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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 130705590-5010-03]

RIN 0648-BD45

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

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

ACTION: Final rule.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we are issuing this final rule enacting Federal American lobster regulations for Lobster Conservation Management Areas 2, 3, 4, and 5, including trap reductions in Areas 2 and 3, and broodstock protection measures in Areas 2, 3, 4, and 5. These measures are intended to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England lobster stock. This action is necessary to ensure fishery regulations for the lobster fishery in Federal waters remain consistent with the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: This rule is effective May 1, 2015, except for the amendments to § 697.19 which are effective April 30, 2016.

ADDRESSES: Copies of the American Lobster Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this regulatory

action are available upon written request to Peter Burns, Fishery Policy Analyst, Sustainable Fisheries Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281-9144. The documents also are available online at <http://www.nero.noaa.gov>

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

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

These final regulations modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) (16 U.S.C. 5101 et seq.), which states that in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) and after consultation with the appropriate fishery management council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, from 3 to 200 nautical miles (nm) offshore. The regulations must be: (1) Compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission; and (2) consistent with the National Standards set forth in section 301 of the Magnuson-Stevens Act.

##### Purpose and Need for Management

The purpose of this final action is to manage the American lobster fishery in a manner that maximizes resource sustainability, recognizing that Federal management occurs in concert with state management and that compatibility between state and Federal measures is crucial to the overall success of American lobster management. To achieve this purpose, we are

responding to recently-approved state management measures to address poor stock conditions and persistent recruitment failure of the Southern New England (SNE) American lobster stock.

## Background

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

The American lobster management unit is divided between three lobster stocks and seven Lobster Conservation Management Areas. Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the Commission adopted Addendum XVII to Amendment 3 of the ISFMP in February of 2012. The measures in Addendum XVII are intended to reduce fishing exploitation to the SNE lobster stock by 10 percent. To further address stock rebuilding of the SNE lobster stock, Addendum XVIII was adopted in August 2012, to reduce latent effort in the trap fishery and scale the fishery to the diminished size of the SNE stock through a series of annual trap reductions in Areas 2 and 3. Removing latent effort through trap reductions will help scale the fishery to the size of the resource because fishers will have a reduced number of traps that better correlates to the reduced size of the SNE lobster stock. This, in turn, will reduce fishing pressure on the SNE stock and reduce exploitation. It will also present a leaner, more accurate fishing model, allowing the

Commission to better manage the stock. Copies of the Addenda are available on the Commission's website at: <http://www.asmfc.org>.

We published a proposed rule (79 FR 43379; July 25, 2014) seeking comment on proposed broodstock management measures and trap reductions and the timing of trap reductions with the trap transferability program. A full discussion of the proposed measures and need for the action are contained in the proposed rule and not repeated here. In the next section, we provide a summary of those measures that were approved by the Commission.

#### Approved Measures

To achieve a 10-percent reduction in fishing exploitation of the SNE American lobster stock under Addendum XVII, the Commission recommended several effort control measures for Areas 2, 3, 4, 5, and 6 to protect broodstock and reduce the amount of American lobsters harvested from these Areas. These measures were reviewed by the Commission's scientific Technical Committee, which found that these measures would likely achieve the desired 10-percent reduction in exploitation. This rule implements the Commission's recommended measures, including: A minimum carapace length increase; mandatory v-notching of egg-bearing female lobsters; and seasonal fishery closures. We did not propose measures recommended by the Commission for Area 6 (mandatory v-notching and a seasonal closure) because Area 6 is contained entirely within state waters and is, therefore, outside of Federal jurisdiction. Table 1 contains the specific measures, by Area, adopted by the Commission and implemented through this action.

Table 1. Addendum XVII Management Measure Changes

Management Measures	Area 2	Area 3	Area 4	Area 5
V-Notching*	Mandatory for legal-sized egg-	n/a	Mandatory for legal-sized egg-	Mandatory for legal-sized egg-

	bearing females		bearing females	bearing females
New Minimum Size	n/a	3 <sup>17</sup> / <sub>32</sub> in (8.97 cm)	n/a	n/a
Seasonal Closure	n/a	n/a	February 1 – March 31	February 1 – March 31

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

While the harvest of lobsters from Areas 4 and 5 is prohibited from February 1 through March 31 each year, we will allow additional time to remove and set gear during the closures. Permit holders will have a 2-week period (i.e., through February 14) to remove all lobster traps from the water. In addition, permit holders may begin to set lobster traps 1 week prior to the end of the area closure (i.e., March 25).

Under Addendum XVIII, the Commission approved trap reductions for Areas 2 and 3, following separate trap reduction schedules. Consistent with the Commission's ISFMP and in response to the Commission's recommendations for complementary management measures to address the needs of the SNE stock, we proposed to reduce qualified Area 2 trap allocations for Federal lobster permit holders by 25 percent on April 30, 2015, the last day of fishing year 2014. Area 2 allocations would then have been reduced by 5 percent at the end of each subsequent fishing year for 5 years, as prescribed by the Commission. Similarly, we also proposed to reduce Area 3 trap allocations by 5 percent on April 30, 2015. Area 3 allocations would then have been reduced by 5 percent at the end of each subsequent fishing year for 4 years, as prescribed by the Commission. Based on the development and implementation of related actions and comments received, which are discussed in greater detail below, we are implementing trap reductions one year later, at 11:59 pm on April 30, 2016, the last day of fishing year 2015. Table 2 includes a schedule of trap reductions, and the resulting trap allocations based on an initial trap allocation of 800 traps.

Table 2. Area 2 and 3 Trap Reduction Schedule and Example Allocations

Effective Year	Area 2 Reductions	Area 2 Example Allocation*	Area 3 Reductions	Area 3 Example Allocation*
Fishing Year 2014 (present)	NA	800	NA	800
End of Fishing Year 2015 (Year 1)	25%	600	5%	760
End of Fishing Year 2016 (Year 2)	5%	570	5%	722
End of Fishing Year 2017 (Year 3)	5%	542	5%	686
End of Fishing Year 2018 (Year 4)	5%	515	5%	652
End of Fishing Year 2019 (Year 5)	5%	490	5%	620
End of Fishing Year 2020 (Year 6)	5%	466	NA	NA

\* After applying the specified reduction, resulting allocations are rounded up to the whole trap.

### Related Actions and Implementation Order

Based on Commission recommendations, we recently published a final rule (79 FR 19015; April 7, 2014), establishing a limited access program in two lobster conservation management areas, Area 2 and the Outer Cape Area, and implementing a lobster Trap Transfer Program in Areas 2 and 3, and the Outer Cape Area. That rule did not set an effective date for the Trap Transfer Program because it is dependent upon the completion and effectiveness of the Commission's Lobster Trap Allocation History (LobsTAH) Database. The LobsTAH Database, which is a prerequisite to the transfer program, remains under development by the Atlantic Coastal Cooperative Statistic Program (ACCSP). The ACCSP Director and Project Manager informed us and the Commission on August 28, 2014, that the database will not be ready until some date later in 2015. Upon receiving that information, the Commission's Lobster Board Chairman concluded that database delays make reducing traps in the 2015 fishing year impractical, and he ultimately recommended implementing trap reductions in fishing year 2016.

Because the Trap Transfer Program may ease economic impacts of trap reductions and provide added additional business flexibility, we are scheduling the trap reductions mentioned above to become effective at the same time as the Trap Transfer Program, as recommended by the Commission. Specifically, the trap reductions will become effective at 11:59 PM on April

30, 2016, just ahead of trap transfers that have been negotiated and approved during fishing year 2015, but which will not become effective until 12:01 AM on May 1, 2016. Putting the trap reductions and trap transfers in this order will make it clearer that the trap transfers will be based upon an already reduced trap allocation, thus ensuring the Commission's objectives set forth in Addendum XVIII. This updated schedule should also allow sufficient time to finish development, testing, and deployment of the LobsTAH Database; adequately inform and prepare industry for the implementation of these complex programs; negotiate trap transfers; reconcile and approve the proposed transfers; and process permits and trap tag orders.

We analyzed the relationship between trap reductions and trap transfers in our EA. The analysis confirms that the effectiveness of the approved trap reductions is dependent upon and impacted by the availability of the Trap Transfer Program and that the timing of the trap reductions and trap transfer programs is critical. Specifically, both industry and the Commission indicated that a trap transfer program was a necessary precursor to any trap reduction program so that certain lobster fishers could potentially replace their reduced traps with transferred traps. In order to maintain lobster business viability, industry and the Commission sought to have trap reductions and trap transfers occur contemporaneously so that businesses did not have to fish at reduced levels for an extended time period while waiting for trap transfers to take effect.

#### Comments and Responses

The proposed rule solicited comments through August 25, 2014. We received two letters, one from the Atlantic Offshore Lobstermen's Association and one from a member of the lobster fishing industry, in response to the proposed rule. A summary of the comments and our responses are provided below.

Comment 1: The Atlantic Offshore Lobstermen's Association and a member of the lobster fishing industry expressed support for the Area 3 minimum gauge size changes and trap reductions set forth in the rule. Both commenters reminded us that the proposed Area 3 trap reductions represented a second round of trap reductions in Area 3.

Response: The Lobster Board's scientific Technical Committee recommended that the suite of measures set forth in the rule, including gauge restrictions and trap reductions, would help reduce lobster exploitation and better scale the fishery to the reduced size of the SNE lobster stock. Area 3 previously underwent a series of trap reductions beginning in 2007 (72 FR 56935, October 2007), which is a primary reason why the Lobster Board did not recommend, and we did not propose, a heightened trap reduction in Year 1 similar to what is being proposed in Area 2.

Comment 2: The Atlantic Offshore Lobstermen's Association and a member of the lobster industry recommended that the trap reductions should occur at the same time as the Trap Transfer Program. The commenters suggested that the trap reductions, without trap transfers, could bring certain fishers to unsustainable allocation levels. Trap transferability, however, gives industry the flexibility to adjust to the trap reductions.

Response: We agree to implement the trap reductions contemporaneously with the Trap Transfer Program. We analyzed the impact of trap reductions in an EA, where we discussed that the impacts of trap reductions are difficult to quantify because, although a business's fishing power will increase with more traps, so too will the costs associated with maintaining, baiting, and tending higher trap levels. For those fishers who do not fish their entire allocation, the pending trap reductions may simply remove latent traps that are not being fished and might have little or no impact to the fishing operation. Further, if active traps are cut from a lobster fisher's allocation, fishers may attempt to recoup the loss in fishing power by fishing the remaining traps



more aggressively, i.e., baiting and tending them more often. Nevertheless, for a certain unknown group of fishers - particularly those fishing at maximum trap levels - the trap reductions will involve active traps that will negatively impact the profitability of the business. The Trap Transfer Program, however, will allow impacted lobster fishers to replenish their allocations by purchasing allocation from another lobster fisher. Further, the rule will have trap transfers take effect immediately after the trap reductions, thus allowing impacted fishers to quickly mitigate the reduction without having to fish at a reduced level for an extended period of time.

Comment 3: Both the Atlantic Offshore Lobstermen's Association and the member of the lobster fishery hoped the rule could take effect in 2015, although neither wanted the rule to take effect until the Trap Transfer Program was in place. The Atlantic Offshore Lobstermen's Association thought the proposed rule needed more specificity on the implementation timeline.

Response: We agree with the need to implement this rule expeditiously, but not at the expense of the underlying program. For those measures that can be implemented more speedily - e.g. broodstock protection measures and area closures - this rule does so as of the start of the next fishing year. As noted above, trap reductions should be implemented in conjunction with the Trap Transfer Program, but the associated LobsTAH Database has yet to be completed. Comments from the ACCSP (the entity building the database) suggest that the database will not be ready in time for the 2015 fishing year. Given the importance of the Trap Transfer Program, we think it imprudent to rush things in the first year of the program. The Lobster Board's plan is to test the database in the spring of 2015, then begin the process of allowing trap transfers in the summer and fall of 2015 to be effective at the start of the 2016 fishing year, which is when the trap reductions would also take effect.

Comment 4: The Atlantic Offshore Lobstermen's Association suggested that if the trap reductions begin in 2016 instead of 2015, that we double the reduction in the first year to make up for the delay.

Response: We will begin to implement the trap reductions set forth in this rule at the start of the 2016 fishing year. Doing so does not create a delay. Addendum XVIII did not set forth a specific date for the trap reductions, but rather simply indicated that the states and NMFS should implement trap transfers and trap reduction rules at the same time. Further, the Lobster Board's implementation plan does not contemplate doubling Area 3 trap reductions in Year 1 (according to a September 19, 2014, memorandum from Lobster Board Chairman, Dan McKiernan, to the Lobster Board) and the Board's Technical Committee has advanced no scientific reason to do so. Consistency with the states is crucial, particularly when traps are to be transferred (see our Trap Transferability FEIS dated December 2013). As such, we will reduce traps at the end of fishing year 2015, consistent with the states, as set forth in this rule.

#### Changes from the Proposed Rule

We made one change from the proposed rule in this action. Instead of implementing trap reductions for Areas 2 and 3 on April 30, 2015, for the reasons described in the preamble and in response to Comment 3, we are implementing trap reductions one year later, at 11:59 pm on April 30, 2016, the last day of fishing year 2015.

#### Classification

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

This final rule does not contain policies with federalism implications as defined in E.O. 13132. The approved measures are based upon the American Lobster ISFMP that was created

by and is overseen by the states. These measures are a result of Addenda XVII and XVIII, which was approved by the states, recommended by the states through the Commission for Federal adoption, and is in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP, which makes recommendations for Federal action. Additionally, these approved measures would not pre-empt state law and would do nothing to directly regulate the states.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. A Final Regulatory Flexibility Analysis (FRFA) was prepared for this final rule, as required by section 604 of the RFA. The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), the relevant portions of the proposed rule describing the proposed management measures, the corresponding analysis in the EA prepared for this action, and the responses to public comments included in this final rule. A copy of this analysis is available from NMFS (see ADDRESSES).

#### The Objectives and Legal Basis for the Action

The objective of this action is to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the SNE lobster stock. The legal basis for the action is the ISFMP for American lobster and our statutory authority to manage coastal fisheries under the Atlantic Coastal Fisheries Cooperative Management Act at 16 U.S.C. 5101, et seq.

### Summary of Public Comments

No public comments were received pertaining directly to the economic effects of this rule.

### Description and Estimate of the Number of Small Entities to which the Rule would Apply

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

The RFA recognizes and defines three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established (and recently modified) for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). Designations of large and small entities were attached based on each entity’s 3-year average landings. When the IRFA was completed, the threshold for “large” was \$5.0 million for entities landing a plurality of revenue in shellfish (NAICS 111412). For entities landing a plurality of revenue in finfish (NAICS 111411), the threshold for “large” was \$19.0 million. On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule (79 FR 33467; June 12, 2014) revising the small business size standards for several industries effective July 14, 2014. The rule increased

the size standard from \$19.0 to \$20.5 million for finfish fishing, from \$5 to \$5.5 million for shellfish fishing, and from \$7.0 million to \$7.5 million for other marine fishing, for-hire businesses, and marinas.

The number of directly regulated entities for purposes of analyzing the economic impacts and describing those that are small businesses is selected based on permits held. Because these approved regulations apply only to the businesses which fish in the four areas managed by the conservation measures being amended, only those business entities are evaluated. Business entities that do not own vessels with directly regulated permits are not described. Based on this approach, NMFS determined that there are 379 distinct entities identified that are directly regulated entities under this action, those that fished in Areas 2, 3, 4 or 5, or some combination between June 1, 2011, and May 31, 2012.

When the IRFA was prepared, 373 of the 379 entities were classified as “small,” while the remaining 6 were classified as “large.” All six of the large businesses were designated as shellfish. Under the updated SBA size standard, 374 of the 379 entities are classified as “small,” while the remaining 5 are classified as “large.” We have reviewed the analyses prepared for this action in light of the new size standards and find that the number of small entities subject to this action increased by one. Since this is not a significant increase, we do not think that the new size standards affect the analyses, and therefore are relying on the analysis previously conducted for the IRFA in the FRFA. Until further guidance is provided, for RFA analyses, business entities are classified into the SBA defined categories based on which activity, in the most recent year, produced the greatest gross revenue. An advantage of this approach is that entities are defined as large or small one time for the duration of a year, maintaining action to action consistency. As far as determining whether a business is large or small, once its major activity is determined

(based on 2012) the average total revenue from all activities over the most recent 3 years (2010-2012) is applied against the appropriate threshold.

Of the 373 small entities determined to be small entities, 180 are considered a shellfish business, 121 are considered a finfish business, 3 are considered a for-hire business, and 69 could not be identified as either because even though they had a lobster permit (in Areas 2, 3, 4, or 5), they had no earned revenue from fishing activity. Because they had no revenue in the last 3 years, they would be considered small by default, but would also be considered as latent effort.

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

While considering the number of affected entities, it is also worth noting that the vast majority of permit holders are either dually permitted (i.e., issued both a Federal and state permit) or otherwise subject to a state's lobster regulations. Accordingly, most all Federal permit holders will be required to comply with the approved measures even if we did not implement them. In other words, these Federal permit holders will be obligated to comply with these measures and responsibilities attendant to their state permit regardless of whether these same measures are also required under their Federal permit.

#### Reporting, Recordkeeping and Other Compliance Requirements

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

Descriptions of Significant Alternatives which Minimize any Significant Economic Impact of Proposed Action on Small Entities

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

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

from the trap reductions. When considered in conjunction with trap transferability, permit holders remaining in the fishery may be able to transfer in traps up to their original trap cap (i.e., transfer in traps to make up for traps lost through trap reductions). Though this will require capital, the ability to acquire additional traps may help another set of permit holders compensate for trap reductions. Finally, the permit holders who elect to leave the fishery and transfer out traps will be compensated immediately by those fishers purchasing traps.

As discussed in greater detail in the EA, we considered but rejected several other trap reduction alternatives for Lobster Conservation Management Areas 2 and 3, the only Areas where trap reductions were considered. For these management areas, we considered the following approaches: 1) Where trap reductions are theoretically approved 6 months before trap transfers, 2) where trap reductions are theoretically approved 6 months after trap transfers, and 3) where trap reductions and trap transferability during a given fishing year, rather than at the start of a fishing year. Under either scenario where trap reductions and trap transfers were approved out-of-sync by 6 months, some permit holders would be prevented from participating in the Trap Transfer Program following trap reductions, resulting in potential loss of economic opportunity, until additional traps could be required. For permit holders whose business model is predicated on fishing at the trap cap, they would be forced to fish at reduced and presumably unprofitable levels for nearly half the fishing year. Under the scenario where trap reductions and trap transfers were during a given fishing year, a fisher's financial investment would be doubled, as a second set of permits and trap tags would be required, in addition to the set that was required to start the fishing year. Because these alternatives may have increase economic impacts, they were rejected in favor of the approved measures, which minimize any significant economic impact.

#### Duplication, Overlap or Conflict with other Federal Rules



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

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, we will send a small entity compliance guide to all Federal permit holders affected by this action. In addition, copies of this final rule and guide (i.e., information bulletin) are available from NMFS (see ADDRESSES) and at the following website: <http://www.nero.noaa.gov/sfd/sfdmulti.html>.

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

Fisheries, fishing.

Dated: January 8, 2015.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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

PART 697--ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

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

2. In § 697.2, in paragraph (a), add the definitions of “Federal Area 1 Limited Access Program,” “Federal Area 2 Limited Access Program,” “Federal Area 3 Limited Access Program,” “Federal Area 4 Limited Access Program,” “Federal Area 5 Limited Access Program,” and “Federal Outer Cape Area Limited Access Program” in alphabetical order to read as follows:

§ 697.2 Definitions.

(a) \* \* \*

\* \* \* \* \*

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

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

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

Federal Area 4 Limited Access Program means the limited access program restricts trap fishing in Area 4 to those Federal lobster permits with qualified and allocated Area 4 traps, as identified in these regulations at § 697.4(a)(7)(ii).

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

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

\* \* \* \* \*

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

§ 697.7 Prohibitions.

\* \* \* \* \*

(c) \*\*\*

(1) \*\*\*

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

(A) Outer Cape Area seasonal closure. The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from February 1 through March 31.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal

lobster permit holder re-setting Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 4 waters during this seasonal closure unless the vessel is operating subject to the grace period identified in paragraph (c)(1)(xxx)(B)(2)(ii) of this section or is transiting through Area 4 pursuant to paragraph (c)(1)(xxx)(B)(5) of this section.

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

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

(i) The trap gear is stowed; and

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

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

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

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

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

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

(1) Lobster fishing is prohibited in Area 5 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 5 during the seasonal closure.

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

(i) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 5 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

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

possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 5 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (c)(1)(xxx)(C)(2)(ii) of this section (ii) or is transiting through Area 5 pursuant to paragraph (c)(1)(xxx)(C)(5) of this section.

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

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

(i) The trap gear is stowed; and

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

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

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

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



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

\* \* \* \* \*

(3) \*\*\*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

Effective Year of Trap Reduction	Area 2 Reductions
April 30, 2016, 11:59 PM	25 percent
April 30, 2017, 11:59 PM	5 percent
April 30, 2018, 11:59 PM	5 percent
April 30, 2019, 11:59 PM	5 percent
April 30, 2020, 11:59 PM	5 percent
April 30, 2021, 11:59 PM	5 percent

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

Effective Year of Trap Reduction	Area 3 Reductions
April 30, 2016, 11:59 PM	5 percent
April 30, 2017, 11:59 PM	5 percent
April 30, 2018, 11:59 PM	5 percent
April 30, 2019, 11:59 PM	5 percent
April 30, 2020, 11:59 PM	5 percent

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

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

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

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

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

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

§ 697.20 Size, harvesting and landing requirements.

(a) \* \* \*

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

(6) Through April 30, 2015, the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is  $3\frac{1}{2}$  inches (8.89 cm).

(7) Effective May 1, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is  $3\frac{17}{32}$  inches (8.97 cm).

(8) Effective May 1, 2015, the minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is  $3\frac{17}{32}$  inches (8.97 cm).

\* \* \* \* \*

(b) \* \* \*

(5) The maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is  $6\frac{3}{4}$  inches (17.15 cm).

(6) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is  $6\frac{3}{4}$  inches (17.15 cm).

(d) \* \* \*

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

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

\* \* \* \* \*

(g) \* \* \*

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

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

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