

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 59 FR 31943, June 21, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 649.1 Purpose and scope.

This part implements the Fishery Management Plan for the American Lobster Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (ASMFC), and approved by the Assistant Administrator for Fisheries, NOAA. Red crab fishing gear, which is fished deeper than 200 fathoms (365.8 m), is gear not capable of taking lobsters, and is not subject to the provisions of this part.

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

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

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

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

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.

Council means the New England Fishery Management Council.

Dealer means any person who receives American lobsters for a commercial purpose from the owner or operator of a vessel issued a valid Federal vessel permit under this part, other than exclusively for transport on land.

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

Effort Monitoring Team (EMT) means a group of technical experts made up of representatives from the Council, NMFS, the appropriate states, and a group of American lobster industry representatives (appointed by the Council), per management area, to each EMT.

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

Fishery Management Plan (FMP) means the Fishery Management Plan for American Lobsters, as amended.

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

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation for a vessel.

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

Lobster pot trawl means a number of lobster traps, all attached to a single groundline.

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation for a vessel.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master or captain of the vessel, or other individual on board the vessel, who is in charge of that vessel's operations.

Party/charter boat means any vessel carrying fishing persons or parties for a per capita fee or for a charter fee.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats and dive boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298, or a designee.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for American lobsters.

Scrubbing is the forcible removal of eggs from a berried female American lobster.

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

Under agreement for construction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

V-notched American lobster means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail toward the viewer).

V-shaped notch means a straight-sided triangular cut, without setal hairs, as least 1/4 inch (0.64 cm) in depth and tapering to a point.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). A cull whole American lobster is an American lobster with one or both claws missing.

[59 FR 31943, June 21, 1994, as amended at 62 FR 10750, Mar. 10, 1997]

§ 649.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Nothing in these regulations shall supersede more restrictive state management measures for American lobsters.

§ 649.4 Vessel permits.

(a) *1994 vessel permits.* (1) Through April 30, 1995, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry on board a valid permit required by or issued under this part. The Regional Director may, by agreement with State agencies, recognize permits or licenses issued by those agencies endorsed for fishing for lobster in the EEZ, providing that such permitting programs accurately identify persons who fish in the EEZ, and that the Regional Director can either individually, or in concert with the state agency, act to suspend the permit or license for EEZ fishing for any violation under this part.

(2) Alternate State EEZ permitting programs will be established through a letter of agreement between the Regional Director and the director of the State marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate EEZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the State director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ permitting program is in force for their state before applying for a Federal permit under paragraph (d) of this section.

(3) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for EEZ fishing under paragraph (a)(2) of this section, must agree, as a condition of the permit, that all the vessel's lobster fishing, catch, and gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable state or local requirements. If a requirement of this part and a conservation measure required by state or local law differ, any vessel owner or operator permitted to fish in the EEZ