

Fishery Conservation and Management

§ 697.4

a vessel for conservation and management purposes by regulations or permits.

Shrimp trawl net means any trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each trawl net, as defined in § 622.2 of this chapter, that is rigged for fishing and has a headrope length longer than 16 ft (4.9 m).

Standard V-shaped notch means a straight-sided triangular cut, without setal hairs, at least ¼ inch (0.64 cm) in depth and tapering to a point.

Stocked Atlantic sturgeon means any Atlantic sturgeon cultured in a hatchery that is placed in rivers and ocean waters of the Atlantic Coast to enhance the Atlantic sturgeon spawning stocks.

TED means Turtle Excluder Device, which is a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Trawl means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats.

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), or any female American lobster that is mutilated in a manner that could hide or obliterate such a mark.

Weakfish means members of the stock or population of the species *Cynoscion regalis*, found along the Atlantic Coast from southern Florida to Massachusetts Bay.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). An American lobster with an intact and measurable body that is missing one or both claws, i.e., a cull lobster, is considered to be a whole American lobster.

Zero tolerance V-shaped notch means a v-shaped notch of any size, with or without straight sides, with or without setal hairs.

(b) [Reserved]

[64 FR 68248, Dec. 6, 1999, as amended at 66 FR 8911, Feb. 5, 2001; 66 FR 14501, Mar. 13, 2001; 68 FR 14925, Mar. 27, 2003; 68 FR 56790, Oct. 2, 2003; 71 FR 13037, Mar. 14, 2006]

§ 697.3 Relation to other Federal and state laws.

(a) The provisions of sections 307 through 311 of the Magnuson-Stevens Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson-Stevens Act.

(b) The relation of this part to other laws is further set forth in § 600.705 of this chapter and would include all regulations and statutes administered by the National Oceanic and Atmospheric Administration (NOAA), including, but not limited to the regulations in this part issued pursuant to the ACFCMA, the regulations at 50 CFR part 229 issued pursuant to the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), and the regulations at 50 CFR part 648 issued pursuant to the Magnuson-Stevens Act.

(c) The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement or measure.

[64 FR 68248, Dec. 6, 1999, as amended at 71 FR 13037, Mar. 14, 2006]

§ 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 in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. This requirement does not apply to: charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if such 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.

(1) *Eligibility in 1999 and thereafter.* To be eligible for issuance or renewal of a Federal limited access lobster permit for fishing year 1999 and thereafter, a vessel must:

(i) Have been issued a Federal limited access lobster permit for the preceding fishing year by the last day of such fishing year unless a CPH has been issued as specified in paragraph (a)(5) of this section or unless otherwise authorized by the Regional Administrator;

(ii) Be replacing a vessel that was issued a Federal limited access lobster permit for the preceding year; or

(iii) Be replacing a vessel issued a CPH.

(2) *Qualification restriction.* Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a Federal limited access lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is eligible for the permit or a CPH under paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history, and management area designation, when required of a vessel, is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history, and management area designation, for the purposes of replacing the vessel.

(4) *Consolidation restriction.* Federal limited access American lobster permits, and any rights or privileges associated thereto, may not be combined or consolidated.

(5) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has

sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (o) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form means the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (c) of this section.

(6) *Restriction on permit splitting.* A Federal limited access lobster permit will not be issued to a vessel or its replacement, or remain valid, if the vessels' permit or fishing history has been

Fishery Conservation and Management

§ 697.4

used to qualify another vessel for another Federal fishery.

(7) *Management area designations for vessels fishing with traps.* (i) For fishing year 2000 and beyond, it is unlawful for vessels issued a limited access American lobster permit fishing with traps, to retain on board, land, or possess American lobster in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s).

(ii) Each owner of a fishing vessel that fishes with traps capable of catching American lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. The ability to declare into Lobster Conservation Management Areas 3, 4 and/or 5, however, will be first contingent upon a one time initial qualification as set forth in paragraphs (a)(7)(vi) through (a)(7)(viii).

(iii) A lobster management area designation certificate or limited access American lobster permit shall specify in which lobster management area or areas the vessel may fish.

(iv) Once a vessel has been issued a lobster management area designation certificate or limited access American lobster permit specifying the lobster EEZ management areas in which the vessel may fish, no changes to the EEZ management areas specified may be made for such vessel for the remainder of the fishing year. There are two exceptions to this re-designation restriction:

(A) Vessels that have been bought, transferred, or become a replacement vessel for another qualified vessel may request re-designation of the EEZ management areas within 45 days of the effective date of the vessel's permit; and

(B) All vessels will have one opportunity to request a correction in permit category, if such request is made in writing to the Regional Administrator within 45 days of the effective date of the vessel's permit.

(v) A vessel issued a lobster management area designation certificate or

limited access American lobster permit specifying more than one EEZ management area must abide by the most restrictive management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year.

(vi) *Participation requirements for EEZ Offshore Management Area 3 (Area 3).* To fish for lobster with traps in Area 3, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 3, the applicant must establish with documenting proof the following:

(1) That the applicant possesses a current Federal lobster permit;

(2) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999);

(3) That at least 25,000 lb (11,340 kg) of lobster were landed by the qualifying vessel from any location during the qualifying year selected in paragraph (9)(7)(vi)(A)(2).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 3 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 3 as it relates to the sliding scale set forth in § 697.19.

(C) *Documentary proof.* To satisfy the Area 3 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(vi)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal

lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number:

(2) As proof of 200 trap/two consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30), Federal Port Agent Vessel Interview forms (NOAA Form 88-30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(3) As proof that 25,000 lb (11,340 kg) of lobster were landed the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30), Federal Port Agent Vessel Interview forms (NOAA Form 88-30) or Federal Sea Sampling Observer Reports; personal vessel logbooks; official state reporting documentation showing the pounds of lobster landed, including, but not limited to, state report cards, state vessel interview forms, state sea sampling observer reports, and catch reports; and/or sales receipts or landing slips. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other

recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(4) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30); Federal Port Agent Vessel Interview Forms (NOAA Form 88-30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88-176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vi)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(5) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(6) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(i) The name, address, lobster permit number and vessel of the applicant;

(ii) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the 2-month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(iii) That at least 25,000 lb (11,340 kg) of lobster were landed during the qualifying year by the vessel, identifying that year and further identifying which documents are being offered as proof of such;

(iv) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(v) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(7) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(8) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(9) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(10) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this final rule (application period start date) and ends December 31, 2003.

(1) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing

with traps in Area 3 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 3 eligibility and trap allocation. This revised permit will supersede the temporary interim permit and be effective immediately.

(2) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 3 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 3 until the 2004 fishing season.

(vii) *Participation requirements for EEZ Nearshore Management Area 4 (Area 4).* To fish for lobster with traps in Area 4, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 4, the applicant must establish with documenting proof the following:

(1) That the applicant possesses a current Federal lobster permit;

(2) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 4 during the qualifying year. To the extent that the documentation so

establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 4, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 4 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number;

(2) As proof of 200 trap/two consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: Copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30), Federal Port Agent Vessel Interview forms (NOAA Form 88-30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(3) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: Copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30); Federal Port Agent Vessel Inter-

view Forms (NOAA Form 88-30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88-176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vii)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(4) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(5) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(i) The name, address, lobster permit number and vessel of the applicant;

(ii) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(iii) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which

documents are being offered as proof of such; and

(iv) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(6) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(7) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(8) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(9) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this final rule (application period start date) and ends December 31, 2003.

(1) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 4 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 4 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(2) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would

allow continued fishing in Area 4 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 4 until the 2004 fishing season.

(viii) Participation requirements for EEZ Nearshore Management Area 5 (Area 5). To fish for lobster with traps in Area 5, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 5, the applicant must establish the following:

(1) That the applicant possesses a current Federal lobster permit;

(2) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 by the qualifying vessel during a two consecutive calendar month period in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 5 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 5, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 5 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(viii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which

§ 697.4

50 CFR Ch. VI (10-1-06 Edition)

would at a minimum include: the applicant's name and address, vessel name and permit number.

(2) As proof of 200-trap/2-consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30), Federal Port Agent Vessel Interview forms (NOAA Form 88-30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years.

(3) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30); Federal Port Agent Vessel Interview Forms (NOAA Form 88-30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88-176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2-consecutive month period

used in paragraph (a)(7)(viii)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(4) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(5) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(i) The name, address, lobster permit number and vessel of the applicant;

(ii) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(iii) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(iv) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(6) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(7) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(8) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(9) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this Final Rule (application period start date) and ends December 31, 2003.

(1) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 5 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 5 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(2) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 5 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 5 until the 2004 fishing season.

(ix) *Qualifying year for vessels seeking to fish for lobster with traps in more than one area of Areas 3, 4, and 5.* Any Federal lobster permit holder applying for a lobster trap allocation in more than one area amongst Areas 3, 4 and 5 must use the same qualifying year for all areas.

(x) *Appeal of denial of permit.* Any applicant having first applied for initial

qualification pursuant to §6 paragraphs (a)(7)(vi), (a)(7)(vii) and/or (a)(7)(viii) of this section, but having been denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing.

(A) *Grounds for appeal.* There shall be two grounds for appeal:

(1) *Clerical error.* It shall be grounds for appeal that the Regional Administrator erred clerically in concluding that the vessel did not meet the criteria in paragraphs (a)(7)(vi), (a)(7)(vii), and/or (a)(7)(viii) of this section. Errors arising from oversight or omission such as ministerial, mathematical or typographical mistakes would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(2) *Documentary hardship.* It shall be grounds for appeal that an otherwise qualified applicant is unable to produce qualification evidence due to documentary hardship. The hardship must have been caused by factors beyond the applicant's control, such as documents lost in a flood or fire. Failure to create the documents in the first instance, or simple loss of the document, or the intentional destruction or discarding of the document in the past by the appellant, or lacking the appropriate qualification documents due to inadvertence, carelessness or excusable neglect, do not constitute grounds for hardship under this paragraph. Appeals based on documentary hardship must establish the following:

(i) *Nature of the hardship.* The appellant must identify the hardship and submit to the Regional Administrator a document corroborating the hardship, such as by insurance claims forms or police and fire reports; and

(ii) *Affidavits.* The appellant must submit affidavits from current Federal permit holders so that three affidavits corroborate each of the qualification criteria for Area 3 as indicated in paragraph (a)(7)(vi) of this section, Area 4 as indicated in paragraph (a)(7)(vii) of

this section, and/or for Area 5 as indicated in paragraph (a)(7)(viii) of this section. Each affidavit must clearly specify in separate and specific paragraphs: The name, address, Federal permit number and vessel name of the affiant; that the affiant can attest to by personal first-hand knowledge that the qualifying vessel set, allowed to soak, hauled back and re-set at least 200 lobster traps during the 2-month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying the nature of that knowledge; for Area 3 only, that the affiant can attest to by personal first-hand knowledge that the qualifying vessel landed at least 25,000 lb (11,340 kg) of lobster during the qualifying year, identifying that year and further identifying the nature of that knowledge; that the affiant can attest to by personal first-hand knowledge to the total number of traps that the applicant claims his or her vessel fished in the area in question during the qualifying year and further identifying the nature of that knowledge; that the affiant also fished in the area being claimed by the applicant during the months in the qualifying year chosen by the applicant; and be signed under the penalties of perjury. The requirement that each qualification criteria must be independently affirmed by three Federal permit holders does not restrict the appellant to using the same three affiants for each qualification criterion, although the appellant is encouraged to do so. The term personal first-hand knowledge in this paragraph means information directly gained by the affiant and would not include information gained from word of mouth or hearsay.

(B) *Appellate timing and review.* All appeals must be in writing and must be submitted to the Regional Administrator postmarked no later than 45 days after the date on NMFS' Notice of Denial of Initial Qualification application. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator of his or her intent to appeal within the 45 days and request a time extension to procure the

necessary affidavits and documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted. Upon receipt of a complete written appeal with supporting documentation in the time frame allowable, the Regional Administrator will then appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(C) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish in Areas 3, 4 or 5 during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in Areas 4 or 5, or up to 1,800 traps in Area 3 during the pendency of the appeal. The Regional Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial or 15 days after the date on the notice of appellate denial, whichever occurs first.

(b) *Condition.* Vessel owners who apply for a Federal limited access American lobster permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, as well as gear, time, and area restrictions issued or set forth in other parts, including, but not limited to, 50 CFR parts 229 and 648. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part

Fishery Conservation and Management

§ 697.4

and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(c) *Vessel permit application.* Applicants for a Federal limited access American lobster permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. To be complete, an application for a Federal limited access American lobster permit must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; lobster management area designation the vessel will fish in, as specified in §697.18, if fishing with traps capable of catching American lobster; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Administrator at least 30 days prior to the date on which the permit is needed by the applicant. The Regional Administrator shall notify the applicant of any deficiency in the application.

(d) *Trap tag application, lost and replacement tags.* (1) Beginning fishing

year 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member, unless exempt under §697.26.

(2) Trap tags shall be issued by the Regional Administrator, or, by state agencies, by agreement with the Regional Administrator, provided that such state tagging programs accurately identify the Federal limited access American lobster permit holder. NMFS will provide notice to American lobster permit holders as to the procedure for applying for trap tags and any required fees.

(3) Vessel owners or operators are required to report to the Regional Administrator lost, destroyed, and missing tags as soon as feasible within 7 days after the tags have been discovered lost, destroyed, or missing, by letter or fax to the Regional Administrator.

(4) Requests for replacement of lost tags in excess of the tag limit specified in §697.19(c) must be submitted in writing to the Regional Administrator on an appropriate form obtained from the Regional Administrator and signed by the permit holder or authorized representative. The form and request for replacement tags will be reviewed by the Regional Administrator on a case-by-case basis and a decision will be reached on the number of replacement tags to be issued, if any. A check for the cost of the replacement tags must be received before tags will be re-issued.

(e) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit or trap tags required under this section. Fee amounts shall be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. Fees may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument

§ 697.4

50 CFR Ch. VI (10-1-06 Edition)

shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit or tags, as applicable, within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received;

(ii) The application was not received by the Regional Administrator by any applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section or the number of tags requested exceeds the applicable tag limit specified in § 697.19(c);

(iv) The applicant has failed to meet any other application or tag requirements stated in this part.

(v) The application is for initial qualification for access to Area 3, 4 or 5 pursuant to the historical participation process in paragraphs (a)(7)(vi)(D), (a)(vii)(D), and (a)(viii)(D) of this section.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A permit expires annually upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect until the renewal date unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance.* A vessel permit may be reissued by the Regional Administrator when requested in writing by the owner

or authorized representative, stating the need for reissuance, the name of the vessel, and the number of the permit requested to be reissued. An application for a reissued permit is not considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(j) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(k) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Administrator. If the written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. Any permit issued under this part must be maintained in legible condition.

(n) *Sanctions.* Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(o) *Abandonment or voluntary relinquishment of limited access American lobster permits.* Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years. If a vessel's Federal limited access American lobster permit or CPH is voluntarily relinquished to the Regional Administrator, or abandoned through failure to renew or otherwise, no Federal limited access American lobster permit or CPH may be reissued or renewed based on the qualifying vessel's history.

(p) *Permit category change.* A vessel permit category change (for individuals who possess a dual Federal limited access permit for American lobster and black sea bass and who restrict fishing operations to Area 5) may be issued by

Fishery Conservation and Management

§ 697.5

the Regional Administrator when requested in writing by the owner or by an authorized representative of a vessel meeting the eligibility requirements under § 697.26(a).

[64 FR 68248, Dec. 6, 1999, as amended at 66 FR 14501, Mar. 13, 2001; 68 FR 14925, Mar. 27, 2003; 71 FR 13037, Mar. 14, 2006]

§ 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, harvested in or from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to: Charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if said lobsters are not intended for nor used in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree, as a condition of this permit, that the operator and vessels fishing, catch, crew size, and pertinent gear (without regard to

whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 697.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in off loading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement or measure.

(d) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of the application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the application fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.