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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191023-0070]

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: Final rule.

SUMMARY: We, the National Marine Fisheries Service, are implementing regulations for the Jonah crab fishery in Federal waters based on Atlantic States Marine Fisheries Commission recommendations. 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: This rule is effective *[INSERT 30 DAYS AFTER FILING AT THE OFFICE OF THE FEDERAL REGISTER]*.

ADDRESSES: You may request copies of the Final Environmental Impact Statement (FEIS), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), or the Record of Decision (ROD) prepared for this action at: National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276 or by calling (978) 281-9315.

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 NMFS, the Atlantic States Marine Fisheries Commission makes a management decision, and then recommends that the 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. Lobster harvesters did not target Jonah crabs but sometimes retained and sold crabs caught while lobster fishing. Eventually, the Jonah

crab market expanded, and lobster harvesters began modifying fishing practices to target Jonah crabs. Landings have dramatically increased from nearly 3 million lb (1,361 mt) in 1994 to a high of over 17 million lb (7,711 mt) in 2015.

The Commission initiated management of Jonah crab out of concern for its future sustainability. Fishery managers became concerned by the rapid increase in Jonah crab landings, particularly because the impacts of the significantly increased fishing pressure are not clear. There is no stock assessment for Jonah crab and no biological reference points, so we do not know whether the stock is overfished or if overfishing is occurring. Managers fear that if overfishing does occur, that it could continue unabated, because the only regulatory protections for Jonah crabs are imposed by lobster fishery regulations. At present, the Jonah crab fishery is unregulated in Federal waters; any unpermitted vessel can fish for any amount of crabs, with unlimited amounts of gear. Prior to development of the Commission's Jonah Crab Plan, some states attempted to implement some control over state Jonah crab harvesters (*e.g.*, limiting Jonah crab harvest to those with a valid lobster permit), but these regulations were often inconsistent between the states. The market provided some additional stock protection. Only crabs above a 5-inch (12.7-cm) carapace length were marketable and, thus, crabs with a smaller carapace width were not harvested and returned to the sea.

The Commission's American Lobster Management Board manages the Jonah crab fishery because of the link between the lobster and Jonah crab fisheries. 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 attempted to maintain the fishery as it existed prior to approval of the plan in 2015 and cap fishing effort at the 2015 levels. 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.asafc.org/species/jonah-crab>. The Commission formally recommended that the Secretary of Commerce implement complementary Federal measures to the Jonah Crab Plan on September 8, 2015. The Commission amended the Jonah Crab Plan to include additional measures and the Secretary to include those additional measures as part of the Federal rulemaking process on February 8, 2017.

Approved Measures

This rule approves 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 -- Approved Jonah Crab Measures

| Sector | Management Measure | Requirement |
|--------------------|---------------------------|---|
| Com merci al | Vessel permitting | Landing requires a Federal 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 definition | Up to 50 percent of weight onboard |
| | Dealer permitting and reporting | Federal dealer permit required and mandatory Federal dealer reporting |
| Recreational | Broodstock protection | Prohibit retention of egg-bearing females |
| | Catch limit | 50 crabs per day |

Commercial Measures

1. Permitting

Only vessels with Federal lobster permits can fish for and harvest Jonah crab. 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 particularly because the Jonah crab fishery has historically been prosecuted by lobster permit holders using lobster traps. The Jonah crab fishery will have trap limits and gear configuration requirements because the pots used are considered lobster traps under our regulations at 50 CFR 697.2 and subject to all the restrictions required by our lobster regulations set forth in 50 CFR part 697.

This action is not expected to prevent historical Jonah crab harvesters from Jonah crab fishing in the future. Analysis of Federal and state harvest data completed during development of the Commission's plan identified that all Jonah crab trap harvesters held an American lobster permit. In multiple advance notices of proposed rulemaking (80 FR 31347, June 2, 2015; 81 FR 70658, October 13, 2016), we 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. We received no comments in response to these notices identifying Jonah crab harvesters that did not have a lobster permit. Since that time, one state has identified Jonah crab-only harvesters in state waters, and there is no evidence that these Jonah crab-only harvesters participated in the fishery in federal waters. We concluded that linking Jonah crab harvest to the existing American lobster permitting structure is appropriate.

Commercial non-trap lobster permit holders may land an incidental amount of Jonah crabs (meeting both the incidental limit and incidental definition, discussed below) (see Table 1). As with trap harvesters, non-trap harvesters must comply with all applicable lobster regulations.

Charter/party-permitted vessels and recreational anglers may possess Jonah crabs but must comply with the recreational requirements (see Table 1). Finally, recreational anglers may not set trap gear.

2. Minimum Size

We are implementing a minimum carapace width size of 4 $\frac{3}{4}$ inches (12.065 cm). The purpose of a minimum size restriction is to protect crabs until they mature and have an opportunity to reproduce. This size restriction should have a negligible impact on the fishing industry because Jonah crabs smaller than 4 $\frac{3}{4}$ inches (12.065 cm) have not been traditionally marketable and therefore, were not harvested. The Commission's Jonah Crab Plan Development Team (PDT) attempted to identify Jonah crab size at maturity and found that, "data suggests that both sexes reach near 100 percent maturity by 3 $\frac{35}{64}$

inches (9.0 cm).” We are implementing the Commission-recommended minimum carapace width because it has biological benefits (i.e., ensures that the majority of crabs have the opportunity to reproduce) and is enforceable. Approving the same size restrictions in this action ensures consistent size restrictions in state and Federal waters.

3. Broodstock Protection

We are approving a prohibition on retaining egg-bearing female Jonah crabs. Approving this prohibition helps to align state and Federal regulations. We are also prohibiting the removal of eggs from an egg-bearing female Jonah crab. While not specifically considered by the Commission, this measure complements the Jonah Crab Plan by closing a potential enforcement loophole which could allow a harvester to circumvent the prohibition of possessing egg-bearing female Jonah crabs by removing the eggs. Finally, this prohibition has been an important and effective 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 implementing 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 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 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.

Because of the PDT's findings, the Commission revised the Plan's incidental catch limit of up to 1,000 crabs per trip for both non-trap gear and non-lobster trap gear as part of Addendum I. Our catch data corroborate the Commission's basis for revising the incidental catch limit as only three trips between 2010 and 2014 landed more than 900 lb (408.2 kg). Therefore, a Federal incidental catch of up to 1,000 crabs provides consistency between Federal and state regulations.

5. Incidental Catch Definition

We are implementing 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 is a second requirement governing the incidental possession of Jonah crabs that complements 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.

Percentage-based incidental 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 approving 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 approving a dealer-permitting requirement and a mandatory dealer-reporting requirement for any dealer purchasing Jonah crabs from federally permitted vessels, consistent with all other regionally managed species.

The Commission did not explicitly discuss a permitting program for dealers purchasing Jonah crabs. Permitting is necessary to successfully implement a mandatory dealer-reporting program. Therefore, we are approving a requirement 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. Requesting an additional fishery in the annual renewal application is not expected to add any additional burden to an applicant. Dealers may begin requesting this permit once the rule is effective. It will be issued and begin being enforced on January 1, 2020.

We are also requiring 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, including lobster. The Jonah Crab Plan specified information to be collected in dealer reports. We are approving the collection of the Commission's recommended information. We will require the same information currently required in other fisheries, as well as 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 adding additional species market codes to the dealer report, which will help more accurately assess Jonah crab landings. While this dealer permitting and reporting program is more expansive than what is specified in the Jonah Crab Plan, 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 approving a prohibition on retaining 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 approving a recreational Jonah crab harvest limit of 50 whole crabs per person, per day. Consistent with the Commission's recommendation and to complement state measures already in effect, we are implementing 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 harvest Jonah crab recreationally, including diving, charter/party trips, and personal angling. While little information exists on the recreational fishery, this limit balances recreational access to the fishery while restricting future expansion.

Other Measures Considered by the Commission but Not Implemented

1. Landing Disposition Requirements (i.e., whole crab vs. claw only fishery)

We are not imposing a landing disposition requirement 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 for better coastwide management consistency.

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 again advocated for a whole-crab fishery, but we 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 the harvest of an unlimited amount of 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 complicates our ability to create complementary Federal regulations. Specifically, it is challenging to issue a single Federal regulation that is consistent with state landing disposition requirements, when the state regulations themselves are inconsistent. Because the states can effectively regulate this matter on shore without complementary regulations, we are not issuing regulations for a landing disposition 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 this issue 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 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, however, will add an additional species code to the vessel trip report 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 Lobster Addendum XXVI/Jonah crab Addendum III 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 from inconsistent reporting and data collection requirements across state and Federal agencies. As a result, the recommended Jonah crab reporting will 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. We expect the proposed measures to publish in late 2019 and the rule to implement requirements to occur in 2020.

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 issued EFPs to MA DMF and CFRF, and the University of Maryland in 2019. These projects have centered on 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 have exemptions from lobster possession provisions in regulations, including provisions on minimum and maximum size, egg-bearing females, etc.

This action expands the exemptions granted to these three research projects to include exemptions from the proposed Jonah crab regulations, as outlined in Table 2. New EFPs will be issued to these researchers, coinciding with the effective date of these measures. These 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 |

Once 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.

Comments and Responses

Two documents solicited comment on this action: A control date advance notice of proposed rulemaking (80 FR 31347; June 2, 2015) and a notice of intent for the environmental impact statement (EIS)/advance notice of proposed rulemaking (81 FR 70658; October 13 2016). Comments were received from: The Atlantic Offshore Lobstermen's Association; the Center for Biological Diversity; and two members of the public. We published a proposed rule in the **Federal Register** on March 22, 2019 (84 FR 10756), soliciting public comment on the proposed Jonah Crab Plan measures. The comment period ended on April 22, 2019. We received eight letters from two fishery organizations, the New England Fishery Management Council, two Jonah crab harvesters, a group of environmental advocacy organizations, and two members of the public. Only comments that were applicable to the proposed measures are addressed below. Consolidated responses are provided to similar comments on the proposed measures.

Comment 1: The Atlantic Offshore Lobstermen's Association supported the establishment of a control date for the Jonah crab fishery, believing that it will discourage speculative entry into the fishery during the interim period before the states and NMFS published regulations to manage the fishery.

Response: We agree. A central purpose of the control date was to put harvesters

on notice of the potential regulatory restrictions and prevent speculation. Available information suggests that speculative fishing was limited.

Comment 2: An anonymous comment opposed establishing a control date. The commenter argued that it was inappropriate for NMFS to issue a control date at the request of the Commission when the fishery takes place in Federal waters and the New England Fishery Management Council expressed interest in management, as Council management would take precedence over Commission management.

Response: We disagree. The control date provided notice to the public of potential future regulations and its purpose and value is independent of its origin from either the Commission or the Council. Here, the Commission's involvement makes sense given the overlap between the lobster fishery and Jonah crab fishery. Notwithstanding the Commission's role in developing its Jonah Crab Plan, the New England and Mid-Atlantic Councils have been consulted on this matter. Many members of the Commission's Lobster Board are also Council members and a New England Council member was invited to represent the Council's Jonah crab interests on the Lobster Board. The Council has participated in Commission decision-making and voted to adopt Commission's actions at the Lobster Board. Because of this, we feel that it was appropriate to issue a control date at the Commission's request.

Comment 3: During development of the rulemaking and EIS, the Center for Biological Diversity raised concern about large whale entanglements in Jonah crab traps and requested that the EIS consider impacts to large whales, specifically the north Atlantic

right whale (*Eubalaena glacialis*).

Response: We are mindful of potential impacts between the Jonah crab fishery and large whales and analyzed trap impacts in Section 5 of the EIS. This analysis will be ongoing because this action folds the Jonah crab fishery into the lobster fishery. Before this action, any unpermitted individual could fish an unlimited number of traps in Federal waters for Jonah crab. Now Jonah crab fishing is restricted to lobster permit holders and any traps used to target Jonah crabs are considered lobster traps, subject to all lobster regulations. This new regulatory framework ensures that the fishery's impacts to whales will be analyzed in NMFS' ongoing fishery Biological Opinion, as well as the recommendations made by the Large Whale Take Reduction Team in April 2019, and all lobster reporting requirements in response to Commission Addendum XXVI.

Comment 4: During development of the rulemaking and EIS, the Center for Biological Diversity stated the spatial information should be included in the reporting requirements.

Response: We agree. NMFS is developing spatial information reporting requirements in a separate rulemaking that addresses the recommendations of Addendum XXVI to the Lobster Plan/Addendum III to the Jonah Crab Plan. This future rulemaking will also consider reporting needs from the Lobster and Jonah Crab Plan, which requires the following information as part of harvester reports: A unique trip ID (link to dealer report), vessel number, trip start date, location (statistical area), traps hauled, traps set, quantity (lb), trip length, soak time in hours and minutes, and target species. These

requirements were intended to match the reporting requirements associated with the Interstate Fishery Management Plan for American Lobster, as these two fisheries are linked. Due to the overlap with North Atlantic right whales, the Atlantic Large Whale Take Reduction Team may recommend additional reporting requirements. Such requirements may be incorporated into this future rulemaking.

Comment 5: During development of the rulemaking and EIS, one individual opposed the development of Federal Jonah crab regulations, preferring that the fishery be closed to commercial harvest, stating that Jonah crabs are a food source for birds and marine mammals.

Response: The Commission developed the Jonah Crab Plan out of precaution and potential concern for the Jonah crab resource given the recent and rapid increase in landings. There is no stock assessment for Jonah crab, but the science does not presently support a complete closure of the fishery. The population has been able to sustain past increases in commercial landings, as described in Section 4.5.2 of the EIS. Fishing effort has been capped at such levels. We are taking action, as requested by the Commission, to implement complementary regulations in Federal waters. This action is expected to put some initial limits on Jonah crab harvest and implement reporting requirements, adding to our information and making a future stock assessment possible.

Comment 6: The Atlantic Offshore Lobstermen's Association commented in support of Federal rulemaking at multiple stages and highlighted the need for the commercial management measures approved in this rule. One commercial lobster

harvester resubmitted a copy of a letter that was submitted to the Commission in 2014 supporting Jonah Crab Plan development. The Cape Cod Commercial Fishermen's Alliance generally supported proposed measures. All three letters supported linking Jonah crab harvest to the lobster permit structure.

Response: We agree and are developing regulations consistent with the Atlantic Coastal Fisheries Cooperative Management Act and the Commission's recommendations in the Jonah Crab Plan. For additional rationale, please refer to Approved Measures.

Comment 7: One harvester, who identified himself as a Jonah crab-only harvester without a lobster permit, disagreed with our proposal to link Jonah crab harvest to the lobster permit structure. Instead, the commenter proposed establishing a targeted Jonah crab permit to allow targeted harvesters to land an unlimited amount of crabs and 100 lobster per day as bycatch, arguing that the Jonah crab fishery has "emerged as its own fishery separate from lobster."

Response: The best available information suggests that the Jonah crab fishery is not separate from the lobster fishery. Landings data available during the development of the Jonah Crab Plan indicated that between approximately 91-99 percent of Cancer crabs (both Jonah crabs and rock crabs) were harvested from lobster permit holder in their trap gear. Data further suggests that the fishery began as unintentional catch; crabs now are increasingly a targeted catch from lobster traps. This obvious linkage is the basis for the American Lobster Board overseeing management and is a primary driver behind the recommendation to link Jonah crab harvest to the lobster permit structure.

There is no justification to qualify and issue Jonah crab-only permits. As discussed above, on several different occasions, we requested information to identify any Jonah crab harvesters that did not hold a lobster permit. One of these requests coincided with a 2015 control date, intended to promote awareness of possible future rulemaking, and discourage speculative entry into and/or investment in the Jonah crab fishery. We received no comments in response to these earlier requests for information. In addition, only one state has identified Jonah-crab only harvesters and only in state waters. As no other information has been presented that helps to identify Jonah crab harvesters without a lobster permit in Federal waters prior to the 2015 control date and the commenter indicated that his entry into the fishery occurred after the 2015 control date, which was designed to prevent such speculative entry, we are linking Jonah crab harvest to the lobster permit structure.

Finally, it would be problematic for NMFS to authorize additional effort in the lobster fishery without consulting the Commission, the American Lobster Board, and our partner states as it would create an inconsistency with the Lobster Plan and with state regulations. The Commission specifically endorsed linking Jonah crab harvest to the lobster permit structure. The Interstate Fishery Management Plan for American Lobster strictly controls harvest. Any additional effort in the fishery should be considered through the Commission's open and public process.

In sum, the administrative and enforcement efficiencies, as well as the biological benefits (to crabs, lobsters, and whales) weighed against the negative time and resources

impacts and ineffectiveness caused by creating an inconsistent Federal Jonah crab-only fishery that would potentially benefit only one individual, all provide the basis for our linking the fisheries.

Comment 8: The Atlantic Offshore Lobstermen's Association, Cape Cod Commercial Fishermen's Alliance, and one industry member supported the proposed minimum size. The other industry member supported a 5-inch (12.7-cm) minimum size.

Response: We agree with the commenters and are approving a 4 ¾-inch (12.065-cm) minimum carapace width. Due to the significant overlap with the American lobster fishery, the Commission's American Lobster Board has overseen management, as recommended. The Board has developed many coastwide measures (*i.e.*, all but claw provisions that are state-by-state) that states have implemented, which will now be complemented in Federal waters through this action.

When developing measures for the fishery, Lobster Board considered a range of minimum sizes. These measures were included in the draft Jonah Crab Plan and taken out to public comment. As discussed in greater detail in the proposed rule, the Commission selected a minimum size of 4 ¾ inches (12.065 cm) because it balances 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.

We considered and analyzed both 4 ¾-inch (12.065-cm) and 5-inch (12.7-cm)

minimum sizes as alternatives in the accompanying EIS. While they are reasonable, approving a measure that is inconsistent with what the states have already promulgated would create a significant inconsistency between state and Federal regulations for this species. Any inconsistency increases the difficulty to achieve coordinated management, administrative and enforcement objectives, and creates additional confusion about applicable regulations for harvesters. Due to these potential negative effects, we have approved a minimum size that is consistent with Commission recommendations and state requirements.

Comment 9: The Atlantic Offshore Lobstermen's Association, the New England Fishery Management Council, and one member of the public supported the prohibition on the retention of egg-bearing female Jonah crabs. Both harvesters supported prohibiting the retention of all female Jonah crabs, with one identifying egg-bearing female Jonah crabs as needing specific protections.

Response: We agree with the associations and one member of the public that the approved broodstock protection measures will provide protections for the Jonah crab fishery, consistent with the Atlantic Coastal Fisheries Cooperative Management Act and the Commission's recommendations in the Jonah Crab Plan. When developing the Jonah Crab Plan, the Lobster Board considered protections for egg bearing female crabs and all female crabs as management alternatives. Both alternatives help ensure that eggs are given the opportunity to hatch and add to the population and 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. The Jonah Crab Plan and the EIS both note that the vast majority of female crabs (96-98 percent) are smaller than the minimum size. As such, approving only a prohibition on egg-bearing female Jonah crabs is more targeted to the Commission's objective of giving eggs the opportunity to hatch and contribute to the overall crab population. Most states had already implemented regulations to prohibit possession of egg-bearing female crabs by June 1, 2016.

While both broodstock protection alternatives are reasonable, approving measures that are inconsistent with what the states have already promulgated would create a significant inconsistency between state and Federal regulations for this species. Due to the potential negative effects associated with inconsistencies, we have approved a prohibition on the retention of egg-bearing female Jonah crabs, consistent with Commission recommendations and state requirements.

Comment 10: The New England Council and one member of the public supported the incidental catch limit.

Response: We agree. The Commission spent several meetings establishing the incidental catch limit in the original Jonah Crab Plan and then perfected it in Addendum I. 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 while preventing future

expansion of the incidental fishery into a larger or more targeted fishery. Our catch data corroborated the Commission’s basis for revising the incidental catch limit as only 3 trips between 2010 and 2014 landed more than 900 lb (408.2 kg). A Federal incidental catch of up to 1,000 crabs provides consistency between Federal and state regulations, thereby avoiding negative impacts associated with inconsistency, as outlined in the response to Comment 8.

Comment 11: The Council, the Cape Cod Commercial Fishermen’s Alliance, and one member of the public supported the proposed dealer requirements.

Response: We agree. Mandatory dealer reporting in the will provide much needed fishery information. Such information will inform future science and management of this species.

Comment 12: The Cape Cod Commercial Fishermen’s Alliance supported “measures to expand research in the fishery to fill gaps in knowledge,” noting that such research could help refine management measures and encouraged that a stock assessment be conducted as soon as possible to “ensure that overfishing is not likely to occur in this burgeoning fishery, allowing it to thrive for generations.”

Response: We agree that additional data and research is needed on this data-poor species. Mandatory dealer reporting in the immediate future and mandatory harvester reporting through a separate, future action should provide much needed fishery information. Such information will feed into a future stock assessment, which the Commission identified as a high priority need in the Jonah Crab Plan. The Plan already

requires jurisdictions to collect the following information from port/sea sampling:

Carapace width, sex, discard information, egg-bearing status, cull status, shell hardness, and whether the landings are whole crabs or parts. Together, this fishery dependent and independent data will be useful to measure the effectiveness of management measures, including the minimum size and to monitor the claw-only fishery in states where it is allowed. These data will inform a future stock assessment. In the interim, the Plan requires that the Lobster Board conduct an annual review of management measures, state data collections, and research needs, which helps to bridge the gap until a stock assessment is scheduled.

Additional research will be critical to answering some of the larger questions about this species. The Plan specifies biological, habitat, and economic research needs, which partner states have begun to address with and without research permits. We encourage additional research on this species and will consider exemptions to lobster and Jonah crab regulations to facilitate future research.

Comment 13: The Atlantic Offshore Lobstermen’s Association noted, “it may be appropriate to modify the language in [F]ederal code 50 CFR 697 to specify that those measures apply to both lobster and Jonah crab fisheries.”

Response: We appreciate the collaboration with and support of the Association in the development and approval of these measures. Staff involved in the management of American lobster and Jonah crab reviewed the existing lobster regulation found at 50 CFR part 697 for any needed revisions based on this rulemaking. Several changes to the

lobster-specific regulations were proposed and are implemented by this final rule. No additional changes are necessary to 50 CFR part 697, as these measures are solely derived from Commission recommendations based on measures in the Interstate Fishery Management Plan for American Lobster, and further clarification is not necessary.

Comment 14: The group of environmental advocacy organizations supported the proposed management measures and recommended the following additional requirements:

1. A 100-percent catch reporting requirement at the trip-level for all limited-access American lobster permit holders;
2. A lost gear reporting requirement;
3. A requirement to report all data including fishing location by 10-minute squares (10nm x 10nm) or a finer spatial scale if available;
4. A requirement to report all data electronically;
5. A requirement for electronic vessel monitoring; and
6. A requirement to mark gear by fishery and statistical area fished on at least every 40 feet (12.2 m) of line.

In addition, the Atlantic Offshore Lobstermen's Association supported the expeditious approval of 100-percent Jonah crab and lobster harvester reporting. Similarly, the Cape Cod Commercial Fishermen's Alliance noted that additional reporting requirements, including harvester reporting and vessel monitoring systems/electronic tracking would improve data collection and be consistent with other fisheries.

Response: We agree. NMFS intends to propose joint Jonah crab/American

lobster harvester reporting requirements in a rulemaking based upon Addendum XXVI to the American Lobster Plan/Addendum III to the Jonah Crab Plan. Harvester reporting was not added to this action for several reasons. First, substantial development of this Jonah-crab specific action had already taken place. Second, adding Jonah crab-specific reporting requirements would be a de-facto reporting requirement for the lobster industry which would have expanded the scope of this action. Third, a lobster-specific rulemaking was in development at a stage where lobster reporting could be easily considered. To that end, we published an advance notice of proposed rulemaking on June 14, 2018 (83 FR 27747), announcing our intent to consider expanded lobster and Jonah crab harvester reporting requirements and expect publication of a proposed rule later in 2019, with implementation targeted for 2020.

We agree that additional data elements will aid in the future management of the lobster fishery and in assessing impacts to protected species. To that end, we have committed to a multi-year overhaul of our fishery reporting systems which will include an increase in electronic reporting, more intuitive forms, and additional data fields that may be pertinent to specific fisheries or gear types. We look forward to engaging with all of our partners on this effort.

Comment 15: The group of environmental advocacy organizations stated, “NMFS must ensure that the ASMFC’s Interstate Fishery Management Plan for the Jonah crab fishery complies with the statutory and regulatory requirements of both the Endangered Species Act and the Marine Mammal Protection Act.” The letter further noted that “the

existing Biological Opinion for the American lobster fishery is inadequate... therefore any new fishing authorized by the existing limited-access American lobster permit would be inherently unlawful until the new consultation is completed.” Finally, the letter stated “until fishing gear that does not include an unattended endline/buoyline is commercially available and legally required, NMFS must take every reasonable step to decrease the number of vertical lines in the water when North Atlantic right whales are present.”

Response: The comment contains legal argument that is the subject of ongoing litigation and is beyond the scope of detailed response in this document. We note, however, that this action restricts the Jonah crab fishery and its gear. Previously unregulated, the Jonah crab fishery will now be regulated as part of the lobster fishery because the fisheries coincide and are both prosecuted using the same lobster trap gear. The lobster fishery which is managed pursuant to the ASMFC’s Interstate Lobster Fishery Management Plan, is undergoing endline/buoyline analysis and restriction as part of the Large Whale Take Reduction Team Process and Endangered Species Act Section 7 consultation reinitiation. Because the lobster and Jonah crab fisheries coincide and overlap, the 2014 Biological Opinion for the American lobster fishery analyzed the effect of this mixed lobster and Jonah crab fishery on endangered species and provides Endangered Species Act Section 7 coverage for the Jonah crab fishery. The agency has re-initiated Section 7 consultation on the lobster fishery, which will necessarily include analysis of the Jonah crab fishery.

Changes from the Proposed Rule

Minor corrections to improve technical accuracy and clarity of the regulatory text

were made between proposed and final rules.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the Jonah crab fishery and that it is consistent with the Atlantic Coastal Fisheries Cooperative Management Act, applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

NMFS prepared a final EIS for this action. The final EIS was filed with the Environmental Protection Agency on June 4, 2019. A notice of availability was published on June 14, 2019 (84 FR 27777). NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see

ADDRESSES).

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

This final 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 approved measures 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 measures would not preempt state law and would not regulate the states.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. A final regulatory flexibility analysis (FRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), the relevant portions of the proposed rule describing the proposed management measures, the corresponding analysis in the EIS prepared for this action, and the responses to public comments included in this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**).

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

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

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

The action will 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 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 the term “affiliation” in its regulations. According to these regulations, 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)).

We applied the Small Business Administration’s definition of affiliation to NMFS’s 2016 vessel ownership data to determine 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 designated non-trap only, 1,597 designated trap only, and 140 designated both a

trap and a non-trap gear. Table 8 summarizes the number of large and small entities after the principals of affiliation were applied. Note that the number of regulated entities is less than the number of permitted vessels because a small number affiliated ownership groups own more than one 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 are the best available source of revenues earned from commercial fishing, it generally lacks 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. Despite this, the analysis, which is 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. None of these vessels relied exclusively on Jonah crab. Percent of trips and vessels landing lobster-only, Jonah crab-only, or both is summarized in Table 4.

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 |
| Vessels | Count | | |
| 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 action will affect limited access lobster non-trap permits, we used VTR data to determine the number of participating vessels that will be affected by the 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. Table 6 summarizes the number of limited access lobster non-trap permit holders, trips, trips landings Jonah crabs, and trips exceeding the approved limit. While the incidental limit is defined in number of crabs, this analysis relies on lb landed, as weight of catch and counts of crabs is reported by harvesters and dealers. An assumption that a crab weighs one lb (0.45 kg) was used; however, 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 lb (533 kg) in 2014 to a low

of 1,046 lb (474 kg) in 2015.

Table 5 -- 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 will be regulated under the action. During 2015, there were 750 Federal dealer permits issued to dealers in Greater Atlantic region states. According to 2015 County Business Patterns (CBP) data, there were 803 dealer establishments in Greater Atlantic Region states that employed 8,118 people. A summary of Federal permits, CBP establishments, CBP employment, and establishment by size class, by state, is provided in Table 7. Of note, 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 establishments in the CBP data 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. This disparity can arise for two reasons: 1) not all dealers are active; and 2) CBP data

classifies multi-activity establishments into only one NAICS code. Available data suggest that the seafood dealer sector is dominated by businesses that are considered small entities for purposes of the RFA.

Table 6 -- 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 |

Reporting, Recordkeeping, and Other Compliance Requirements

This action contains several new reporting and recordkeeping requirements that will involve costs to dealers intending to land or purchase Jonah crabs, however, these costs are expected to be limited. Dealers wishing to purchase Jonah crabs will be required to obtain a Jonah crab designation on their dealer permit and report their purchases weekly, as required for other federally managed species. These approved measures will impose new compliance requirements; however, the measures are already in place for states and are, by design, intended to be consistent with past fishing practices and market

requirements, thereby limiting costs.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

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 approved measures 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. These smaller crabs were already protected from harvest due to market forces, and under the changes in this rule, these smaller crabs would be protected for conservation purposes. 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 approved in this rule were set in a manner to ensure that the vast majority of past trips would be accounted for under the approved limit. Because the measures in this final rule are consistent with Commission recommendations, current state regulations, and existing

lobster fishery requirements, this final rule minimizes the economic impact on small entities. Further, if we had approved alternate measures, this would likely create inconsistencies and regulatory disconnects with the states, and, therefore, would likely worsen potential economic impacts.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which the Office of Management and Budget (OMB) approved under the OMB control numbers listed below. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

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).

Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the **ADDRESSES** above, and e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806. 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.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 5, 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 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):

a. Remove the definition for “Berried female;”

b. Add definitions for “Berried female Jonah crab” and “Berried female lobster”
in alphabetical order;

c. Remove the definition for “Carapace length;” and

d. Add definitions for “Jonah crab,” “Jonah crab carapace width,” and “Lobster
carapace length” in alphabetical order.

The additions read as follows:

§ 697.2 Definitions.

(a) * * *

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.

The requirement in this paragraph (a) 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. The requirement in this paragraph (a) 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) *General.* 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) * * *

(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 this paragraph (n); 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. New dealers will be notified of the minimum specifications via letter during the permitting process.

* * * * *

(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 (h) to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(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.

* * * * *

(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.

* * * * *

(h) *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 paragraph (h)(2)(i)(C) of this section.

(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 paragraph (h)(2)(i)(C) of this section.

(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 (h)(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 this part, the ACFCMA, or the

Magnuson-Stevens Act.

(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 paragraph (h)(2)(i)(C) of this section.

(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 paragraph (h)(2)(i)(C) of this section.

(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) 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.

(i) 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.

(ii) 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. Section 697.17 is revised 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), or (b)(3)(ii) of this chapter or § 697.7(c)(2)(i)(C).

(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.

(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 $\frac{1}{4}$ 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 $\frac{1}{4}$ 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).

* * * * *

(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.

* * * * *

(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 ³/₄ inches (12.065 inches).

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

(ii) 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.

(iii) 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.* (i) 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.

(ii) 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.

(iii) 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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