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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151006928-9089-02]

RIN 0648-BF43

**Fisheries of the Northeastern United States; Jonah Crab Fishery; Interstate Fishery
Management Plan for Jonah Crab**

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

ACTION: Proposed rule.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we, the National Marine Fisheries Service, are proposing to implement regulations for the Jonah crab fishery in Federal waters. This action is necessary to enact measures that provide stock protections to a previously unmanaged fishery. The action is intended to ensure compatibility between state and Federal Jonah crab management measures, consistent with the Commission's Interstate Fishery Management Plan for Jonah Crab and the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Public comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by

NOAA-NMFS-2015-0127, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0127, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: “Comments on Jonah Crab Proposed Rule.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

You may request copies of the Draft Environmental Impact Statement (DEIS), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), prepared for this action at the mailing address specified above or by calling (978) 281-9225. The document is also available online at

<https://www.greateratlantic.fisheries.noaa.gov/nr/2018/May/jonahcrabDEIS.html>.

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to the mailing address listed above and by e-mail to *OIRA_Submission@omb.eop.gov*.

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

SUPPLEMENTARY INFORMATION:

Background

Under its process for managing species that are managed by both the states and NOAA's National Marine Fisheries Service, the Atlantic States Marine Fisheries Commission decides upon a management strategy, and then recommends that the states and Federal government enact regulations to complement these measures when appropriate. The Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*) directs the Federal government to support the management efforts of the Commission and, to the extent the Federal government seeks to regulate a Commission species, to develop regulations that are compatible with the Commission's Interstate Fishery Management Plan and consistent with the Magnuson-Stevens Fishery Conservation and Management Act's National Standards.

Historically, Jonah crabs (*Cancer borealis*) have been harvested as an incidental catch in the American lobster trap fishery. That is, traditionally, lobster harvesters did not target Jonah crabs, but sometimes kept and brought them to market if they caught some while lobster fishing. Eventually, the Jonah crab market expanded, and lobster harvesters began making legal

modifications to their lobster traps and setting traps for the specific purpose of catching Jonah crabs. Landings have dramatically increased from nearly 3 million lb (1360.78 mt) in 1994 to a high of over 17 million lb (7711.07 mt) in 2017.

The rapid increase in Jonah crab landings concerned fishery managers. Little is known about the species within U.S. waters other than the fact that fishing pressure has significantly increased. There has been no scientific stock assessment, so we do not know whether the stock is overfished or whether overfishing is occurring. The Jonah crab fishery has been wholly unregulated in Federal waters; anybody could fish for any amount of crabs. Minimal and inconsistent regulations had been issued by some states. Some states tied the harvest of Jonah crabs to their state lobster license, while others did not. The market did provide limited stock protection: Harvest was tempered at times by a low demand, and Jonah crabs with a carapace width smaller than 5 inches (12.7 cm) were considered less marketable. In recent years, targeted fishing pressure has increased, likely due to the decline of the Southern New England lobster stock and the growing market demand for crab.

The Commission initiated management of Jonah crab out of concern for its future sustainability. Given the linkage between the lobster and Jonah crab fisheries, the Jonah crab fishery is managed by the Commission's American Lobster Management Board. The Commission approved an Interstate Fishery Management Plan for Jonah Crab in August 2015, following its public process for review and approval of management actions. The goal of the Commission's Jonah Crab Plan is, "to promote conservation, reduce the possibility of recruitment failure, and allow the full utilization of the resource by the industry." In general, the plan aimed

to capture the fishery within the parameters that existed prior to approval of the plan in 2015. For example, this involved establishing a fishery that was limited to and prosecuted by lobster trap harvesters. Shortly after the Commission approved the plan, the Commission initiated and approved Addenda I and II, refining incidental catch limits and claw-only measures. These documents are available on the Commission’s website at:

<http://www.asmfc.org/species/jonah-crab>. The Commission formally recommended that the Secretary of Commerce implement complementary measures to the Jonah Crab Plan on September 8, 2015. The Commission amended the Jonah Crab Plan to include additional measures on February 8, 2017 and at that time contemporaneously asked the Secretary to include those additional measures as part of the Federal regulatory process.

Proposed Measures

This rule proposes the following measures (Table 1) which are consistent with the Commission’s recommendations in the Jonah Crab Plan and its addenda. Measures are discussed in greater detail below.

Table 1. Proposed Jonah Crab Regulations.

| Sector | Management Measure | Requirement |
|-------------------|-----------------------------|-------------------------------------------|
| Commercial | Permitting | Landing Requires a Lobster Permit |
| | Minimum Size | 4.75-inch (12.065-cm) carapace width |
| | Broodstock Protection | Prohibit Retention of Egg-Bearing Females |
| | Incidental Limit | Up to 1,000 crabs per trip |
| | Incidental Catch Definition | Up to 50 percent of weight onboard |

| | | |
|--------------|------------------------------|-------------------------------------------|
| | Dealer Permits and Reporting | Mandatory Reporting |
| Recreational | Broodstock Protection | Prohibit Retention of Egg-Bearing Females |
| | Catch Limit | 50 crabs per day |

Commercial Measures

1. Permitting

We are proposing to limit Jonah crab fishing access and harvest to those harvesters who already have an existing permit within the limited-access American lobster permit system. As a result, there is no need to separately qualify or issue a Jonah crab-specific permit. Tying Jonah crab access to the lobster permits allows managers to take advantage of existing lobster regulations to protect Jonah crabs, which makes sense because the Jonah crab fishery has historically been prosecuted by lobster permit holders using lobster traps. This action is not expected to prevent historical Jonah crab harvesters from Jonah crab fishing in the future. Our analysis of Federal and state harvest data failed to identify a Jonah crab trap harvester that did not hold an American lobster permit. In multiple advance notices of proposed rulemaking (80 FR 31347, June 2, 2015; 81 FR 70658, October 13, 2016), we have requested information to identify any Jonah crab harvesters that did not hold a lobster permit, which would inform our proposal to link Jonah crab harvest to the existing lobster permit structure. To date, we have received no comments identifying Jonah crab harvesters that did not have a lobster permit. We conclude that linking Jonah crab harvest to the existing American lobster permitting structure is appropriate. We are, however, inviting the public to comment on this linkage between the Jonah crab and lobster permit structure.

Approximately 95 percent of Jonah crab landings are caught in lobster traps. By combining Jonah crab harvest with the Federal lobster permit, a Jonah crab trap would be considered a lobster trap under Federal regulations at 50 CFR 697.7. As a result, commercial lobster trap permit holders harvesting Jonah crabs would be subject to the Federal lobster effort control measures set forth in 50 CFR part 697 *et seq.*, including the trap tag program, allocation and trap cap limits, gear requirements, etc. Provided that all lobster requirements and the other requirements proposed by this rulemaking are complied with, a lobster trap permit holder may harvest an unlimited amount of crabs. No additional lobster traps are proposed to be authorized through this action.

Approximately five percent of the Jonah crab harvest is taken by non-trap gear. We are proposing that commercial non-trap lobster permit holders would be permitted to land an incidental amount of Jonah crabs (meeting both the incidental limit and incidental definition, discussed below), should these proposed measures be approved (see Table 1). Jonah crabs have not been a directed catch using trawl gear. As with trap harvesters, non-trap harvesters would remain obligated to comply with all applicable lobster regulations.

Charter/party permitted vessels must comply with the proposed recreational requirements (see Table 1). Finally, recreational anglers and divers would be restricted to the recreational requirements, and, as with lobster, would not be permitted to set trap gear.

2. *Minimum Size*

We are proposing to implement a minimum carapace width size of 4 $\frac{3}{4}$ inches (12.065 cm). The proposed size restriction should have a negligible impact on the fishing industry because

Jonah crabs smaller than 4 ¾ inches (12.065 cm) have not been traditionally marketable and therefore were not harvested and brought to market.

The draft Jonah Crab Plan included a range of minimum carapace width size alternatives ranging from 4 inches (10.16 cm) to 5 ½ inches (13.97 cm) in quarter-inch (0.635-cm) increments, along with a no coastwide minimum size alternative. When developing these alternatives, the Commission's Jonah Crab Plan Development Team (PDT) attempted to identify Jonah crab size at maturity. The PDT found minimal information, stating in the Jonah Crab Plan that, "what little is known comes from unpublished documents and published studies with low sample sizes." Nevertheless, "examination of the data suggests that both sexes reach near 100 percent maturity by 3 35/64 inches (9.0 cm)." A 4 ¾-inch (12.065-cm) size restriction should allow Jonah crabs to reproduce before they grow to harvestable size.

The Commission's PDT looked at alternatives with larger and smaller carapace sizes and with different levels of enforcement tolerance (the amount of animals smaller than the minimum size which are harvested by mistake without the action being considered willful). Ultimately, the Commission selected a minimum carapace width size of 4 ¾ inches (12.065 cm) with no tolerance for undersized crabs. This minimum size was selected by the Lobster Board because it balances current market demands, biological concerns over the size at which crabs become mature, and industry concerns that enforcement officials would issue violations for crabs that are just under the market-preferred size in this high-volume fishery where measuring each crab may be difficult. States were required to implement regulations consistent with the 4 ¾-inches (12.065-cm) minimum size by June 1, 2016.

Minimum sizes are used in most Greater Atlantic commercial fisheries as a tool to protect immature fish and shellfish to ensure that some percentage of fish have the opportunity to reproduce. We support such measures because they have biological benefits and are enforceable. The measures are also recommended by the Commission and have already been implemented by most states. Adopting the same size restrictions in this action would provide for consistent size restrictions in state and Federal waters.

3. Broodstock Protection

We are proposing to prohibit the retention of egg-bearing female Jonah crabs and prohibit the removal of eggs from egg-bearing female Jonah crabs. Three alternatives aimed at affording such protections were considered in the draft Jonah Crab Plan: 1. No prohibition; 2. a prohibition on egg-bearing female crabs; and 3. a prohibition on the retention of all female crabs with a tolerance. Prohibitions on possessing egg-bearing crabs were considered in the draft plan because they help ensure that eggs are given the opportunity to hatch and add to the population. Similar measures have been successfully used in the lobster fishery, under the Interstate Fishery Management Plan for American Lobster. Ultimately, the Commission selected to prohibit the possession of egg-bearing female crabs. Most states had already implemented regulations to prohibit possession of egg-bearing female crabs by June 1, 2016.

Given the Commission's objective of giving eggs the opportunity to hatch and contribute to the overall crab population, we are also proposing to prohibit the removal of eggs from an egg-bearing female Jonah crab. While not specifically recommended by the Commission, this measure compliments the Jonah Crab Plan by providing an additional measure to fortify the Plan's

biological objective of allowing eggs to hatch. It also closes a potential enforcement loophole which could allow a harvester to circumvent the Commission's prohibition of possessing egg-bearing female Jonah crabs. Finally, we believe this has been an important and effect element of our lobster regulations, and therefore we think it is important to include a similar provision for Jonah crabs.

4. Incidental Catch Limit

We are proposing to implement an incidental catch limit of up to 1,000 crabs per trip for commercial non-trap lobster permit holders, as recommended in Addendum I. The Commission spent several meetings establishing the incidental catch limit in the original Jonah Crab Plan and then perfected it in Addendum I. This Addendum also included discussion on gears that must abide by this limit. The Commission originally approved an incidental catch limit of up to 200 crabs per day and up to 500 crabs per trip which largely mirrored the lobster incidental catch limit. The Lobster Board believed that the original limit was sufficient to allow for an incidental catch while preventing non-trap gear from targeting Jonah crabs.

Following approval of the Jonah Crab Plan, some stakeholders raised concern that the incidental catch limit did not include historic Jonah crab harvest amounts. Other management measures developed in the Jonah Crab Plan attempted to capture historic fishery practices. The PDT reviewed available catch information and determined that the original Jonah Crab Plan limit would have restricted some past trips which landed more than 200 crabs per day or 500 crabs per trip. The PDT determined that a limit of 1,000 crabs per trip would cover the majority of past landings from non-trap gear.

Ultimately, the Commission approved a new, expanded limit of up to 1,000 crabs per trip for both non-trap gear and non-lobster trap gear as part of Addendum I. The Commission expected that this revised limit would be more consistent with the maximum incidental catch that existed in 2015 prior to developing the Jonah Crab Plan. Our catch data corroborates the Commission's basis for revising the incidental catch limit. A Federal incidental catch of up to 1,000 crabs would provide consistency between Federal and state regulations.

We support the Commission's Addendum I incidental limit of up to 1,000 crabs per trip, as only 3 trips between 2010 and 2014 landed more than 900 lb (408.2 kg). This higher limit balances the Jonah Crab Plan's goals of maintaining historic catch levels while preventing future expansion of the incidental fishery into a larger or more targeted fishery. We are proposing to adopt and apply the incidental limit of up to 1,000 crabs per trip to the American lobster commercial non-trap permit category.

5. Incidental Catch Definition

We are proposing to implement a requirement that Jonah crabs cannot comprise more than 50 percent, by weight, of all species kept onboard a commercial non-trap permitted vessel. This would be a second requirement governing the incidental possession of Jonah crabs and would complement the maximum incidental catch limit of 1,000 crabs per trip. To further ensure that the incidental catch of Jonah crabs does not expand into a targeted fishery, the Commission developed and approved an incidental catch definition (called a "bycatch definition") as part of Addendum II. Options included a status quo no incidental catch limit and a 50-percent limit, which would require that Jonah crabs make up no more than 50 percent, by weight, of all species

kept on board a vessel. This requirement is intended to work in conjunction with the incidental catch limit. In order to retain the full incidental Jonah crab trip limit, a vessel would need to have at least the same weight of other species, combined, onboard. The Commission developed this measure out of concern that fishermen harvesting Jonah crab under the incidental catch limit may, in fact, target Jonah crab by landing 1,000 crabs per trip. The Commission was also concerned that this small-scale targeted fishery would be allowed to land 1,000 crabs per trip, and nothing else. The Commission noted that these examples conflicted with their intent for the incidental catch limit, which was to account for Jonah crabs caught while targeting another species. States were required to implement regulations consistent with this definition by January 1, 2018.

We support the Commission's Addendum II goal of further ensuring that historic incidental harvest does not evolve into targeted harvest. Percentage-based catch caps have been used in other regionally-managed fisheries and are enforceable. Therefore, consistent with the Commission's recommendation and to complement state measures already in effect, we are proposing to implement a requirement that, in addition to the incidental catch limit, Jonah crabs cannot comprise more than 50 percent, by weight, of all species kept onboard a vessel.

6. Mandatory Dealer Reporting

We are proposing a dealer permitting requirement and a mandatory dealer reporting requirement for any dealer wishing to purchase Jonah crabs from Federally-permitted vessels, consistent with all other regionally-managed species. The Jonah Crab Plan included a goal to "implement uniform collection, analysis, and dissemination of biological and economic information; and improve understanding of the status of the stock and the economics of harvest."

To that end, the Commission developed several options requiring 100-percent dealer reporting in its draft Jonah Crab Plan, along with an option that did not require dealer reporting. Those options specified information for collection, including a unique trip identification number, species, quantity (lb), state and port of landing, market grade and category, areas fished and hours fished, and price per pound. As mandatory dealer reporting is now universally required in all other fisheries, this reporting requirement was passed with little debate at the Commission.

The Commission did not explicitly discuss a permitting program for dealers purchasing Jonah crabs. Permitting would be necessary to successfully implement a mandatory dealer reporting program. Therefore, we are proposing to require that a dealer obtain a Federal Jonah crab dealer permit if that dealer wishes to purchase Jonah crabs from a federally-permitted lobster permit holder. Due to the overlap of Jonah crab and lobster harvest, our analysis shows that the vast majority of dealers currently purchasing Jonah crabs already have Federal dealer permits due to the other species purchased, specifically lobster. Therefore, requesting an additional permit in the annual renewal application is not expected to be burdensome.

We are proposing to require that all federally-permitted Jonah crab dealers submit dealer reports electronically, on a weekly basis, consistent with dealer reporting requirements for all other regionally-managed commercial fisheries. The Jonah Crab Plan specified information to be collected in dealer reports. We are proposing to collect the Commission's recommended information. We intend to require the same information currently required in other fisheries, which includes some additional information. These requirements include: Dealer name; dealer permit number; name and permit number or name and hull number (U.S. Coast Guard

documentation number or state registration number, whichever is applicable) of the vessel from which fish are purchased; trip identifier (vessel trip report identification number for vessels with mandatory vessel trip reporting requirement); date of purchase; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. Finally, to facilitate reporting of all market categories, we are proposing to add additional dealer codes, which will help more accurately assess Jonah crab landings.

We support the Commission's data collection and standardization goal, as well as the requirement for 100 percent dealer reporting. While our proposed dealer permitting and reporting program is more expansive than what is specified in the Jonah Crab Plan, we believe it is consistent with the Commission's intent and will ensure consistency with the dealer reporting requirements for other federally-managed fisheries.

Recreational Measures

1. Broodstock Protection

We are proposing to prohibit the retention of egg-bearing female Jonah crabs in the recreational fishery, consistent with the Commission's recommendation. Development of this measure occurred in parallel to broodstock protection measures for the commercial fishery. For more background, please see *Broodstock Protection* under the **Commercial Measures** heading above.

2. Recreational Catch Limit

We are proposing to limit the recreational Jonah crab harvest to 50 whole crabs per person, per day. The PDT included three measures in the draft Jonah Crab Plan for Commission and public consideration: 1. No coastwide possession limit; 2. a possession limit of 50 (whole crabs); or 3. a possession limit of 100 claws per person. Cautious, restrictive recreational catch limits were developed by the PDT because few data existed on the extent of the existing recreational Jonah crab fishery. Further, it was believed that such a small limit would help to maintain a recreational harvester's participation in the fishery while preventing expansion of effort and targeting for illegal commercial harvest. Following public comment and discussion, the Commission elected to approve a 50 whole-crab per person, per day recreational limit of Jonah crabs without allowing a recreational claw harvest. States were required to implement recreational regulations by June 1, 2016.

Consistent with the Commission's recommendation and to complement state measures already in effect, we are proposing to implement a recreational catch limit of 50 whole crabs per person, per day. Consistent with the regulations for recreational harvest of American lobster, non-trap gear must be used to recreationally harvest Jonah crab, including diving, charter/party trips, and personal angling. While little information exists on the recreational fishery, we believe this limit balances recreational access to the fishery while restricting future expansion.

Other Measures Considered by the Commission

1. Landing Disposition Requirements (i.e., claw fishery)

We do not intend to impose landing disposition requirements at this time. Landing disposition requirements, like the incidental landing limit, evolved during the development of the

Jonah Crab Plan and its addenda. In a first attempt to capture regional harvesting differences in the Jonah Crab Plan, the Commission approved a whole crab fishery with an exemption for individuals who could prove a history of claw landings before the June 2, 2015, control date in the states of New Jersey, Delaware, Maryland, and Virginia. During the development of the Jonah Crab Plan, we advocated for a whole-crab fishery due to biological, enforcement, and National Standard 4 concerns. National Standard 4 requires that conservation and management measures shall not discriminate between residents of different states. Following approval of the Jonah Crab Plan, we raised several concerns with this measure, indicating in a February 29, 2016, letter, that “it may prove challenging for us to implement the claw-only exemption, as constructed in the August 2015 Jonah Crab Plan because of National Standard 4,” because the plan included little rationale for implementing this measure differently based on state affiliation.

The Commission reconsidered its claw fishery requirements as part of Addendum II. This effort included a thorough investigation of state and Federal landings data in an attempt to determine the extent of Jonah crab claw landings. The Jonah Crab PDT developed a range of potential management measures, including: 1. Status quo (a whole crab fishery with an exemption for southern states); 2. a whole crab fishery coastwide; and 3. a coastwide regulated claw fishery. Incidental volumetric measure claw limits such as a maximum of one 5-gallon (18.93 L) bucket were also discussed. During the development of Addendum II, we advocated for a whole-crab fishery due to biological and enforcement concerns, but supported options that would allow a small amount of claw-only landings. The Commission ultimately approved a measure that established a coastwide standard for claw harvest, allowing for an unlimited amount

of claws to be harvested subject to a minimum claw length requirement.

In response, states have implemented a wide range of measures. Some allow harvest of an unlimited claws that meet the minimum size, others allow harvest of a maximum of one 5-gallon (18.93 L) bucket of claws, while others allow only whole crabs to be landed. The Commission recommended that we implement complementary claw fishery measures, but the variety of state regulations complicated our ability to complement regulations. Specifically, we found it challenging to issue a single Federal regulation that is consistent with state landing disposition requirements, when the state regulations themselves are inconsistent. Therefore, we are not proposing regulations for the claw fishery at this time. As such, states will regulate crab landing disposition shore-side. We will monitor the effectiveness of these state regulations to determine whether future Federal regulation will be necessary. Deferring action on the claw fishery is expected to minimize disconnects between state and Federal regulations.

2. Mandatory Commercial Harvester Reporting

The Commission recommended a 100-percent mandatory harvester reporting program as part of the Jonah Crab Plan but allowed jurisdictions requiring less than 100 percent of lobster harvester reporting to maintain their current programs and extend them to Jonah crab. The Jonah Crab Plan established specific information to be reported, including: A unique trip identification (link to dealer report); vessel number; trip start date; location (NMFS stat area); traps hauled; traps set; quantity (lb); trip length; soak time in hours and minutes; and target species. We intend to restrict Jonah crab harvest to only Federal lobster permit holders, and at present, there is no mandatory harvester reporting requirement for Federal lobster permit holders. Therefore, we do

not intend to modify Federal lobster permit holder's reporting requirements through this action. This action proposes to add an additional species code to better capture the landings of Jonah crab claws in states that permit such activity.

In recent months, the Commission has given additional consideration to the reporting requirements in both the lobster and Jonah crab fisheries. In February 2018, the Commission approved Addendum XXVI to the Interstate Fishery Management Plan for American Lobster, which also serves as Addendum III to the Jonah Crab Plan. The intent of this addendum is to expand lobster harvester reporting requirements, enhance the spatial and effort data collections, and improve the amount and type of biological data collected in the offshore trap fishery. Given the offshore expansion of lobster trap effort in recent years, the Commission developed this addendum to address data gaps due to inconsistent reporting and data collection requirements across state and Federal agencies. As a result, the recommended Jonah crab reporting would be subsumed by the lobster reporting requirements that the Commission already made as part of Addendum XXVI to the Lobster Plan/Addendum III to the Jonah Crab Plan. We are currently developing a proposed rule in a separate action to consider adopting these expanded lobster and Jonah crab harvester reporting recommendations.

Research Activities

Since the Commission's approval of the Jonah Crab Plan, several organizations have established Jonah crab research programs focused on the research needs identified in the plan. Researchers from the Massachusetts Division of Marine Fisheries (MA DMF), the Commercial Fisheries Research Foundation (CFRF), and the University of Maryland have requested exempted

fishing permits (EFPs), including exemptions from Jonah crab regulations, to conduct research on migration, growth rates, and maturity in Federal waters. Because no Federal regulations existed for Jonah crab, we advised researchers that they were free to conduct their research activities in Federal waters, but that exemptions from lobster regulations would be required.

We have issued EFPs to MA DMF and CFRF, and are considering an EFP for the University of Maryland. These projects have centered around the collection of crabs and lobster using ventless traps and, to date, have received exemptions from the lobster trap regulations, including exemptions from escape vent, trap tagging, and number of allowable traps requirements. Several of these studies are also collecting information on lobsters, and therefore also have exemptions from lobster possession provisions in regulations, including provisions on minimum and maximum size, egg-bearing females, etc.

This action proposes to expand the exemptions granted to these three research projects to include exemptions from the proposed Jonah crab regulations, as outlined in Table 2. Exemptions would not be issued until a final rule for Jonah Crab Plan measures is published. These proposed exemptions do not expand the scope or scale of any existing research projects; they are intended to allow these research activities to continue without interruption.

Table 2. Expanded Exemption Proposal to Existing Research Permits.

| Organization | Project Title | Jonah Crab Exemptions |
|--------------------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------------|
| Commercial Fisheries Research Foundation | Southern New England Cooperative Ventless Trap Survey | Minimum size |
| Massachusetts Division of Marine Fisheries | Random Stratified Coastwide Ventless Lobster Trap Survey | Minimum size Prohibition on the possession of egg-bearing female Jonah crabs |
| University of Maryland | Sexual maturity investigation of Jonah crabs | Minimum size |

If approved, the applicants may request minor modifications and extensions to the EFP throughout the year. We may grant EFP modifications and extensions without further notice if the modifications and extensions are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP requests. The EFPs would prohibit any fishing activity conducted outside the scope of the exempted fishing activities. Finally, we invite any other organizations conducting Jonah crab research to contact us to discuss whether their research activities will require Federal permits.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Coastal Fisheries Cooperative Management Act, applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared a draft environmental impact statement for this Plan; a notice of availability was published on May 25, 2018 (83 FR 24305). This action establishes Federal management measures for the Jonah crab fishery. As the species was previously unregulated, slight positive impacts are expected on the target species. Such measures will help to ensure the future sustainability of the stock. This action is expected to have no impact to slight negative impacts on essential fish habitat because it authorizes trap gear to be used. Impacts are considered to be slight because these are the same traps that have already been authorized and are currently used in the lobster fishery, and trap gear is known to have a minimal footprint on the bottom. Other more administrative measures are expected to have no impact. No impact to slight

negative impacts on protected species are expected because the fishery uses a gear type known to have interactions with several protected species, including North Atlantic right whales, humpback whales, fin whales, and sei whales; and Northwest Atlantic distinct population segment loggerhead and leatherback sea turtles. The number of traps will not increase through this proposed action. This action is expected to have a short-term slight negative impact, but a longer-term positive impact, on human communities. While, in general, the Commission recommended regulations that were consistent with industry norms, such regulations could limit a harvester's ability to land Jonah crabs in the short term to the extent that a harvester had previously fished outside of those norms. While our data does not suggest that harvesting outside of the norm took place, if it did, the restrictions could lead to a slight negative impact. In the longer term, the regulations proposed in this rule are likely to help ensure the sustainability of the Jonah crab population for future harvest, yielding slight positive long-term impacts.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not contain policies with federalism implications as defined in E.O. 13132. NMFS has consulted with the states in the creation of the Jonah Crab Plan, which makes recommendations for Federal action. The measures proposed in this rule are based upon the Jonah Crab Plan and its addenda, which were created by the Commission, and, as such, were created by, and are overseen by, the states. These measures are already in place at the state level. Additionally, these proposed measures would not preempt state law and would not regulate the states.

An initial regulatory flexibility analysis (IRFA) was prepared, 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, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the SUMMARY section. A summary of the analysis follows. A copy of this analysis is available from the NMFS (see **ADDRESSES**).

Description of the Reasons Why Action by NMFS is Being Considered

Recent data indicate that Jonah crab landings have increased dramatically in the past 15 years. To ensure that the stock is sustainably harvested, the Commission initiated the Jonah Crab Plan, as well as Addenda I and II to the plan to implement coastwide regulations. The Commission recommended that the Federal government implement measures consistent with its plan. To the extent practicable, this proposed rule would implement regulations that are consistent with the Commission's recommendations and the regulations promulgated by our state partners.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to ensure sustainable management of the Jonah crab fishery in Federal waters, recognizing that Federal management occurs in concert with state management.

The purpose of the proposed measures is to manage the Jonah crab fishery in Federal waters in a manner consistent with the Atlantic Coastal Fisheries Cooperative Management Act, the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act, the

Jonah Crab Plan, other applicable Federal laws, and, to the extent practicable, State laws and regulations.

The Jonah Crab Plan, the Atlantic Coastal Fisheries Cooperative Management Act, and promulgating regulations at 50 CFR part 697 provide the legal basis for the proposed action.

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

The proposed action would implement regulations affecting commercial fishing activities (North American Industry Classification System (NAICS) code 11411), seafood dealers (NAICS code 424460), and operators of party/charter businesses (NAICS code 487210). Because each of these activities has their own size standard under the RFA, consideration of the number of regulated entities and the potential economic impacts of the proposed action for each NAICS code is discussed below.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2014 through 2016.

Section 3 of the Small Business Act defines affiliation. Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or

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

Affiliated entities based on reported vessel ownership information on the 2016 permit application were used to ascertain the number of affiliated regulated entities that were associated with at least one limited access lobster permit. During 2016 there were 2,377 limited access lobster permits included in the ownership database, of which, 640 held only a non-trap permit, 1,597 held only a trap permit, and 140 held both a trap permit and a non-trap gear permit. Applying the principles of affiliation, and based on sales reported through the NMFS dealer database, the total number of regulated entities in 2016 was 2,026, of which, 2,018 entities had gross receipts from all fishing activity less than \$11 million, and 8 entities had combined gross sales by all affiliated permitted vessels that exceeded \$11 million. Note that the number of regulated entities is less than the number of permitted vessels because some affiliated ownership groups own more than one permit; although the overwhelming majority of ownership groups (1,847) are associated with only one limited access lobster permit.

Table 3. Summary, by entity size, of average gross sales, number of regulated entities, and lobster sales.

| | Number of Entities | Mean Gross Sales (\$1,000's) | Mean Lobster and Jonah Crab Sales (\$1,000's) |
|----------------------------------|--------------------|------------------------------|-----------------------------------------------|
| Large Entities | 8 | 21,562 | |
| Non-Participating Large Entities | 4 | 21,729 | |
| Participating Large Entities | 4 | 21,395 | 6,984 |
| Small Entities | 2,018 | 387 | |
| Non-Participating Small Entities | 609 | 564 | |
| Participating Small Entities | 1,409 | 311 | 220 |

Dealer data are the primary source of data used to estimate gross receipts for purposes of size class determination. Although dealer data is the best available source of revenues earned from commercial fishing, it is prone to missing gear information, which is needed to estimate the number of affected trap gear entities. For this reason, vessel trip reports (VTRs) are used to estimate the number of affected participating lobster trap gear entities. As previously noted, a significant number of vessel owners possess only a limited access lobster permit and are not subject to mandatory reporting. For this reason, the analysis based on vessel owners that do possess at least one other permit for which VTRs are mandatory is representative of the fleet of limited access lobster trap permit holders.

The number of permitted limited access trap vessels that reported one or more lobster trap trips from 2014-2016 ranged from 400 in 2014 to 412 in 2016 (Table 4). None of these vessels relied exclusively on Jonah crab. About 62 percent of these vessels exclusively reported landing lobster while 38 percent of vessels reported landing both lobster and Jonah crab. In terms of lobster trap trips, 87 percent of VTR records reported landing lobster with no Jonah crab. Less than 1 percent of trips reported landing Jonah crab and no lobster, and 12 percent to 13 percent of trips reported landing both lobster and Jonah crab.

Table 4. Summary of Lobster Trap Effort and Number of Affected Entities.

| | 2014 | 2015 | 2016 |
|-------------------------------|---------|------|------|
| Trips | Percent | | |
| Lobster Only Effort | 86.7 | 87.7 | 87.1 |
| Jonah Crab Only Effort | 0.5 | 0.4 | 0.4 |
| Lobster and Jonah Crab Effort | 12.8 | 11.9 | 12.5 |
| Permits | Count | | |

| | 2014 | 2015 | 2016 |
|-------------------------------|------|------|------|
| Lobster Only Effort | 252 | 251 | 258 |
| Jonah Crab Only Effort | 0 | 0 | 0 |
| Lobster and Jonah Crab Effort | 148 | 160 | 154 |

As previously noted, the ownership data used to determine the number of affected entities is based on aggregated dealer data. Because the proposed action would affect limited access lobster non-trap permits, VTR data were used to determine the number of participating vessels that would be affected by the proposed action. Analysis of data from 2010 through 2014 presented in Addendum I to the Jonah Crab Plan indicated only three trips would have exceeded the proposed trip limit. During calendar years 2014-2016, the number of limited access lobster non-trap permit holders was 647 in 2014 and 660 in 2016 (Table 6). These vessels took a reported total of between 30,000 to 34,000 trips each year. It should be noted that, while the incidental limit is defined in number of crabs, this analysis relies on pounds landed. It was assumed that a crab weighs one pound (0.45 kg), and this assumption may be an underestimate given that the market favors larger crabs. The median value of this distribution ranged from a high of 1,175 pounds in 2014 to a low of 1,046 pounds in 2015. Comparing the incidental harvest definition to the VTR reported weight of Jonah crab results in an estimated average number of affected trips of 145 trips ranging from a high of 180 trips in 2015 to a low of 115 trips in 2014. This is about 0.5 percent of the total number of trips taken by limited access lobster non-trap trip permitted vessels (Table 5). The total number of regulated entities that would be affected by at least one trip where harvested Jonah crabs would be constrained by the Jonah crab incidental harvest limit ranged from 11 to 15 vessels from 2014 to 2016.

Table 6. Affected Regulated Non-trap Permits.

| | 2014 | 2015 | 2016 |
|-----------------------------|--------|--------|--------|
| Number of Reporting Permits | 647 | 659 | 660 |
| Number of Affected Permits | 11 | 15 | 12 |
| Number of trips | 30,865 | 31,192 | 33,891 |
| Trips Landing Jonah Crab | 502 | 608 | 413 |
| Jonah Crab Above Limit | 115 | 180 | 139 |

Under existing regulations for other regulated species, NMFS requires a Federal dealer permit for the purchase of seafood from a Federally-permitted commercial vessel. NMFS regulations also require that dealers report all purchases of fish and/or shellfish from any vessel, including state-waters-only vessels. This means that any dealer issued a Federal dealer permit would be regulated under the proposed action. During 2015, there were 750 Federal dealer permits issued to dealers in Greater Atlantic region states, ranging from a high of 221 dealer permits in Maine to a low of 6 dealer permits in Delaware (Table 7). According to 2015 County Business Patterns (CBP) data, there were 803 dealer establishments in Greater Atlantic Region states that employed a total of 8,118 people. For Maine, New Hampshire, Massachusetts, and Rhode Island, the CBP number of establishments ranged from 52 percent to 66 percent lower than the number of Federal permits issued to dealers in those states. By contrast, the number of CBP establishments was approximately equal to the number of Federal permits in both Delaware and New Jersey, but the number of CBP establishments was substantially higher than the number of Federal permits in all other states in the Mid-Atlantic region.

The number of CBP establishments by employment size class demonstrates that the overwhelming majority of establishments (796 of 803) employ fewer than 100 employees. Moreover, 86 percent of seafood dealer establishments in Greater Atlantic Region states employ fewer than 19 people. This suggests that the seafood dealer sector is dominated by businesses that

are considered small entities for purposes of the RFA.

Table 7. Number of Regulated Seafood Dealers and Employment Size Distribution for 2015.

| State | Federal Permits | CBP Establishments | CBP Employment | CBP Number of Establishments by Employment Size Class | | | | | | |
|-------|-----------------|--------------------|----------------|-------------------------------------------------------|-----|-------|-------|-------|---------|---------|
| | | | | 1-4 | 5-9 | 10-19 | 20-49 | 50-99 | 100-249 | 250-499 |
| ME | 221 | 146 | 1,123 | 89 | 28 | 13 | 13 | 2 | 1 | 0 |
| NH | 17 | 9 | 108 | 3 | 3 | 1 | 2 | 0 | 0 | 0 |
| MA | 204 | 129 | 1,808 | 57 | 26 | 17 | 20 | 7 | 2 | 0 |
| RI | 51 | 28 | 182 | 13 | 7 | 8 | 0 | 0 | 0 | 0 |
| CT | 12 | 20 | 211 | 9 | 2 | 5 | 4 | 0 | 0 | 0 |
| NY | 100 | 275 | 2,056 | 178 | 38 | 31 | 23 | 4 | 1 | 0 |
| NJ | 85 | 78 | 784 | 43 | 10 | 15 | 7 | 2 | 1 | 0 |
| DE | 6 | 6 | 54 | 4 | 0 | 1 | 1 | 0 | 0 | 0 |
| NC | 42 | 59 | 1,187 | 27 | 10 | 10 | 8 | 3 | 0 | 1 |

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

This action imposes minimal impacts on small entities. Due to the expected high rate of dual permitting and the fact that the states are already compliant with these measures, the majority of Federal vessels are already abiding by these requirements, and therefore will not be impacted by the measures in this proposed rule. For those vessels not dually permitted, several measures in this proposed rule that regulate the harvest of Jonah crabs (minimum size, broodstock protections, etc.) can be expected to have a limited economic impact on permit holders, because existing market preferences encompass these measures. That is, long before the existence of any minimum size restrictions, harvesters threw back small crabs because dealers would not buy them.

In other words, these smaller crabs were already protected from harvest due to market forces, and under the changes in this proposed rule, these smaller crabs would be protected for conservation purposes. Regardless, no crab will be thrown back based upon this regulation that would not have already been thrown back as unmarketable. As such, there will be limited economic impact on the fishing industry from establishing the recommended minimum size. Furthermore, because the Jonah crab fishery has largely been prosecuted by lobster trap harvesters, the Jonah crab fishery remains restricted by effort control measures that already exist in the lobster regulations. Non-trap harvest limits proposed in this rule were set in a manner to ensure that the vast majority of past trips would be accounted for under the proposed limit. Because the measures in this proposed rule are consistent with Commission recommendations, current state regulations, and existing lobster fishery requirements, alternative measures would likely create inconsistencies and regulatory disconnects with the states, and, therefore, would likely worsen potential economic impacts.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains several new reporting and recordkeeping requirements that would involve costs to vessels and dealers intending to land or purchase Jonah crabs. Vessels would be required to obtain a permit that authorizes the retention and sale of Jonah crabs and may be required to report catch via the Federal vessel trip report. Dealers wishing to purchase Jonah crabs would be required to obtain a Federal Jonah crab permit and report their purchases weekly, as required for other Federally-managed species. These proposed measures would impose several new compliance requirements; however, the proposed measures are already in place for

states and are, by design, are intended to be consistent with past fishing practices and market requirements.

Duplication, Overlap or Conflict with other Federal Rules

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

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Following are estimated averages for the public reporting burden for dealer permitting and dealer reporting:

1. Initial Federal dealer permit application, OMB# 0648–0202, (15 minutes/response); and
2. Dealer report of landings by species, OMB# 0648–0229, (4 minutes/response).

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 Greater Atlantic Regional Fisheries Office at the **ADDRESSES** section above, and by e-mail to *OIRA_Submission@omb.eop.gov*.

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.

Authority: 16 U.S.C. 5101-5108; 16 U.S.C. 1801 *et seq.*

Dated: March 18, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

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

2. In §697.2:

a. Delete definitions for “berried female” and “carapace length;” and

b. Add new definitions for “berried female Jonah crab,” “berried female lobster,” “Jonah crab,” “Jonah crab carapace width,” and “lobster carapace length,” in alphabetical order.

The deletions and additions read as follows:

§ 697.2 Definitions.

* * * * *

Berried female Jonah crab means a female Jonah crab bearing eggs attached to the abdomen.

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

* * * * *

Jonah crab means *Cancer borealis*.

Jonah crab carapace width is the straight line measurement across the widest part of the shell including the tips of the posterior-most, longest spines along the lateral margins of the carapace.

* * * * *

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

* * * * *

3. In §697.4, revise paragraph (a) introductory text to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) *Limited access American lobster permit.* Any vessel of the United States that fishes for, possesses, or lands American lobster or Jonah crab in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. This requirement does not apply to: Charter, head, and commercial dive vessels that possess 6 or fewer American lobsters per person or 50 Jonah crab per person aboard the vessel if such lobsters or crabs are not

intended for, nor used, in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster or Jonah crab.

* * * * *

4. In § 697.5, revise paragraph (a) to read as follows:

§ 697.5 Operator permits.

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

* * * * *

5. In §697.6, revise paragraphs (a), (n)(1) introductory text, (n)(1)(i), (n)(1)(ii)(B), (n)(2), and (s) to read as follows:

§ 697.6 Dealer permits.

(a) Any person who receives, for a commercial purpose (other than solely for transport on land), American lobster or Jonah crabs from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), American lobster or Jonah crabs, managed by this part, must have been issued, and have in his/her possession, a valid permit issued under this section.

* * * * *

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

(i) *Required information.* All dealers issued a Federal lobster or Jonah crab dealer permit under this part must provide the following information, as well as any additional information as applicable under §648.7(a)(1)(i) of this chapter: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are transferred, purchased or received for a commercial purpose; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip reporting requirement; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood

product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) * * *

(A) * * *

(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 or Jonah crab), and part 648 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Greater Atlantic Region, which are not affected by the provision; and

* * * * *

(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.

* * * * *

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

6. In § 697.7, revise paragraphs (c)(1)(i), (iii), (iv), and (xxix), and add paragraph (g), to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) *American lobster.*

(1) * * *

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

(ii) * * *

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

(iv) Remove eggs from any berried female lobster, land, or possess any such lobster from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under §697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in §697.24 may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

* * * * *

(xxix) Retain on board, land, or possess at or after landing, whole American lobsters that exceed the maximum lobster carapace length standard specified in §697.20(b). All American

lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

* * * * *

(g) *Jonah crab.* (1) In addition to the prohibitions specified in §600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under §697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in §697.24 to do any of the following:

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

(ii) Retain on board, land, or possess any berried female Jonah crabs specified in §697.20(h)(2).

(iii) Remove eggs from any berried female Jonah crab, land, or possess any such Jonah crab from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under §697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in §697.24 may land or possess any Jonah crab that has come in contact with any substance capable of removing crab eggs.

(iv) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any Jonah crabs,

unless the dealer has a valid Federal Dealer's Permit issued under §697.6.

(v) Fish for, take, catch, or harvest Jonah crabs on a fishing trip in or from the EEZ by a method other than traps, in excess of up to 1,000 crabs per trip, unless otherwise restricted by §697.7(g)(2)(i)(C) of this chapter.

(vi) Possess, retain on board, or land Jonah crabs by a vessel with any non-trap gear on board capable of catching Jonah crabs, in excess of up to 1,000 crabs per trip, unless otherwise restricted by §697.7(g)(2)(i)(C) of this chapter.

(vii) Transfer or attempt to transfer Jonah crabs from one vessel to another vessel.

(2) In addition to the prohibitions specified in §600.725 of this chapter and the prohibitions specified in paragraph (g)(1) of this section, it is unlawful for any person to do any of the following:

(i) Retain on board, land, or possess Jonah crabs unless:

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

(B) The Jonah crabs were harvested in state waters by a vessel without a valid Federal limited access American lobster permit; or

(C) The Jonah crabs were harvested by a charter boat, head boat, or commercial dive vessel that possesses 50 or fewer Jonah crabs per person on board the vessel (including captain and crew) and the Jonah crabs are not intended to be, or are not, traded, bartered, or sold; or

(D) The Jonah crabs were harvested for recreational purposes by a recreational fishing vessel; or

(E) The Jonah crabs were harvested by a vessel or person holding a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in §697.24.

(ii) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any Jonah crabs from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under §697.4, or the Jonah crabs were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for Jonah crabs exclusively in state waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and that is fishing under the provisions of and in the areas designated in §697.24.

(iii) To be, or act as, an operator of a vessel fishing for or possessing Jonah crabs in or from the EEZ, or issued a Federal limited access American lobster permit under §697.4, without having been issued and possessing a valid operator's permit under §697.5.

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

(v) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, Jonah crabs caught by a vessel other than one issued a valid Federal limited access American lobster permit under §697.4, or one holding or owned or operated by one holding a valid State of Maine American lobster permit or

license and fishing under the provisions of and in the areas designated in §697.24, unless the Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and that fishes for Jonah crabs exclusively in state waters.

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

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

(viii) Retain on board, land, or possess any Jonah crabs harvested in or from the EEZ in violation of §697.20.

(ix) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live Jonah crabs in violation of §697.20.

(x) Violate any terms of a letter authorizing exempted fishing pursuant to §697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xi) Possess, deploy, fish with, haul, harvest Jonah crabs from, or carry aboard a vessel any lobster trap gear on a fishing trip in the EEZ on a vessel that fishes for, takes, catches, or harvests Jonah crabs by a method other than lobster traps.

(xii) Fish for, take, catch, or harvest Jonah crabs on a fishing trip in the EEZ by a method other than traps, in excess of up to 1,000 crabs per trip, unless otherwise restricted by §697.7(g)(2)(i)(C) of this chapter.

(xiii) Possess, retain on board, or land Jonah crabs by a vessel with any non-trap gear on

board capable of catching lobsters, in excess of up to 1,000 crabs per trip, unless otherwise restricted by §697.7(g)(2)(i)(C) of this chapter.

(xiv) Transfer or attempt to transfer Jonah crabs from one vessel to another vessel.

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

(3) *Presumptions.* (i) Any person possessing, or landing Jonah crabs at or prior to the time when those Jonah crabs are landed, or are received or possessed by a dealer for the first time, is subject to all of the prohibitions specified in paragraph (g) of this section, unless the Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and that fishes for Jonah crabs exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed 50 or fewer Jonah crabs per person aboard the vessel and the Jonah crabs are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

(ii) Jonah crabs that are possessed, or landed at or prior to the time when the Jonah crabs are received by a dealer, or Jonah crabs that are possessed by a dealer, are presumed to have been harvested from the EEZ or by a vessel with a Federal limited access American lobster permit. A preponderance of all submitted evidence that such Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and fishing exclusively for Jonah crabs in state or foreign waters will be sufficient to rebut this presumption.

(iii) The possession of egg-bearing female Jonah crabs in violation of the requirements set forth in §697.20(h)(1) or Jonah crabs that are smaller than the minimum sizes set forth in §697.20(h)(2), will be prima facie evidence that such Jonah crabs were taken or imported in

violation of these regulations. A preponderance of all submitted evidence that such Jonah crabs were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

7. In § 697.17, revise paragraphs (a), (b), and (c), and add paragraphs (d), (e), and (f) to read as follows:

§ 697.17 Non-Trap Harvest Restrictions.

(a) *Non-trap lobster landing limits.* In addition to the prohibitions set forth in §600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board capable of catching lobsters, or, that fishes for, takes, catches, or harvests lobster on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted by §648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or §697.7(c)(2)(i)(C) of this chapter.

(b) *Trap prohibition for non-trap lobster harvesters.* All persons that fish for, take, catch, or harvest lobsters on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer American lobster from one vessel to another vessel.

(c) *Trap prohibition for non-trap lobster vessels.* Any vessel on a fishing trip in the EEZ that fishes for, takes, catches, or harvests lobster by a method other than traps may not possess on board, deploy, fish with, or haul back traps.

(d) *Non-trap Jonah crab landing limits.* In addition to the prohibitions set forth in

§600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board that fishes for, takes, catches, or harvests Jonah crabs on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of up to 1,000 Jonah crabs (or parts thereof), for each trip, unless otherwise restricted by §697.7 of this chapter.

(e) *Restrictions on fishing for, possessing, or landing fish other than Jonah crabs.*

Vessels are prohibited from possessing or landing Jonah crabs in excess of 50 percent, by weight, of all other species on board.

(f) *Trap prohibition for non-trap Jonah crab harvesters.* All persons that fish for, take, catch, or harvest Jonah crabs on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer Jonah crabs from one vessel to another vessel.

* * * * *

8. In § 697.20, revise paragraph (a), (b) and (d), and add paragraph (h) to read as follows:

§ 697.20 *Size, harvesting and landing requirements.*

(a) *Minimum lobster carapace length.* (1) The minimum lobster carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3 ¼ inches (8.26 cm).

(2) The minimum lobster 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 the Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3 ¼ inches (8.26 cm).

(3) The minimum lobster carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is $3\frac{3}{8}$ inches (8.57 cm).

(4) The minimum lobster 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 Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is $3\frac{3}{8}$ inches (8.57 cm).

(5) Through April 30, 2015, the minimum lobster carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is $3\frac{1}{2}$ inches (8.89 cm).

(6) Through April 30, 2015, the minimum lobster 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 lobster 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 lobster 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).

(9) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (a) of this section.

(b) *Maximum lobster carapace length.* (1) The maximum lobster carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(2) The maximum lobster 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 the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

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

(4) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in one or more of EEZ Nearshore Management Areas 2, 4, 5, and 6 is $5\frac{1}{4}$ inches (13.34 cm).

(5) The maximum lobster 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 lobster 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).

(c) * * *

(d) *Berried female lobsters.*

(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.

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

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

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(h) *Jonah crabs.* (1) *Minimum Jonah crab carapace width.* The minimum Jonah crab carapace width for all Jonah crabs harvested in or from the EEZ 4 ¾ inches (12.065 inches).

(2) *Berried female Jonah crabs.* (A) Any berried female Jonah crab harvested in or from the EEZ must be returned to the sea immediately.

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

(C) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or

foreign commerce, any berried female Jonah crab as specified in paragraph (d) of this section.

(3) *Removal of eggs.* (A) No person may remove, including, but not limited to, the forcible removal and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female Jonah crab.

(B) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove, including but not limited to, the forcible removal, and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female Jonah crab.

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

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