

Action in the default process	Timeframe (days from pmt due date)	
	Collateral pledged	No collateral pledged
Reclamation and lender determine whether a cure is possible. If no cure can be found, the loan is in default and any collateral pledged for the loan becomes eligible for liquidation .....	90	90
Lender submits a proposed method of liquidation in writing .....	120	N/A
Reclamation informs lender if liquidation plan is approved .....	150	N/A
Lender files an estimated loss claim if liquidation will exceed 90 days .....	180	N/A
Lender files final Report of Loss .....	210	120
Reclamation makes loss payment .....	270	180

#### **§ 403.67 What is the process for liquidation of pledged collateral?**

(a) Any of the following factors may lead to a decision to liquidate:

(1) The loan has been delinquent 90 days;

(2) Delaying liquidation will jeopardize recovery of the loan collateral; or

(3) Borrower or lender has been uncooperative in resolving the default;

(b) The lender must, within 30 days after a decision to liquidate, submit to Reclamation in writing a proposed method of liquidation. Reclamation will not make any payments for estimated or actual losses prior to final Report of Loss.

(c) Within 30 days after receiving the liquidation plan, we will inform the lender in writing whether we concur.

(d) The lender will discontinue interest accrual at the point of default, or 90 days after the first payment was missed, whichever is earlier.

(e) When the lender conducts the liquidation, it must account for funds during the period of liquidation and will provide us with reports at least quarterly on the progress of the liquidation. Only expenses authorized by Chapter 9 plans or Chapter 11 reorganizations, or Chapters 11 or 7 liquidations (United States Bankruptcy Code) may be deducted from collateral proceeds, if any.

#### **§ 403.68 What is the timeline for filing a Final Report of Loss?**

Within 30 days after liquidation of all collateral, the lender must prepare a final Report of Loss and submit it to us. We will not guarantee interest beyond the point of borrower default. We will pay the approved loss payment within 60 days after reviewing the final Report of Loss and accounting of the collateral.

#### **§ 403.69 [Reserved]**

#### **§ 403.70 What interest does the lender have in the guaranteed loan after Reclamation makes a loss payment?**

When we receive a final Report of Loss and pay the loss claim, we are immediately subrogated to the lender in

all rights with respect to the guaranteed loan. The lender must sign and deliver to Reclamation an assignment of any rights it may have had with respect to the guaranteed loan.

#### **§ 403.71 What will Reclamation do if a borrower defaults?**

If a borrower defaults, we are required to notify the Attorney General. The Attorney General will take appropriate action to recover the unpaid principal and interest due from assets of the defaulting non-Federal borrower associated with the obligation, or any other collateral pledged to secure the obligation.

#### **§ 403.72 When does the Loan Note Guarantee Agreement terminate?**

A Loan Note Guarantee Agreement under this part will terminate automatically upon:

(a) Full Repayment of the guaranteed loan;

(b) Full Payment of any loss obligation or negotiated loss settlement as described in the Lender's Agreement; or

(c) Written request from the lender to Reclamation, upon return of the Loan Note Guarantee Agreement to Reclamation.

#### **§ 403.73 What happens if the non-Federal party breaches the existing Loan Note Guarantee Agreement?**

The Federal Government reserves the right to prosecute both the borrower and the lender to the fullest extent possible under existing laws until full recompense has been made and the conditions of the Loan Note Guarantee Agreement have been fulfilled. In addition, if a Loan Note Guarantee Agreement is breached, the Borrower will no longer be eligible to receive a Federally-guaranteed loan for any of its future activities or projects, and may not be eligible for other Federal assistance. Furthermore, any lender in breach of a Loan Note Guarantee Agreement will be responsible for paying any additional fees as determined necessary to the Federal Government and will not be allowed to hold a Federal Government

note until the United States Treasury has been paid in full.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 697**

[Docket No. 070717357-7593-02]

RIN 0648-AV77

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes new Federal American lobster (*Homarus americanus*) regulations that would implement a mandatory Federal lobster dealer electronic reporting requirement, changes to the maximum carapace length regulations for several lobster conservation management areas (LCMAs/Areas), and a modification of the v-notch definition in certain LCMAs. This action responds to the recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). Implementation of a mandatory Federal lobster dealer reporting requirement would be consistent with the recommendations for Federal action by the Commission in Addendum X to Amendment 3 of the ISFMP and would assist in providing a more comprehensive and consistent coastwide accounting of lobster harvest data to facilitate stock assessment and fishery management. Additionally, this action intends to implement new and revise existing Federal lobster

regulations to support the Commission's ISFMP by adopting v-notching and maximum carapace length measures (together referred to as broodstock protection measures) in several management areas that are, for the most part, identical to those already enforced by the states. The incorporation of these proposed broodstock protection measures would support the Commission's ISFMP by reducing confusion and facilitating enforcement within and across management areas. Finally, the proposed action would expand the Commission's recommended broodstock protection measures to include the Outer Cape Management Area to provide further opportunities to protect lobster broodstock in this management area.

**DATES:** Comments must be received no later than 5 p.m. eastern standard time on or before November 20, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number 0648-AV77, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.
- Fax: (978) 281-9117, Attn: Peter Burns.
- Mail: Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Lobster Proposed Rule."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), prepared for this regulatory action may be obtained at the mailing address specified above; telephone (978) 281-9327. The documents are also available online at <http://www.nero.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects

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

**FOR FURTHER INFORMATION CONTACT:** Peter Burns, Fishery Management Specialist, phone (978) 281-9144, fax (978) 281-9117.

#### **SUPPLEMENTARY INFORMATION:**

##### **Statutory Authority**

The proposed regulations would modify Federal lobster regulations in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C 5101 *et seq.*, which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

##### **Purpose and Need for Management**

One purpose of this action is to improve the availability and utility of fishery-dependent lobster data to meet the need for a more comprehensive baseline for assessing the status of lobster stocks coastwide. Additionally, this proposed action would enhance lobster broodstock protection and facilitate enforcement of lobster measures by revising American lobster maximum carapace size and v-notch requirements, consistent with the recommendations of the Commission in the ISFMP. Finally, this proposed action would expand the curtain of protection on broodstock lobster traveling among lobster management areas by extending the revised maximum carapace size and v-notch requirements to the Outer Cape Management Area.

The need for action is rooted in the most recent American lobster stock assessment and in recommendations in a subsequent peer review panel report. The findings of the stock assessment and peer review panel prompted the Commission to take action by adopting measures to address the need for

improved fishery data collection and broodstock protection. The Commission took action to address these issues through the adoption of Addendum X and Addendum XI to Amendment 3 of the ISFMP. The focus of this rulemaking is on the mandatory dealer reporting requirements in Addendum X and the broodstock protection measures of Addendum XI. As explained in greater detail later in this document and the associated draft environmental assessment completed for this action, NMFS analyzed three alternatives for each of the three regulatory actions proposed: mandatory dealer reporting requirements; the maximum carapace size; and, revisions to the v-notch requirements. The three alternatives for each of the three proposed regulatory actions included: a status quo (no action) alternative; an alternative that would implement the Commission's ISFMP recommendations in Addendum X and XI; and a third modified alternative that would vary in certain aspects from the Commission recommendations, but would be compatible with the Commission's ISFMP.

##### **Background**

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

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

to fulfill the management needs of the resource, and that a mandatory catch reporting system is needed. Such conclusions provided the impetus for Addendum X's mandatory reporting requirements, which has spawned the proposed Federal dealer reporting requirement described in this proposed rule.

This same assessment and peer review process concluded that the Southern New England (SNE) lobster stock is suffering from depleted stock abundance and recruitment with high dependence on new recruits. The SNE stock component is in poor shape with respect to spawning, recruit and full-recruit abundance indices. The assessment results also indicated that the Georges Bank (GBK) lobster stock, although in a stable state with respect to abundance and recruitment, is also dependent on new entrants to the fishery a cause for concern that the fishery is too reliant on newly recruited lobster. Accordingly, the Commission adopted Addendum XI, which sought to protect SNE and GBK broodstock by creating new maximum carapace lengths and implementing a more restrictive definition of a v-notch in certain Lobster Management Areas. Accordingly, NMFS proposes three independent regulatory actions:

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

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

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

#### **Proposed Changes to the Current Regulations**

NMFS proposes to amend the Federal lobster regulations by expanding reporting requirements to all Federal lobster dealers, and revising the maximum carapace length regulations and v-notch definition for several LCMAs.

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

Consistent with the Commission's recommendations in Addendum X, NMFS proposes to implement regulations to extend mandatory reporting coverage to all Federal lobster dealers. Currently, if a Federal dealer holds a lobster dealer permit and no other Federal seafood dealer permits,

that dealer is not required to report lobster or other seafood purchases to the Federal government. Based on the analysis completed for this action, 148 Federal lobster dealers (29 percent of all Federal lobster dealers) fall in this category and, therefore, are not currently subject to Federal reporting requirements. The remaining 71 percent of Federal lobster dealers hold another Federal seafood dealer permit that requires routine reporting. Such dealers are mandated to report all species purchased, including lobster.

Accordingly, this proposed action would affect only those Federal lobster dealers not currently required to report lobster sales based on reporting requirements mandated by other federally-managed fisheries. Under this requirement, all Federal lobster dealers would complete trip-level reports and submit them electronically each week, consistent with current Federal dealer reporting requirements. This proposed measure differs from the Commission's recommendations because this proposed measure would mandate electronic dealer reporting and would collect the data in a timelier manner (weekly vs. monthly).

The Commission's Expanded Coastwide Data Collection Program set forth in Addendum X is intended to increase the quality and quantity of fisheries-dependent and fisheries-independent data collected at the state and Federal level. Federal fishery-independent data collection programs, such as sea sampling and port sampling activities, are longstanding and underway as implemented by NMFS, contributing substantially to the pool of information used for lobster stock assessments, as are the trawl surveys conducted by the Northeast Fisheries Science Center. NMFS believes that these Federal fisheries-independent data collection activities exceed those as identified in Addendum X. Further, with respect to fishery-dependent data collection, Addendum X mandates participating states, and recommends that NMFS, require at least 10 percent of all lobster harvesters to report their catch. Currently, approximately 61 percent of all Federal lobster vessels report their catch through the NMFS Vessel Trip Report (VTR) program, exceeding the reporting threshold under the ISFMP. Since these fishery-dependent and fishery-independent activities in place already exceed those recommended in Addendum X, NMFS intends to take no further action in this rulemaking to modify the current level of harvester reporting. Consequently, the harvester reporting and fishery-independent elements of Addendum X

are not part of this proposed rulemaking.

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

Although SAFIS was intended to be the overall entry point and warehouse for state and Federal dealer data, NMFS relies on its Commercial Fisheries Database System (CFDBS), managed by the Northeast Fisheries Science Center, as the official warehouse for Federal dealer data even though all Federal and state data are, ultimately, available on the SAFIS database. The proposed Federal dealer reporting requirements would be implemented consistent with those reporting requirements currently in place for Federal lobster dealers and other Federal seafood dealers who are already subject to mandatory electronic reporting requirements for fisheries managed under the authority of the Magnuson-Stevens Act. The mandatory electronic reporting requirements for fisheries managed under the authority of the Magnuson-Stevens Act are set forth in 50 CFR 648.6 and 50 CFR 648.7 of the Federal fisheries regulations and specify the data elements and technological requirements needed for electronic reporting. As such, Federal lobster dealers who would be affected by the proposed reporting regulations would be required to submit their weekly reports into SAFIS.

Federal lobster dealers affected by the proposed action, similar to Federal dealers already required to report, would be required to submit electronic reports to NMFS by selecting one of three methods: direct real-time, online data entry into SAFIS; off-line data entry using software provided by NMFS, followed by file upload to SAFIS; or

proprietary record-keeping software which could be uploaded to SAFIS. Those entering the data directly into the SAFIS system could do so with a personal computer and Internet access. Those who choose to enter the data using a file upload system would also need a computer and Internet access. However, these respondents may be eligible to obtain the file upload software through a NMFS contractor, at no cost to the impacted dealer. The no-cost option could mitigate some of the financial impact to Federal lobster dealers who would be subject to mandatory dealer reporting. However, all impacted lobster dealers would still be required to maintain a personal computer and Internet connection to upload the data to NMFS.

#### *Maximum Carapace Length Requirements*

In support of the Commission's measures in Addendum XI to address the recommendations contained in the stock assessment and peer review process, NMFS proposes to implement a maximum size of 5¼ inches (13.34 cm) on all (male and female) lobsters in Area 2 wherein there is currently no maximum size requirement in the Federal regulations. In Area 4, the current Federal requirement of 5¼ inches (13.34 cm) pertains to female lobster only. This proposed regulatory action would broaden the scope of the maximum size to include all lobsters (male and female). In Area 5, the current Federal requirement is 5½ inches (13.97 cm), applicable only to female lobster. This proposed regulatory action would reduce the maximum size to 5¼ inches (13.97 cm) for both male and female lobster. Currently, the Federal lobster regulations for Area 4 and Area 5 allow recreational fishermen to retain one female lobster that exceeds the maximum size requirement as long as such lobster is not intended for commercial sale. This so-called "trophy" lobster allowance in Area 4 and Area 5 would be eliminated. In Area 6, this proposed action would establish a maximum size of 5¼ inches (13.34 cm) for all lobster harvested by Federal vessels in this area.

Additionally, this regulatory action would establish a maximum carapace size requirement in Area 3. The Commission's plan requires the states to have implemented a lobster maximum carapace length of 7 inches (17.78 cm) by July 1, 2008, reduced by ⅛ inch (0.32) during each of two successive subsequent years until a terminal maximum size of 6¾ inches (17.15 cm) is in place in July 2010. Given the timing associated with Federal

rulemaking on this proposed action, the earliest NMFS would establish a 7-inch (17.78 cm) maximum size would be July 1, 2009. Therefore, to be consistent with the Commission and States' recommended time frame for implementation and fully complement state regulations, this proposed action would implement the maximum size recommended by the Commission for the second year of the three-year implementation schedule and implement the 6 7/8-inch (17.46 cm) maximum size in July 2009. Consistent with the ISFMP, the terminal maximum size for Area 3 of 6¾ inches (17.15 cm) would take effect on July 1, 2010. The aforementioned measures would be consistent with the Commission's plan. The Commission's plan does not include a maximum size requirement for the Outer Cape Area, the only Area without a maximum size requirement under the Commission's ISFMP. NMFS, however, in this regulatory action proposes to adopt a maximum carapace length requirement for the Federal waters of the Outer Cape Area, consistent with the sizes and implementation time-line proposed for Area 3. It is anticipated that such action would provide additional conservation benefits for lobster migrating through this area from the other stock areas.

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

As approved by the Commission in Addendum XI, NMFS proposes to revise the v-notch definition in Areas 2, 3, 4, 5 and 6 to apply to any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as ⅛ inches (0.32 cm), with or without setal hairs. In the proposed revision, v-notched lobster also pertains to any female which is mutilated in a manner which could hide, obscure, or obliterate such a mark. Under the Commission's ISFMP, the zero tolerance v-notch definition for Area 1 would remain unchanged, and the Outer Cape Area would maintain the current definition of a v-notch (at least ¼ inch (0.64 cm) in depth, without setal hair). NMFS however, proposes in this regulatory action to also include the Outer Cape Management Area under the revised v-notch definition as specified in the Commission's ISFMP for Areas 2, 3, 4, 5 and 6.

#### **Comments and Responses**

In response to the Commission's recommendations for Federal action in Addenda X and XI, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on September 21, 2007 (72 FR 53978), to inform the public that the agency is considering

implementing several management measures including a mandatory electronic reporting requirement for Federal lobster dealers and changes to the v-notch and maximum size regulations in several LCMAs. The comment period closed on October 22, 2007.

A total of eight entities commented in response to the ANPR. Some of the comments spoke to more than one of the proposed actions. The comments can be categorized as follows: Six commentators wrote in opposition of the mandatory electronic Federal lobster dealer reporting requirement; One commentator commented in favor of the proposed maximum size and v-notch requirements; Two commentators opposed the maximum size requirements.

The dealer reporting comments were received from three lobster dealers, the State of Maine Department of Marine Resources, and two lobster fishermen's organizations. The general theme of these comments was that mandatory weekly electronic reporting would add more administrative burden to lobster dealers and it would be redundant since many dealers are already providing the data to their respective state fisheries agency. There were no comments in favor of this measure. Two comments opposing the maximum size requirements were received by a mobile gear fishermen's group and a recreational diving group. The comments and the NMFS response to each comment are provided here.

*Comment 1:* Three lobster dealers from Maine wrote in opposition to the mandatory electronic dealer reporting requirement, generally stating that this measure would unnecessarily add to the reporting burden already mandated by the state. One dealer is concerned that this additional burden would cause the business to have to hire additional office staff.

*Response:* NMFS understands that there might be a small amount of seeming redundancy for those Federally permitted dealers who also have a state dealer permit and who are thus already bound to report by virtue of their state permit. On balance, however, NMFS believes that the utility of electronic reporting outweighs the minor burden associated with the minority of dealers who would have to report both electronically and by paper. More specifically, the majority of Federal lobster permit dealers, approximately 71 percent, already have to report electronically. Collection and assembly of the requisite data likely the most time intensive task is a one-time event that must occur regardless of the format in

which the data is ultimately reported (and such data is undoubtedly being collected by the business in some form as part of the dealer's regular business practices). Although there might be some start-up costs associated with electronic reporting (See NMFS Response to Comment 4), computer reporting is intuitively more efficient and less time intensive than having to write the data out and submit it in paper format. Whether computer reporting would ultimately result in new efficiencies in every case is difficult to gauge and might be dependent on individuals on a case by case basis. Nevertheless, NMFS has received no information to suggest that its proposed electronic reporting would be a significant additional burden to the 29 percent of the dealers who do not presently report in such a format, much less that the burden would cause the need to hire additional office staff.

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

Second, NMFS believes that data received through different systems can undermine the integrity and usefulness of the data. NMFS finds it advantageous for its data to be collected in consistent fashion, not only for administrative efficiencies (NMFS already has a successful and tested electronic reporting system in place for other species), but for the statistical integrity

of collecting similar data sets for a single species by the same means. Further, NMFS's experience suggests that while overall compliance with Commission plans is excellent, states do not always interpret, and are not always able to implement, the plans consistently and uniformly. Accordingly, NMFS believes it more prudent in this instance to mandate a single uniform Federal lobster dealer reporting system rather than rely on the eleven states on the Lobster Board to submit data for certain Federal dealers according to the individual state's reporting program.

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

*Response:* The Commission's plan recommends that the dealer provide the statistical area where the lobster were harvested. NMFS has considered but rejected this recommendation and, at this time, does not propose that Federal dealers provide data on where the lobster they purchase were harvested. NMFS is aware that some lobster dealers in Maine acquire lobster without interacting directly with the harvester as lobster are collected by the dealers from the harvesters' lobster cars. NMFS believes that lobster harvesting information is best provided by the harvester, not the dealer.

*Comment 3:* One lobster cooperative manager commented that dealer reporting for lobster is not necessary since lobster is not a quota-managed species.

*Response:* Although the lobster fishery is not managed by a quota system, the benefits of consistent fishery-dependent data in effectively managing the resource cannot be overstated. The lobster fishery is the most economically lucrative in the Northwest Atlantic, with ex-vessel revenues totaling nearly \$395 million in 2006, sustaining numerous fishing communities. Yet, only 61 percent of Federal lobster harvesters and only 71 percent of Federal lobster dealers provide landings data to NMFS. The most recent peer-reviewed lobster stock assessment indicated that improvements to the quality and quantity of fishery-dependent data, including dealer data, are needed to facilitate the assessment of the lobster stocks. In the absence of a mandatory Federal harvester reporting program NMFS is proposing to act on the Commission's recommendation to implement a mandatory dealer reporting

program to complement the actions of the states in enhancing the quality and quantity of lobster fishery data to assist in the management of this important fishery.

*Comment 4:* The State of Maine Department of Marine Resources responded in opposition to the proposed mandatory dealer reporting measure, indicating that it would impact about 86 small dealers in Maine. The Maine Department of Marine Resources is already collecting trip-level data from dealers on a monthly basis and believes that electronic reporting requirements would be too burdensome on dealers who do not have access to the Internet or to a computer and are now able to provide this data on paper trip tickets to fulfill state requirements. The State of Maine believes this Federal action could jeopardize the relationship that Maine has fostered with its dealers to facilitate the receipt of lobster landing data.

*Response:* Maine's industry outreach to establish the cooperation and trust needed to acquire this important data is laudable, as is the commitment of the lobster industry to provide invaluable fishery-dependent data for management purposes. This relationship embodies the concept of cooperative management that is vital to the management framework for the lobster fishery. It is not clear, however, how a Federal reporting requirement would undermine industry cooperation at the state level. Integration of an electronic reporting program may enhance the relationship between industry and public agencies by reducing the time and costs of both providing and acquiring the data over time.

NMFS realizes that although a Federal electronic dealer reporting requirement would only impact a minority of lobster dealers (estimated to be 29 percent of all Federal lobster dealers), a large portion of the 29 percent come from Maine (88 of the 148 non-reporting Federal lobster dealers are based in Maine, based on NMFS permit data). At the same time, 36 dealers in Maine are successfully reporting on an electronic basis. However, as the largest lobster harvesting state by far, Maine harvest data is critical to ensure the responsible management of the fishery.

It is evident, both anecdotally and from some of the comments received that some dealers, especially in more remote areas, may not use computers as part of their business operations. Therefore, it is assumed that the State of Maine and other states allow dealers the option of submitting either paper or electronic reports to maintain current business practices and avoid the start-

up and maintenance costs associated with acquiring the technological means to conduct business in an electronic format. For the purposes of this proposed rulemaking, NMFS estimates that the initial costs to dealers would be about \$580 for an adequate computer and approximately \$652 annually to support Internet access for those dealers that currently do not have a computer or Internet service. The potential impact that the cost of acquiring a computer and maintaining Internet access would have on affected Federal dealer business income is uncertain. However, potential impacts to lobster dealers with no other Federal permits could be assumed to be similar to Federal dealers who are currently subject to mandatory reporting whose business is solely or primarily comprised of lobster sales. Under this assumption, the estimated first-year cost of purchasing equipment and Internet access would represent 0.47 percent of gross net sales assuming a 40 percent markup (based on a NMFS economic analysis conducted on lobster fishery transactions) and median purchases of 134,000 pounds (60,909 kg) with net gross sales valued at \$245,000 during 2007. These estimates are based on dealer reports for all Federal lobster permit holders who were subject to mandatory reporting during 2007. At these values, the annual cost of maintaining Internet access would be 0.27 percent of net gross sales. The expected costs would be lower for any dealer who already has Internet access and a computer meeting the minimum specifications. Further, the computer and Internet service, having been purchased, would have great utility and application to improve other aspects of the dealer's business in ways not associated with data reporting.

Put another way, based on the assumed markup of 40 percent, dealers would receive \$1.83 per pound over the cost of purchasing lobster from harvesters. This translates into sales of 673 pounds (305.3 kg) of lobster to cover the cost of purchasing equipment and Internet access in year 1 and 356 pounds (161.8 kg) of lobster sales to cover the cost of Internet access on an ongoing basis.

Electronic dealer reporting, as proposed in this regulatory action, despite the initial costs, could save time and money for dealers affected by this requirement. Additionally, it has the potential to save time for state agencies now devoting staff to hand-enter these paper reports for submission into the SAFIS system. In addition to the potential benefits to industry participants, reporting consistency with all other Federal dealers in possession

of limited access permits, and timeliness of electronic dealer reports represent additional benefits associated with this proposed electronic dealer reporting action. NMFS also analyzed an option to allow dealers one year to acquire the means necessary to provide electronic reports, however, it appears that this approach would merely defer the costs associated with acquiring the necessary technology to the following year, with savings limited to the uncommitted costs of Internet service.

In general, the proposed measures are based upon the lobster ISFMP that was created and overseen by the states. Further, the measures are the result of addenda that were unanimously approved by the states, including the State of Maine, and are consistent with regulations already in place at the state level.

*Comment 5:* A commercial lobster fishing industry association commented in favor of the proposed maximum size and v-notching requirements as described in the ANPR.

*Response:* NMFS agrees and believes that the implementation of the proposed measures would be compatible with the Commission's recommendations for Federal action and would reduce confusion on the part of the participants and regulatory agencies, and facilitate enforcement by aligning state and Federal lobster management measures. Additionally, by expanding the scope of this action to include the Outer Cape LCMA under the maximum size and v-notching requirements as proposed, some unknown level of protection to transient lobster moving among different management areas may be realized. Further, this action could reduce the potential for more directed fishing effort into the Outer Cape LCMA that could occur if that area remained the only LCMA not governed by a maximum size requirement and bound to a less restrictive definition of a legal v-notch.

*Comment 6:* A commercial fishing industry group whose membership includes vessels participating in the non-trap lobster fishery sector wrote to oppose the proposed maximum size requirements in the ANPR. The commentator adds that the non-trap sector has a comparatively negligible impact on lobster mortality although the lobster bycatch of this sector provides an essential contribution to the groundfish fleet. The commentator requests that NMFS justify the biological need for this restriction as well as the economic analysis of its impacts.

*Response:* With the exception of the Outer Cape Area, NMFS action would

not further impact lobster vessels since they are already subject to the new maximum sizes under state regulations. NMFS has proposed to implement the recommended maximum sizes for Area 2, Area 3, Area 4, Area 5 and Area 6 consistent with the Commission's plan to diminish confusion that could occur with differing state and Federal regulations in these areas and to support the intent of these measures to provide additional broodstock protection as advised through the most recent American lobster stock assessment peer review process. Consistent with this conservation premise, NMFS is proposing to extend the Area 3 maximum size requirement to the Outer Cape Area. The intent of this proposed action would be to provide further protection for lobster broodstock in this area which is known to be a corridor for lobster moving between inshore and offshore areas and between stock and management areas. In other words, there is the potential to undermine the maximum size broodstock protection benefits of these proposed measures if lobster are protected in one area (i.e., caught, but released back to the sea), only to have that lobster caught and kept while transiting another area. In addition, at-sea enforcement would be significantly enhanced if the proposed broodstock measures were implemented in all LCMAs.

The commentator has asked that the economic impacts of this proposed action to the non-trap sector be addressed. Given previous state action to adopt the new maximum size requirements with the exception of the Outer Cape Area, the proposed Federal action would only impact non-trap lobster harvest of lobster greater than 6 3/4 inches (17.15 cm) taken from the Outer Cape Area. Based on NMFS observer data, approximately 5.7 percent of the lobster taken by the non-trap fleet in Area 521, used as a proxy for the Outer Cape Area, exceeded 6 3/4 inches (17.15 cm). Based on this information and in consideration of average lobster price, NMFS estimates that the three-year average value of reduced lobster landings for non-trap vessels fishing in the Outer Cape Area would range from less than \$1 to under \$1,000 annually. The estimated median loss of foregone lobster value would be about \$117 annually per affected vessel. In terms of impacts on total fishing revenue for affected non-trap vessels, these values translate into losses ranging from less than 0.01 percent to 1.2 percent. Therefore, the relative change in total fishing income is much less than the expected change in Outer Cape Area

landings since non-trap vessels may fish for lobster in other areas and because they earn the majority of their fishing income from species other than lobster. However, a survey of lobster vessels indicates that increased fuel costs have caused a reduction in the profit margin for some fishing businesses. In the Outer Cape Area the added effect of reduced revenue potential could compound the economic stress on the financial viability of lobster businesses operating in the area.

*Comment 7:* A representative of a recreational diving club wrote to express concerns over the passage of Addendum XI wherein the Commission adopted the revised maximum sizes to include both male and female lobster. This group submitted a proposal before the Commission's Lobster Management Board after adoption of Addendum XI to request the recreational take of one oversized lobster per trip by divers. Although discussed at several Board meetings, both prior to and after approval of Addendum XI, the proposal was not approved by the Board.

*Response:* Although NMFS acknowledges that the proposed rule might have some impact on recreational divers seeking so-called "trophy sized" lobster, NMFS believes that, on balance, applying maximum sizes consistently to male and female lobster is prudent. As a preliminary matter, maximum size restrictions are known to protect larger lobsters which, according to the best available scientific information, are more prolific breeders. Further, application of the standard to both male and female lobsters would make the regulation more consistent, understandable, and enforceable. Additionally, the maximum size restriction of 5¼ inches (13.34 cm) would still allow for the capture of large lobsters and NMFS has received no information to suggest that divers currently diving for oversized lobster would not dive for lobsters in excess of 5 inches (12.7 cm) which would still remain legal under this proposed rule. Regardless of Federal action, recreational divers are already bound by the proposed maximum size revisions by virtue of the states having approved the restrictions of the Commission's Addendum XI.

#### Classification

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

This proposed rule does not contain policies with Federalism implications as defined in E.O. 13132. The proposed measures are based upon the lobster

ISFMP that was created and is overseen by the states. The proposed measures are the result of addenda that were unanimously approved by the states, have been recommended by the states through the Commission, for Federal adoption, and are in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP which makes recommendations for Federal action. Additionally, these proposed regulations do not pre-empt state law and do nothing to directly regulate the states.

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

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the State, Federal and Constituent Programs Office at the **ADDRESSES** above, and by e-mail to *David.Rostker@omb.eop.gov* or fax to (202) 395-7285.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reason for consideration, and the legal basis are contained in the **SUMMARY** section of the preamble in this

proposed rule. A summary of the IRFA follows:

The proposed (preferred) action would implement a mandatory electronic Federal lobster dealer reporting requirement. In addition, it would revise the current lobster maximum carapace length restrictions in Area 4 and Area 5 and establish a maximum size in Areas 2, 3, and 6. Beyond the scope of the ISFMP, the proposed Federal action would expand the Area 3 maximum size requirement to the Outer Cape Area wherein the Federal regulations do not currently limit lobster harvest based on a maximum carapace length. Additionally, it would include the Outer Cape Area under the more restrictive 1/8-inch (0.32 cm) v-notch requirement.

The proposed management measures would affect small entities engaged in several different aspects of the lobster fishery. The affected entities include lobster dealers, party/charter vessel operators, and commercial fishers using trap and non-trap gears. The proposed action would implement a mandatory electronic reporting program for Federal lobster dealers, a maximum carapace length limitation and a change in the definition of a standard v-notched lobster. Specifically, the latter two measures, intended for lobster broodstock protection, would impact Federal vessels that fish in the Outer Cape Area.

#### Economic Impacts of the Proposed Rule on Small Entities

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

Federal lobster dealers are the entity that would be most affected by this proposed requirement. According to the Small Business Administration (SBA), lobster dealers are considered small entities when they employ less than 100 people. NMFS does not collect employment data from Federally-permitted lobster dealers in the Northeast region. However, based on review of data reported in the U.S. Census Bureau's County Business Patterns it is estimated that all regulated entities that specialize in lobster wholesale trade, as well as those entities that may not specialize in the lobster trade yet would be required to comply with the proposed action, are presumed to be small entities for purposes of the Regulatory Flexibility Act (RFA).

The proposed action would require all federally-permitted lobster dealers to report all seafood purchases, including lobster, through an electronic reporting system. This action would only affect



regulated lobster dealers who are not already required report by virtue of holding at least one other Federal dealer permit requiring mandatory reporting. During 2007 there were 511 lobster dealers issued a Federal permit to purchase lobster. Of these dealers the majority (71 percent) were already required to report leaving 148 regulated small entities that would be required to comply with the proposed action.

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

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

Since the states have already implemented the maximum size and v-notch requirements for the affected areas, with the exception of the Outer Cape Area as proposed in this rulemaking action, the small entities impacted by the maximum size and v-notch provisions proposed herein

would be limited to the Federal commercial lobster fishing vessels and party/charter dive vessels that fish, or are permitted to fish, in the Outer Cape Area. The Outer Cape Area has been characterized as fishing on a population of transient lobsters migrating between inshore and offshore areas.

Party/Charter Vessels. Party/Charter operators are classified with businesses that offer sightseeing and excursion services where the vessel departs and returns to the same location within the same day. Relevant to this proposed action, these businesses include party/charter recreational fishing vessels which offer SCUBA divers recreational opportunities to harvest lobsters for personal use. The SBA size standard for this sector is \$7 million in gross sales. Although sales data are not available, party/charter operators in the lobster fishery tend to be small in size and do not carry a large number of passengers on any given trip. For these reasons it is expected that all regulated party/charter operators holding a Federal lobster permit would be classified as a small entity for purposes of the RFA. All Federal lobster party/charter permit holders are already required to abide by all state regulations under the most restrictive rule of the ISFMP. This means that the proposed action would only affect party/charter operators that take passengers for hire in the Outer Cape Area since this is the only area in the proposed Federal action not included for a maximum size or a more restrictive v-notch in the ISFMP and therefore, not under such restrictions by any state.

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

also took recreational lobster fishing trips only within the Mid-Atlantic area. None took a for-hire trip in the Outer Cape Area.

These data suggest that participating for-hire lobster permit holders would not be affected by the proposed action in the Outer Cape Area although these permit holders may have been affected by action already taken by individual states. While the magnitude of any impact associated with state action is uncertain, it is likely to have been relatively small. In the areas where recreational lobster fishing was reported (corresponding to Area 4 and/or 5) a maximum size for female lobsters has already been in place for several years. Despite the state action and proposed Federal action to reduce the maximum size from 5½ inches (13.97 cm) to 5¼ inches (13.34 cm) in Area 5 and expand it to provide additional protection for male lobsters in Areas 4 and 5, these areas represent the southern terminus of the lobster resource. Therefore, eliminating the exemption for a trophy lobster would have little impact on the recreational fishery since the encounter rate with lobsters of that size is expected to be very low.

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

The survey data indicate that the majority of Area 1 lobster businesses were able to cover operating costs with gross sales. However, net earnings for the majority of businesses were below



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

**Trap Gear Vessels.** The proposed Federal action would directly affect only those Federal lobster vessels that selected the Outer Cape Area. For the 2007 fishing year, 184 Federal lobster trap vessels selected the Outer Cape as one of the potential trap fishing areas. Federal Fisheries Observer data suggest, in consideration of the terminal maximum size proposed in the preferred alternative of 6 inches (17.15 cm), trap vessels operating in this area would expect a reduction in catch of approximately 0.5 percent. Note, however, that a price premium is paid for larger lobsters such that the realized economic impact on lobster fishing businesses is likely to be proportionally larger than the expected change in catch.

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

revenue these estimated revenue impacts represent between 0.01 percent and 1.2 percent of total fishing revenue for participating regulated non-trap gear small entities.

The added economic impact of the change in v-notch definition across all areas is highly uncertain. Although this change would result in an unknown level of reduced opportunities to retain legal lobsters it seems likely that this additional impact would have less impact on non-trap than trap vessels since non-trap vessels earn only a portion of total fishing revenue from lobsters. The added effect on trap vessels is difficult to assess, but would reduce potential revenue in addition to that which may be associated with either changes in existing maximum size or implementation of new maximum size regulations. Available sea sampling data from the Commonwealth of Massachusetts indicate that between 2 percent and 4 percent of females encountered in the Outer Cape Area were v-notched. A substantial portion of the Outer Cape Area legal harvest is comprised of females (64 percent), an unknown proportion of which would be illegal under the preferred alternative.

#### **Economic Impacts of Non-Preferred Alternatives to the Proposed Action**

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

NMFS analyzed two alternatives in addition to the proposed alternative for this action: a no action alternative and a one-year delay in the implementation of mandatory lobster dealer electronic reporting. With the no action alternative, there would be no expected economic impacts to Federal lobster dealers. Those who are not required to report under the current Federal requirements would not be required to report lobster purchases to NMFS and would not suffer any associated economic impacts. Specifically, 148 Federal lobster dealers would not be required to submit electronic trip-level reports to NMFS on a weekly basis. This could impede the availability of an up-to-date, comprehensive data set of trip-level lobster landings from Federal dealers on a coastwide basis. NMFS believes that the optimal situation from a fishery monitoring and data management perspective would be one wherein all Federal dealers report electronically to NMFS, making this trip-level data available in a single format on a weekly basis.

If the one-year delay in implementation is selected, this alternative would provide some

temporary relief to affected regulated entities, but would only put off the cost of coming into compliance with the proposed action for one year. Consistent with the proposed action, it would allow for the receipt of all trip-level lobster data by all Federal lobster dealers in a consistent and more timely fashion. However, it would allow the industry more time to comply with the requirements. It would postpone the start-up and maintenance costs associated with the purchase of a computer (\$580) in cases where the dealer does not currently own one, and would postpone the costs of Internet service (\$652 per year), as applicable.

##### *Maximum Carapace Length Measures*

As with the dealer reporting requirement, NMFS analyzed a no action alternative and the Commission's alternative in addition to the proposed alternative selected for this rulemaking action. Essentially, all Federal permit holders possess either a landing permit or lobster fishing license from a state of landing. Under the Federal lobster regulations (50 CFR part 697), Federal lobster vessels are subject to the most restrictive of either state or Federal regulations, regardless of where the vessels fish. Therefore, in the absence of Federal rules that mirror revised state regulations based on the Commission's plan, Federal vessels will be held to the new state regulations for the respective lobster management areas, even if fishing in Federal waters. So, the impact is, theoretically, the same to Federal vessels and to the resource, regardless of whether the no action alternative or the Commission's alternative is selected, assuming that states remain in compliance with the ISFMP. However, in choosing the no action alternative, differences in the state and Federal regulations across multiple management areas could cause some confusion among the industry and managers and may inhibit effective enforcement of fisheries regulations. This could occur since, without complementary Federal action, nearly all the lobster management areas within the scope of this action would have inconsistent Federal and state maximum size requirements within each area. Conversely, implementation of the Commission recommendations, the second alternative that NMFS analyzed and has rejected in favor of the proposed measures, would negate any inconsistencies between state and Federal regulations. With the Commission's alternative, the industry would not be impacted since they are already complying with these measures under state law. Under either of these

rejected alternatives, Outer Cape lobster vessels would not be impacted and could, with some exceptions, harvest lobster in the Outer Cape Area without regard to maximum carapace lengths.

#### *Revision to V-notch Definition*

The consequences associated with the Federal implementation of the v-notch definition as recommended in the Commission's alternative and set forth in the respective state regulations are the same, in most respects, as no Federal action. The measures adopted by the states would impact the Federal permit holders since they are more restrictive than the current Federal regulations. Implementing these measures at the Federal level would not subject Federal lobster vessels to any further economic burden since they would already be subject to these restrictions by standing state laws in the absence of Federal action. However, there are benefits to Federal action in implementing the Commission's recommended measures compared to the no action alternative because consistent state and Federal regulations would limit confusion as to the enforceable standards among jurisdictions and management areas and would facilitate the enforcement of these measures and foster their utility in augmenting egg production through broodstock protection. Therefore, on balance, the Commission's alternative would provide additional benefits to industry participants and would allow for more effective enforcement than the no-action alternative.

Socio-economic impacts would not be expected by choosing to maintain the current Federal v-notching standards or by implementing the Commission's recommendations which would not include a revised v-notch for the Outer Cape Area. Federal vessels will be subject to the more restrictive v-notch measures in place at the state level even if NMFS maintains the status quo. Outer Cape lobster fishers would not be impacted by a more restrictive v-notch under either non-preferred alternative and could continue to harvest lobster under the current 1/4-inch (0.64-cm) v-notch requirement, while vessels in other management areas would remain subject to the stricter 1/8-inch (0.32-cm) v-notch standard.

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

Fisheries, Fishing.

Dated: October 1, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

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

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

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

2. In § 697.2(a), the definition for "Standard v-shaped notch" is revised to read as follows:

##### **§ 697.2 Definitions.**

(a) \* \* \*

\* \* \* \* \*

*Standard V-shaped notch* means a straight-sided triangular cut, with or without setal hairs, at least 1/8 inch (0.32 cm) in depth and tapering to a point.

\* \* \* \* \*

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

##### **§ 697.6 Dealer permits.**

\* \* \* \* \*

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

(i) *Required information.* All dealers issued a Federal lobster dealer permit under this part must provide the following information, as well as any additional information as applicable under § 648.7(a)(1)(i) of this chapter: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip

reporting requirement; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable); port landed; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

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

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

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

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

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

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator: All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

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

(p) *Record retention.* Records upon which trip-level reports are based must be retained and be available for immediate review for a total of 3 years after the date of the last entry on the report. Dealers must retain the required records at their principal place of business.

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

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

(3) Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

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

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

(s) *Additional dealer reporting requirements.* (1) All persons issued a lobster dealer permit under this part are subject to the reporting requirements set forth in paragraph (n) of this section, as well as §§ 648.6 and 648.7 of this chapter, whichever is most restrictive.

(2) [Reserved]

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

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

\* \* \* \* \*

(b) \* \* \*

(3) Effective July 1, 2009, the maximum carapace length for all American lobster harvested in or from one or more of the EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(4) Effective July 1, 2009, the maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in one or more of EEZ Nearshore Management

Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(5) Effective July 1, 2009, 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 6⅞ inches (17.46 cm).

(6) Effective July 1, 2009, 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 6⅞ inches (17.46 cm).

(7) Effective July 1, 2010, the maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(8) Effective July 1, 2010, the maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

\* \* \* \* \*

(g) \* \* \*

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

\* \* \* \* \*

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