' N.	69°45.00' W.
205 .....	40°07.60' N.	70°04.50' W.
206 to 119 ..	40°07.80' N.	70°09.20' W.

OFFSHORE BOUNDARY

Point to 193	Latitude	Longitude
69 .....	40°07.90' N. ..	68°36.00' W.

OFFSHORE BOUNDARY—Continued

Point to 193	Latitude	Longitude
70 .....	40°07.20' N. ..	68°38.40' W.
71 .....	40°06.90' N. ..	68°46.50' W.
72 .....	40°08.70' N. ..	68°49.60' W.
73 .....	40°08.10' N. ..	68°51.00' W.
74 .....	40°05.70' N. ..	68°52.40' W.
75 .....	40°03.60' N. ..	68°57.20' W.
76 .....	40°03.65' N. ..	69°00.00' W.
77 .....	40°04.35' N. ..	69°00.50' W.
78 .....	40°05.20' N. ..	69°00.50' W.
79 .....	40°05.30' N. ..	69°01.10' W.
80 .....	40°08.90' N. ..	69°01.75' W.
81 .....	40°11.00' N. ..	69°03.80' W.
82 .....	40°11.60' N. ..	69°05.40' W.
83 .....	40°10.25' N. ..	69°04.40' W.
84 .....	40°09.75' N. ..	69°04.15' W.
85 .....	40°08.45' N. ..	69°03.60' W.
86 .....	40°05.65' N. ..	69°03.55' W.

OFFSHORE BOUNDARY—Continued

Point to 193	Latitude	Longitude
87	40°04.10' N ..	69°03.90' W.
88	40°02.65' N ..	69°05.60' W.
89	40°02.00' N ..	69°08.35' W.
90	40°02.65' N ..	69°11.15' W.
91	40°00.05' N ..	69°14.60' W.
92	39°57.80' N ..	69°20.35' W.
93	39°56.75' N ..	69°24.40' W.
94	39°56.50' N ..	69°26.35' W.
95	39°56.80' N ..	69°34.10' W.
96	39°57.85' N ..	69°35.05' W.
97	40°00.65' N ..	69°36.50' W.
98	40°00.90' N ..	69°37.30' W.
99	39°59.15' N ..	69°37.30' W.
100	39°58.80' N ..	69°38.45' W.
102	39°56.20' N ..	69°40.20' W.
103	39°55.75' N ..	69°41.40' W.
104	39°56.70' N ..	69°53.60' W.
105	39°57.55' N ..	69°54.05' W.
106	39°57.40' N ..	69°55.90' W.
107	39°56.90' N ..	69°57.45' W.
108	39°58.25' N ..	70°03.00' W.
110	39°59.20' N ..	70°04.90' W.
111	40°00.70' N ..	70°08.7' W.
112	40°03.75' N ..	70°10.15' W.
115	40°05.20' N ..	70°10.90' W.
116	40°02.45' N ..	70°14.1' W.
119 to 206 ..	40°02.75' N ..	70°16.1' W.

**Subpart C—Egg Production Rebuilding Schedule and Adaptive Management Adjustments**

**§ 697.30 Purpose and scope.**

The purpose of this subpart is to specify the requirements and adaptive area management procedures for implementing the egg production rebuilding schedule for American lobster, intended to eliminate overfishing in all resource areas and rebuild the stock.

**§ 697.31 Egg production rebuilding schedule Lobster Management Areas.**

(a) *Management areas.* The egg production rebuilding schedule shall be developed based on the status of stock of American lobsters and management considerations for each of the following lobster management areas described and defined in paragraph (a) of this section.

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

Point	Latitude	Longitude
A	43°58' N. ....	67°22' W.
B	43°41' N. ....	68°00' W.
C	43°12' N. ....	69°00' W.

Point	Latitude	Longitude
D	42°49' N. ....	69°40' W.
E	42°15.5' N. ....	69°40' W.
G	42°05.5' N. ....	70°14' W.

(2) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 including state and Federal waters that are near-shore in Southern New England, defined as follows:

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

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

(3) *Area 2/3 Overlap.* In the southern New England area, there shall be an area of overlap between Area 2 and Area 3, defined as follows:

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

(4) *EEZ Offshore Management Area 3.* EEZ Offshore Management Area 3 comprises entirely Federal waters defined by the area bounded by straight lines connecting the following points, in the order stated:

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

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

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

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

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

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

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

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

Point	Latitude	Longitude
W	39°50' N. ....	74°09' W.
V	39°50' N. ....	73°01' W.
X	38°39.5' N. ....	73°40' W.
Y	38°12' N. ....	73°55' W.
Z	37°12' N. ....	74°44' W.
ZA	35°34' N. ....	74°51' W.
ZB	35°14.5' N. ....	75°31' W.

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

(7) *EEZ Nearshore Management Area 6.* The EEZ Nearshore Management Area 6 includes New York and Connecticut state waters specified as follows:

T	41°00.5' N. ....	72°00' W.
S	40°58' N. ....	72°00' W.

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

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

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

(8) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore

Outer Cape Lobster Management Area including state and Federal waters off Cape Cod, specified as follows:

Point	Latitude	Longitude
F .....	42°10' N.	69°56' W.
G .....	42°05.5' N.	70°14' W.
H .....	41°40' N.	70°00' W.
I .....	41°15' N.	70°00' W.
J .....	41°21.5' N.	69°16' W.

From Point "J" along the outer Cape Cod coast to Point "F".

(9) NMFS may, consistent with § 697.36, implement management measures necessary for each management area, in order to end overfishing and rebuild stocks of American lobster.

(b) [Reserved]

#### § 697.32 Management area designations.

(a) *Management area designations for vessels fishing with traps.* (1) Each owner of a vessel issued a Federal limited access American lobster permit or CPH which fishes with traps capable of catching American lobster must complete a lobster management area designation and trap program application form and declare to NMFS in which management areas described in § 697.31(a) the vessel intends to fish. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. It shall be unlawful to retain on board, land, or possess American lobster until the application is complete and the designation certificate is issued.

(2) A lobster designation certificate will indicate which lobster management area or areas the vessel has elected.

(3) Vessels issued a designation certificate electing to fish in any or all of the lobster EEZ Nearshore Management Areas (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6) regardless of whether the vessel has changed ownership after election, are prohibited from:

(i) Fishing for, landing from, or possessing lobster in, unless in continuous transit, the lobster EEZ Offshore Management Area 3.

(ii) Changing the elected management area designation to the EEZ Offshore Management Area 3.

(iii) Changing the elected EEZ Nearshore Management Area designation for the remainder of the fishing year in which the EEZ Nearshore Management Area designation was elected.

(4) A vessel issued a designation certificate electing more than one EEZ Nearshore Management Area (Area 1, Outer Cape Lobster Management Area,

Area 2, Area 4, Area 5, or Area 6) and/or the Area  $\frac{2}{3}$  Overlap must abide by the most restrictive management measures in effect for the areas elected for the entire fishing year.

(5) Vessels issued a designation certificate electing any of the EEZ Nearshore Management Area designations (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6) or the Area  $\frac{2}{3}$  Overlap are subject to trap allocation requirements established in § 697.33 (a) and (b) and subject to trap tag allocation requirements established in § 697.34.

(6) Vessels issued a designation certificate electing the lobster EEZ Offshore Management Area 3 regardless of whether the vessel changes ownership after election, are prohibited from:

(i) Fishing for, landing from, or possessing lobsters in, unless in continuous transit, any of the lobster EEZ Nearshore Management Areas (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6), or;

(ii) Changing the elected management area designation for the duration of the fishing year in which the EEZ Offshore Management Area 3 was elected.

(7) A vessel issued a designation certificate electing the lobster EEZ Offshore Management Area 3 may elect to change to the lobster EEZ Nearshore Management Areas (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6) during the annual permit renewal process, but once the vessel is issued a designation certificate in any of the EEZ Nearshore Management Areas (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6), regardless of whether the vessel changes ownership after election, the vessel is prohibited from:

(i) Fishing for, landing from, or possessing lobster in the EEZ Offshore Management Area 3, for that fishing year or;

(ii) Changing the elected management area designation to the EEZ Offshore Management Area 3 for any subsequent fishing year.

(8) Vessels issued a designation certificate electing the EEZ Offshore Management Area 3 shall be subject to trap allocation requirements established in § 697.33 (c) and (d) and subject to trap tag allocation requirements established in § 697.34 for the entire fishing year, regardless of whether the vessel changes ownership after election.

(9) A vessel issued a designation certificate electing the EEZ Offshore Management Area 3 and the Area  $\frac{2}{3}$  Overlap must abide by the most

restrictive management measures in effect for the areas elected for the entire fishing year, regardless of whether the vessel changes ownership after election.

(10) If a vessel is bought, sold, or otherwise transferred, the management area designation(s) transfer with the vessel.

(b) [Reserved]

#### § 697.33 Trap allocations.

(a) Beginning on May 1, 1999, it shall be unlawful for vessels issued a designation certificate electing to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6) or the Area  $\frac{2}{3}$  Overlap to fish with, deploy in, possess in, or haul back from such area more than 1,000 traps.

(b) Beginning on May 1, 2000, it shall be unlawful for vessels issued a designation certificate electing to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape Lobster Management Area, Area 2, Area  $\frac{2}{3}$  Overlap, Area 4, Area 5, or Area 6) or the Area  $\frac{2}{3}$  Overlap to fish with, deploy in, possess in, or haul back from such area more than 800 traps.

(c) Beginning on May 1, 1999, it shall be unlawful for vessels issued a designation certificate electing to fish in the EEZ Offshore Management Area 3 to:

(1) Fish with, deploy in, possess in, or haul back from such area more than 2,000 traps.

(2) Fish with, deploy in, or haul back traps in any EEZ Nearshore Management Area (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6) or state waters.

(d) Beginning on May 1, 2000, it shall be unlawful for vessels issued a designation certificate electing to fish in the EEZ Offshore Management Area 3 to:

(1) Fish with, deploy in, possess in, or haul back from such area more than 1,800 traps.

(2) Fish with, deploy in, or haul back traps in any EEZ Nearshore Management Area (Area 1, Outer Cape Lobster Management Area, Area 2, Area 4, Area 5, or Area 6) or state waters.

(e) *On-shore trap count.* When requested by an authorized officer, vessel owners must display lobster traps for an on-shore count to verify the amount of lobster traps being fished in compliance with this section.

#### § 697.34 Trap tag allocations.

(a) A permit holder letter will be sent to all eligible Federal limited access American lobster vessels informing them of the costs associated with the

tagging requirement and directions for obtaining tags.

(1) Each owner of a vessel issued a Federal limited access American lobster permit that fishes with traps capable of catching American lobster must complete a lobster management area designation and trap program application form, indicate the number of lobster trap tags that they are requesting, and include a check for the cost of the tags. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. It shall be unlawful to fish for, retain on board, land, or possess American lobster until the application is complete and the permit is issued.

(2) The Regional Administrator may, by agreement with state agencies, permit trap tags issued by those agencies to fish for lobster in the EEZ in lieu of trap tags required by this part, provided that such tagging programs accurately identify Federal limited access American lobster permit holders who fish in the EEZ, and that the Regional Administrator can either individually, or in concert with the state agency, act to suspend the permit or license for EEZ fishing for any violation under this part.

(3) Alternate state EEZ tagging programs may be established through an appropriate agreement between the Regional Administrator and the state concerned, dependent upon state and Federal enabling authorities. The letter of agreement will specify the information to be collected, how it will be collected, and how often it will be collected and provided to the Regional Administrator by the alternate EEZ tagging program. The Regional Administrator will, in cooperation with the state, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ tagging program is in force for their state before applying for a Federal permit under § 697.4.

(b) (1) In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder shall be the applicable trap limit specified in § 697.33 plus an additional 10 percent to cover trap loss.

(2) *Lost tags.* Vessel owners or operators are required to report in writing to the Regional Administrator lost, destroyed, and missing tags within 24 hours after the tags have been

discovered lost, destroyed, or missing, on an official lobster trap tag replacement order form signed by the permit holder or authorized representative.

(3) *Replacement tags.* Requests for replacement of lost tags in excess of the tag limit specified in paragraph (b)(1) of this section must be submitted in writing to the Regional Administrator on an official lobster trap tag replacement order form, signed by the permit holder or authorized representative. The form and request for replacement tags will be reviewed by the Regional Administrator on a case by case basis and a decision will be reached on the number of replacement tags to be issued, if any. A check for the cost of the replacement tags must be received before tags will be re-issued.

(c) Effective May 1, 1999, it shall be unlawful to:

(1) Fish any lobster trap in Federal waters unless a valid Federal lobster trap tag is permanently attached to the trap bridge or central cross-member.

(2) Fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer.

(3) Reproduce, or cause to be reproduced, lobster trap tags without the written consent of the Regional Administrator.

(4) Tag a lobster trap with, or use, a lobster trap tag that has been reported lost, missing, destroyed, or issued to another vessel.

(5) Sell, transfer, or give away lobster trap tags that have been reported lost, missing, destroyed, or issued to another vessel.

#### § 697.35 Non-trap harvest restrictions.

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

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

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

#### § 697.36 Adjustment to management measures.

(a) On or before February 15, 2001, and annually on or before February 15, thereafter, NMFS may, after consultation with the Commission, file with the Office of Federal Register for publication of a proposed rule to implement additional or different management measures for Federal waters in any of the management areas specified in § 697.31(a) if it is determined such measures are necessary to achieve or be compatible with ISFMP objectives, or the ISFMP, to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. These management measures may include, but are not limited to, continued reductions of fishing effort or numbers of traps, increases in minimum or maximum size, increases in the escape vent size, decreases in the lobster trap size, closed areas, closed seasons, landing limits, trip limits and other management area-specific measures as may be identified and recommended by the Commission prior to December 1 of the previous year. After considering comment, NMFS shall file with the Office of Federal Register for publication of a final rule to implement any such measures.

(b) At any other time, NMFS may file with the Office of Federal Register for publication of a proposed rule, after consultation with the Commission, to implement any additional or different management measures in order to achieve ISFMP objectives or be consistent or compatible with Commission measures or recommendations. After considering public comments, NMFS may file with the Office of Federal Register for publication of a final rule to implement any such measures.

(c) Notwithstanding other provisions of this part, NMFS may publish any additional or different management measures as described herein without prior public comment, pursuant to and consistent with 5 U.S.C. 553.

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