

Atlantic States Marine Fisheries Commission

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MEMORANDUM

August 11, 2006

To: Toni Kerns
Lobster FMP Coordinator

From: Mike Howard
ASMFC Law Enforcement Coordinator
Atlantic States Marine Fisheries Commission

Subject: Re-examination of issues relating to V-Notch Enforcement

The Law Enforcement committee has re-examined the issues concerning v-notching of female lobsters. After a thorough review of existing enforcement practices, past law enforcement committee positions on this matter and alternatives of 1/8th and 1/16th inch minimum size v-notches, the committee and the head of their respective law enforcement departments (if not the LEC representative) have reaffirmed that the letter to Carrie Selberg dated 10-5-04 is still accurate and represents the individual and collective responses of the LEC.

The LEC again requests that where possible, efforts should be made to have consistent definitions, sizes and regulations regarding the taking and possessing of American lobster. This will allow for a higher degree of enforceability at sea, dockside, and in wholesale and retail markets.

A copy of the text of the 2004 letter is attached below.

In addition to this letter, the proposal from Connecticut does not conflict with the LEC (Law Enforcement Committee) position on v-notching and provisions requiring enforcement were approved as enforceable by an ASMFC LEC (Atlantic States Marine Fisheries Commission- Law Enforcement Committee) representative that participated in the drafting of the proposal.

TEXT OF LETTER TO LMB dated 10-5-06

This letter is in response to a written request dated August 31, 2004 from Mr. Pat White, Lobster Board Chair to the ASMFC Law Enforcement Committee. The letter was the result of a written request from Paul Diodati, Director of Division of Marine Fisheries in Massachusetts to Mr. White dated July 26th, 2004 and presented at the August meeting week of the ASMFC.

Mr. White has asked for feedback and that the LEC discuss the following;

1. Is the current v-notch definition enforceable?
2. Is the v-notch law interpreted consistently?
3. Compare the enforceability of the current v-notch definition to a standard that includes a minimum depth of v-notch such as 1/8th inch.

A conference call was held which included most of Area #1 states law enforcement, the chair of the LEC, a representative from the NMFS office of law enforcement and ASMFC's law enforcement coordinator.

After much discussion, a review of existing law enforcement positions on v-notching and other related letters presented to the board on lobster law enforcement, the members of the LEC concluded that;

1. The current definition of v-notching as adopted by each of the states is easily enforced and adequate for meeting the FMP's goals of zero tolerance. The definition is also adequate for prosecution of cases related to violations of this provision.
2. The laws of each state in Area #1 provide consistent wording strong enough to provide a basis for uniform law enforcement action on v-notching. It is possible that some inconsistencies may occur when individual officers use their judgment and discretion, but it is not the policy or intent of any member state to allow the statute to be violated. Local courts have and will continue to influence to what degree enforcement actions are winnable in court when a violation appears weak or unclear, such as a minor nick or the "hanging Chad". Law enforcement has shown through its compliance report to the board in 2002 and 2003 that enforcement efforts on lobster are a priority. No significant changes to the FMP would improve enforcement of the v-notch provisions more than consistency throughout all areas as to the size or allowance of a v-notch.
3. The Zero Tolerance provision is easily enforced. A 1/4" standard is enforceable, but maybe not quite to the degree of the zero tolerance once the lobster has shed. Any size less than 1/4" v-notch that has to be measured on the tail flipper may be less enforceable due to the difficulty of measuring properly in the field.