

destroyed or fragmented. The available information suggests that the Miami blue is rare and may exist only in small numbers at a few sites. This probable rarity suggests that the species might not be able to recolonize former portions of its range that may have suitable, but unoccupied, habitat. Also, the available information demonstrates that mosquito spraying in the Florida Keys and probably other parts of the Miami blue's former range has the potential to harm this species.

The petitioners stated that the Miami blue butterfly's last known population may be destroyed by mosquito control adulticide treatments, by human-caused changes to its habitat on the public land it inhabits, or by unethical butterfly collectors, and they requested emergency listing of the species. We may issue an emergency rule when an immediate threat poses a significant risk to the well-being of a species. Although the Miami blue butterfly appears to be in danger of extirpation, we do not believe that the threats are so great that extirpation is imminent. Upon receiving the petition, we reviewed the available information to determine if the existing and foreseeable threats posed an emergency. Consequently, we determined that an emergency listing was not warranted at this time. However, if at any time we determine that emergency listing of the Miami blue butterfly is warranted, we would seek to initiate an emergency listing. The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the Miami blue butterfly is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

#### Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Miami blue butterfly. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Miami blue butterfly. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology,

ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Supervisor, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### References Cited

You may request a list of all references cited in this document, as well as others, from the South Florida Ecological Services Office (see **ADDRESSES** section).

#### Author

The primary author of this document is David Martin, South Florida Ecological Services Office (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 2001.

**Marshall P. Jones Jr.,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02-36 Filed 1-2-02; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 010918229-1229-01; I.D. 022301A]

RIN 0648-AP15

#### American Lobster Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to modify the management measures applicable to the American lobster fishery. This action responds to the following recommendations made by the Atlantic States Marine Fisheries Commission (ASMFC): To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area (LCMA) 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone (EEZ) from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this announcement is intended to make the regulations easier to understand.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on February 19, 2002.

**ADDRESSES:** Comments on the proposed rule should be sent to Harry Mears, Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

Comments will not be accepted if submitted via e-mail or the Internet. Comments regarding the collection-of-information requirements contained in the proposed rule should be sent to Harry Mears at the above address, and the Office of Information and Regulatory

Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer). Copies of a Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) can be obtained from Harry Mears at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Ross, NMFS, Northeast Region, 978-281-9234.

**SUPPLEMENTARY INFORMATION:**

**Proposed Action**

NMFS is proposing regulations to modify Federal lobster conservation management measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the ASMFC and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The lobster management program uses a fishing effort limitation strategy, among other measures, to control lobster fishing mortality. Fishing effort is currently limited by restricting the access of new vessels to the fishery and by limiting the number and size of traps that may be fished by each vessel. This proposed rule, issued as part of a Federal/state cooperative management effort, would implement a historical participation management regime to control lobster fishing effort and to preserve the socio-economic character of the associated lobster fisheries in Areas 3, 4, and 5. It would also establish a process for the evaluation of recommendations from ASMFC for Federal lobster regulations implementing ASMFC-approved conservation-equivalency measures in state coastal waters. In this regard, the proposed action would respond to an ASMFC recommendation to modify trap limit restrictions for Federal lobster permit holders fishing in EEZ Nearshore Management Area 1 who also possess a New Hampshire state lobster license. Finally, the proposed action would

modify boundaries of lobster management areas in Massachusetts state waters for clarity and consistency with past fishing practices.

**Effort Control in Lobster Conservation Management Areas 3, 4, and 5**

In 1994, NMFS implemented a 5-year moratorium on new entrants into the EEZ lobster fishery via a limited access permit system. In December 1999, that moratorium was extended indefinitely under Federal regulations found at 50 CFR part 697 (64 FR 68228). Based upon its approval of selected management measures proposed by the Areas 3, 4, and 5 Lobster Conservation Management Teams, the ASMFC recommended that access to, and levels of effort in, the lobster trap fishery in EEZ Offshore Area 3 and Nearshore EEZ waters of Areas 4 and 5 be based on historical participation. The ASMFC recommendations for qualification based on historical participation addressed qualification criteria, allocation of fishing effort, and limitations on vessel upgrades. Qualification criteria are different among the areas and include demonstration of active involvement in the fishery through provision of certain documents. The ASMFC plan for Area 3 proposes that potential participants must meet or exceed both a landing and a fishery intensity threshold in order to qualify, whereas the plans for Areas 4 and 5 would only require fishermen to have held a lobster trap permit during the qualification period (see details provided in subsequent text).

The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action, and the number of vessels that do not qualify for future participation in the LCMA 3, 4, and/or 5 fisheries may be higher than the number identified in this proposed rule and in the DSEIS/RIR/IRFA.

**Area 3 Fishing Effort Control Program**

*Area Coordinates*

EEZ Offshore Management Area 3 is defined at 50 CFR 697.18(d). A copy of a map showing the American lobster EEZ management areas is available upon request from the Director of the State, Federal and Constituent Programs Office, see **ADDRESSES**.

*Qualification Period and Establishment of a Federal Control Date*

NMFS proposes to limit the number of traps fished in Area 3 based on proof of historical participation in the Area 3 fishery and the number of traps fished by a vessel during a qualifying period from March 25, 1991 (date recommended by the ASMFC) through September 1, 1999. NMFS is not proposing to use the ASMFC's recommended ending date of November 1, 1997, for this qualification period because of NMFS' policy to provide advance notice to the public of qualification dates. On September 1, 1999, NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (64 FR 47756), to give notice that NMFS was considering September 1, 1999, the publication date of the ANPR, as a possible control date, or cut-off date, to be used to determine eligibility for future access to the Federal lobster trap fishery. This proposed qualification period is similar to the recommendations pertaining to historical participation in the EEZ for Areas 3, 4, and 5 approved by the ASMFC under the ISFMP on August 1, 1999.

NMFS is proposing to use the ASMFC's recommended criterion that would require fishermen to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during 2 consecutive calendar months within the qualification period. The use of a 2-consecutive calendar month period would maintain consistency with the ASMFC's ISFMP, and avoid the potential for conflicting state and Federal regulations when implementing this qualification criterion. In addition, the NMFS dealer landing and vessel trip report data, which would likely be used for qualification purposes, is based on calendar month time periods. Due to the calendar month configuration of the NMFS databases, the use of an alternative time frame, such as 60-consecutive days, would be more prone to error.

NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time

period, rather than some other time period, such as a Federal lobster fishing year (May 1 through April 30). The use of calendar years would be consistent with recommendations provided by the ASMFC. In addition, documents provided by fishermen to demonstrate historic participation, such as tax returns, are commonly based on a calendar year rather than a fishing year. Also, there is often less lobster fishing effort in the winter months due to weather conditions and the availability of the resource. Therefore, it is less likely that a 2-consecutive month period used to qualify a vessel would overlap the December to January time period.

#### Qualification Criteria

In order to qualify to fish for lobster with traps in Area 3, Federal lobster permit holders would need to meet all of the following criteria:

1. Possession of a current Federal limited access lobster permit.
2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year during the qualification period, from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.
3. Provision of sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at

least 25,000 lb (11,340 kg) of lobster from any location during the year used as the qualifying year from March 25, 1991, through September 1, 1999.

#### Trap Allocations

Federal permit holders intending to fish for lobster with traps in Area 3 would also have to provide a signed affidavit to NMFS certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation used to demonstrate compliance with qualification criterion number 2. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate qualification criterion number 2.

The use of Federal Fishing Vessel Trip Reports to document historical fishing effort (fishing location and number of traps fished) in the lobster fishery would be possible for some, but not all, Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A recent review by NMFS indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62 percent) held Federal permits for other fisheries requiring mandatory reporting. The utility of these reports for documenting lobster fishing effort would be further restricted to those permit holders who accurately noted, on the reports, the number of individual lobster traps fished on an area-by-area basis. Similarly, an informal review of the utility of official state reports for determination of lobster trapping effort concludes that such documents may be relevant only to Connecticut and Massachusetts residents (approximately 34 percent of Federal lobster permit holders).

Use of Federal Fishing Vessel and Gear Damage Compensation Reports will be limited to an unknown number of Federal lobster permit holders who have submitted compensation claims for gear loss under the provisions of the Fishermen's Protective Act (22 U.S.C. 1980 *et seq.*). Vessel logbooks, receipts from the sale of lobsters or the purchase of lobster traps, observer trip reports, and income tax forms provide other examples of documentation that could be used to help substantiate previous levels of lobster fishing effort (i.e., number of traps). Due to the varying

degrees to which each of these forms of documentation may be either available or relevant for purposes of certifying historical trapping effort on a case-by-case basis, NMFS proposes that the discretion should be left to the individual permit holder to decide which documents to use. Accordingly, NMFS does not agree with the ASMFC's recommendations that a priority ranking should be assigned to the use of any one form of documentation over another.

Some fishermen would likely need a combination of documents to certify the number of traps fished historically. Although NMFS recognizes the importance of this information as a basis to certify historical participation in the Area 3 fishery, it is sensitive to the fact that no mandatory reporting requirements in the lobster fishery exist. NMFS believes, at this point, that the use of an affidavit, with the provision of supporting documentation to NMFS, would accommodate the necessary procedures to implement lobster trap fishing effort controls on the basis of historical participation.

The ASMFC has also recommended that NMFS contract with an independent outside entity to determine and recommend trap allocations and publish a notice that specifies initial trap allocations for each lobster permit holder. NMFS disagrees and believes that an in-house review would be the most efficient and equitable means of approving trap allocations. In addition, the release of personal documents and records to an outside review body raises privacy issues. NMFS also believes that the issuance of a public notice that would specify individual trap allocations for each Federal permit holder, as recommended by the ASMFC, also raises privacy issues and serves no constructive purpose.

#### Trap Reduction Plan

Once qualified, a lobster permit holder would be allocated a certain number of lobster traps, based on the affidavit and supporting documentation provided, but no Federal lobster permit holder would be given an initial lobster trap allocation of more than 2,656 lobster traps. (This maximum trap allocation was recommended by ASMFC as a result of Addendum II to Amendment 3 of the ISFMP.) Each trap allocation of more than 1,200 traps would be reduced annually on a sliding scale basis over 4 years. Trap reductions would not go below a baseline of 1,200 traps. Each initial allocation in Area 3 of fewer than 1,200 traps would remain at that allocation. The reduction schedule recommended by the ASMFC is shown in Table 1.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

Number of Traps Approved by the Regional Administrator	Trap Allocation by Fishing Year*			
	2002	2003	2004	2005 and beyond until changed
1200-1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300-2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267

\* Trap allocations below 1,200 will not be subject to further reductions.

This proposed rule would require that any Federal lobster permit holder applying for an Area 3 trap allocation who also applies for a trap allocation in Area 4, Area 5, or in all three of those areas use the same qualifying year for all areas and avoid a combined trap allocation greater than the number of traps that the permit holder fished with any one vessel in any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide by the most restrictive regulations, including trap allocations, in any one elected area at any one time, would remain in effect.

#### Vessel Upgrades

NMFS is not proposing to adopt the ASMFC's recommendation to limit vessel upgrades for Federal permit holders receiving an Area 3 trap allocation. This limitation, if implemented, would preclude federally permitted vessels in the Area 3 lobster fishery that measure over 50 ft (15.24 m) in length, or upgrading to over 50 ft (15.24 m) in length, from upgrades or replacement that would result in more than a 10-percent increase in length overall, or a 20-percent increase in shaft horsepower, for 2 years.

NMFS does not concur with this recommendation. A prohibition on an increase in vessel length or an increase in horsepower for a 2-year period would require existing permit holders to substantiate existing baseline vessel characteristics. Lobster trap vessels are

generally small, with an average length of 39 ft (11.9 m). Many such vessels are not U.S. Coast Guard documented, and, therefore, information on length and horsepower may not be available to NMFS. The implementation of lobster vessel upgrade criteria may accordingly require a marine survey to establish legal vessel specifications, adding a financial burden on vessel owners. The potential cost to hire a marine surveyor or naval architect to verify existing baseline vessel characteristics can range from \$150 to \$600, with associated costs increasing with vessel size, and would result in added delays for vessel replacement and transfers, if implemented. NMFS' review of requests for transfers would take more time, because NMFS would need to verify whether the specific vessel with a limited access American lobster permit would qualify to fish in Area 3 and, therefore, would be restricted by the upgrade provision.

NMFS is concerned that implementation of the ASMFC's recommended, temporary upgrade restrictions would be unnecessarily burdensome for fishermen and NMFS and would afford no obvious conservation benefits to the lobster resource, unlike the permanent restrictions on vessel and horsepower upgrades in the scallop and groundfish fisheries. In addition, an unknown number of vessels that would qualify for historical participation in Area 3 as specified in this proposed rule may

currently hold a Federal fisheries permit in another fishery that permanently restricts vessel and horsepower upgrades. The implementation of trap limits, either fixed or based on a historical level of participation, has the potential to effectively limit fishing effort in the offshore lobster fishery without an additional requirement for vessel upgrade restrictions.

#### Areas 4 and 5 Fishing Effort Control Program

##### Area Coordinates

EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 are defined in 50 CFR 697.18(e) and (f), respectively. A copy of a map showing the American lobster EEZ management areas is available upon request to the Director, State, Federal and Constituent Programs Office, see **ADDRESSES**.

##### Qualification Period and Establishment of a Federal Control Date

The eligibility of Federal lobster permit holders to fish with traps in the Areas 4 and/or 5 fishery would be based on proof of historical participation and numbers of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. NMFS is not proposing to adopt the ASMFC-recommended ending date (control date) of September 15, 1998, for this qualification period because NMFS previously notified the public that it may use September 1, 1999, as the control date. See Area 3 discussion for

associated rationale. NMFS is proposing to use the ASMFC's recommended 2-consecutive calendar month period criterion within the qualification period to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 4 or 5. See Area 3 discussion for associated rationale. NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time period, rather than some other time period such as a Federal lobster fishing year (May 1 through April 30). See Area 3 discussion for associated rationale.

#### **Qualification Criteria for EEZ Nearshore Management Area 4**

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 4:

1. Possession of a current Federal limited access lobster permit.
2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year.

Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

#### **Qualification Criteria for EEZ Nearshore Management Area 5**

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 5:

1. Possession of a current Federal limited access lobster permit.
2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen as the qualifying year, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation indicating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period.

#### **Rationale for Provision of Documentation in Support of a History of Lobster Trap Fishing in Areas 4 or 5**

Although not recommended by the ASMFC, NMFS believes that requiring documentation to substantiate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in either or both Areas 4 or 5, during a 2-consecutive calendar month period in

any calendar year during the qualification period is necessary to effectively establish historical participation, consistent with the qualification criteria of the Area 3 plan. NMFS has no conclusive data for determining historical numbers of traps fished in Areas 4 and 5. However, on the basis of the best information available to NMFS and associated comments received with respect to the DSEIS, NMFS believes that the setting, soaking, hauling back, and re-setting of at least 200 lobster traps in Areas 4 or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period represents a reasonable indicator of a fisherman's socio-economic reliance on the lobster fishery.

#### **Trap Allocations for Areas 4 and 5**

Similar to the proposed action for Area 3, this proposed rule would require Federal permit holders qualifying to fish for lobster with traps in Areas 4 and/or 5 to provide a signed affidavit certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 4 and/or 5 at any one time during the qualifying year. The affidavit would be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation for Areas 4 and/or 5. This proposed rule would require that such certification be based upon the same or similar type of documentation used to fulfill the qualification criterion number 2, and that the affidavit be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate trap fishing activity in qualification criterion number 2.

ASMFC recommendations for the Areas 4 and 5 fisheries, unlike those for the Area 3 fishery, do not contain either trap limits or trap reduction schedules. Although not recommended by the ASMFC, NMFS is proposing a trap limit not to exceed 1,440 lobster traps per vessel, on the basis of public comment received on the DSEIS, and the conservation benefit to the resource. NMFS believes the removal of existing trap limits in Areas 4 and 5 (800 lobster traps per vessel under current Federal Regulations), without implementation of an alternative trap limit, would likely result in excessive lobster fishing mortality. Implementation of a

maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel, in combination with the proposed qualification criteria for participation in the Areas 4 and 5 trap fishery, may preclude excessive trap fishing effort and corresponding levels of lobster fishing mortality.

The implementation of a trap limit is also consistent with the proposed measure for controlling lobster trap fishing effort on the basis of historical participation proposed for Area 3. A trap limit not to exceed 1,440 lobster traps was initially analyzed as a non-preferred alternative in the DSEIS. In accordance with ASMFC recommendations, NMFS is not proposing a trap reduction requirement once the initial trap allocations have been determined for qualified participants in the Areas 4 and 5 trap fisheries.

This proposed rule would require any Federal lobster permit holder applying for access to more than one of the 3 areas (Areas 3, 4, or 5) to use the same qualifying year for all areas in order to avoid a combined allocation greater than the number of traps that the permit holder ever fished with any one vessel at any one time during any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide at all times by the most restrictive regulations, including trap allocations, in any one elected area regardless of the area being fished, would remain in effect.

#### Appeals Process

Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5 could appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal would need to be in writing. The only ground for appeal would be that the Regional Administrator erred in concluding that the vessel did not meet the criteria specified in this proposed rule. The appeal would need to set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

The Regional Administrator would appoint a designee to make the initial decision on the appeal. Within 30 days of the date on the notice of the initial decision on the appeal, the appellant could request in writing a review by the Regional Administrator of the initial decision. The appellant could present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer would make findings of fact and a

recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator would make a decision on the appeal, which would be the final decision of the Department of Commerce. If the appellant did not request a review within 30 days of the date on the notice of the initial decision on the appeal, the initial decision would be the final administrative action of the Department of Commerce.

A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 could fish in Areas 3, 4, and/or 5, provided that the denial had been appealed, the appeal was pending, and the vessel had on board a letter from the Regional Administrator authorizing the vessel to fish in Areas 3, 4, and/or 5. The Regional Administrator would issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal was pending, the vessel could fish up to 800 lobster traps, unless the vessel's Federal lobster permit had designated only Area 3 for lobster trap fishing, whereby, the vessel could fish up to 1,800 lobster traps in Area 3 only. If the appeal was finally denied, the Regional Administrator would send a notice of final denial to the vessel owner; the authorizing letter would become invalid 5 days after receipt of the notice of denial or 15 days after the date it was sent, whichever occurred first.

#### Clarification of Procedures for Consideration of Conservation Equivalency Measures as They Apply to Federal Lobster Permit Holders

The ISFMPs developed by ASMFC allow states to adopt management measures that differ from the specific management measures in the ISFMPs as long as the states' alternative measures achieve the same quantified level of conservation for the resource under management. Such alternative management measures are referred to as "conservation equivalent measures." For example, any state may request a change to regulations in waters under its jurisdiction pertaining to the default trap limits specified in the ISFMP. Such requests are reviewed by ASMFC's Lobster Technical Committee, which provides its evaluation of the biological merit of such proposals to ASMFC's Lobster Board for subsequent policy review and approval. Upon approval of such measures, the ASMFC, under the provisions of the ACFCMA, may decide to recommend modifications to Federal lobster regulations, as may be deemed

necessary, to complement a state's conservation equivalent measures. This proposed rule would clarify a procedure by which NMFS would consider such recommended modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s).

Specifically, under 50 CFR 697.25, NMFS would consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to the agency in writing by the ASMFC and that contain the following supporting information: (1) a description of how Federal regulations would be modified; (2) an explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations; (3) an explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and (4) a detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering a recommendation for conservation equivalent measures and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

In the DSEIS prepared for this action, NMFS expressed concern that recommendations from the ASMFC for Federal implementation of conservation equivalent measures may unduly burden the agency, given that there are 15 member states in the ASMFC and that each state may seek Federal implementation of the conservation equivalent of several different types of measures under the ISFMP. NMFS believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NMFS to respond to recommendations for Federal rulemaking in a more timely and efficient manner. This cooperative approach to the implementation of conservation equivalent measures would benefit the states, fishermen, and enforcement of fishery regulations by minimizing the time lag between state and Federal implementation of approved conservation equivalent

measures and by reducing the time period during which state-only permit holders and Federal permit holders from the same state may be subject to different requirements.

#### **Modification of Area 1 Trap Limits for New Hampshire Lobster License Holders**

In October 1998, ASMFC approved a proposal from the State of New Hampshire for conservation equivalent lobster trap limits that vary from the 800 lobster trap limit in Area 1. That state's lobster management program provides for a two-tier lobster license system:

State fishermen who provide documentation of landing more than 12,000 lb (5,443 kg) of lobster in at least 2 years, from 1994 to 1998, receive a full commercial lobster license issued by the State of New Hampshire; those who cannot provide this documentation are issued a limited commercial lobster license. Those fishermen who qualify for a full license may fish up to 1,200 lobster traps in state waters, and those in the limited category may fish a maximum of 600 lobster traps in state waters. Following approval of the New Hampshire proposal under the ISFMP, the ASMFC recommended that NMFS modify Federal regulations to maintain the biological and socio-economic basis of New Hampshire's lobster management program. The ASMFC has not received similar proposals, although allowable, from the States of Maine and Massachusetts, which also border Area 1. The ASMFC requested that NMFS modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

There are approximately 80 Federal lobster permit holders with vessel ports in New Hampshire (1998 data) who harvest lobster primarily with trap gear. Twenty-two of these individuals also possess a full commercial lobster license, and 26 possess a limited commercial lobster license issued by the State of New Hampshire, as described in the DSEIS.

Under current regulations, Federal lobster permit holders must abide by the stricter of either Federal or state lobster management measures. Under the preferred alternative, NMFS would waive this requirement with respect to the number of lobster traps for Federal

lobster permit holders who elect to fish in Area 1 and who possess a valid New Hampshire full commercial lobster license for Area 1. Specifically, this proposed rule would not make any change in the number of traps allowed to be fished in the Federal waters of Area 1. However, a New Hampshire full commercial lobster licensee fishing aboard a federally permitted vessel would be allowed to fish an additional 400 lobster traps in New Hampshire state waters.

#### **Lobster Management Area Boundary Clarification**

In Addendum 1 to the American Lobster ISFMP, the ASMFC revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP.

NMFS proposes to implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area to maintain consistency with the ASMFC's American lobster ISFMP and to avoid confusion if the Federal and ASMFC area boundaries and their associated lobster management measures differ.

#### **Cape Cod Canal Overlap**

The Cape Cod Canal (Canal) cuts through the Cape Cod peninsula in Massachusetts and connects the waters of Cape Cod Bay to the north (within Area 1) with the waters of Buzzards Bay to the south (within Area 2). The Canal is large enough at certain points to allow the setting of lobster trap gear, and lobster fishermen from both Areas 1 and 2 have historically set trap gear in the Canal.

To allow fishermen in the adjacent areas of Area 1 and Area 2 to maintain their historical ability to fish in the Canal, the Cape Cod Canal would be considered an area of overlap between Areas 1 and 2. To establish this overlap area, the existing boundaries of both Area 1 and Area 2 would be modified to encompass the Cape Cod Canal.

#### **Outer Cape Lobster Management Area's Northern Boundary**

As a result of an oversight contained in Amendment 3 to the ISFMP, the boundary line coordinates separating the Outer Cape Area from Area 1 did not extend to the shoreline of Massachusetts and, therefore, did not effectively separate these management areas. To correct this situation, under Addendum 1 to the ISFMP, the coordinates for the

boundary line separating Area 1 and the northern boundary of the Outer Cape Area were revised and extended around the western tip of Cape Cod. This revision effectively extended the boundary line to the shoreline of Massachusetts and created an area of overlap between Area 1 and the Outer Cape Area.

NMFS proposes to revise the existing boundary line coordinates as follows:

**Northern Boundary:** Following the LORAN C 9960-Y-44120 line to the intersection with the 9960-W-13850 line (42°04.25' N. lat., 70°17.22' W. long.), then following that line in a southeasterly direction to the intersection with the 9960-Y-44110 line (42°02.84' N. lat., 70°16.1' W. long.), then following that line in an easterly direction to Race Point (42°03.35' N. lat., 70°14.2' W. long.) in the town of Provincetown, MA.

**Overlap Zone Boundary:** Beginning at Race Point, MA (42°03.35' N. lat., 70°14.2' W. long.) following the LORAN C 9960-Y-44110 in a westerly direction to its intersection with 9960-W-13850 line (42°02.84' N. lat., 70°16.1' W. long.), then following that line in a southeasterly direction to its intersection with a 9960-X-25330 line (41°52' N. lat., 70°07.49' W. long.), then following that line in a northeasterly direction to where it meets the shoreline of Great Island in the town of Wellfleet, MA (41°54.46' N. lat., 70°03.99' W. long.), then following the shoreline in a northerly direction back to the beginning.

When the coordinates for the recommended revision to the Overlap Zone boundary between Area 1 and the Outer Cape Area were plotted, there was a problem with the information provided in Addendum I. As a result, the chart included in the Addendum does not agree with the associated LORAN C coordinates. The chart in Addendum I indicates that the area of overlap extends to a point northeast of and beyond Race Point, MA, continuing around the tip of Cape Cod, while the coordinates denote an overlap area beginning at Race Point, MA. NMFS developed the coordinates in this section based on the coordinates in Addendum I, not on the graphics (chart) in Addendum I. The ASMFC has been informed of this discrepancy.

#### **Boundary Change Between Area 2 and The Outer Cape Management Area**

In Addendum I the ASMFC revised the boundary separating Area 2 and the Outer Cape Area, which runs from the southeastern tip of Cape Cod to Nantucket Island, by shifting it west by

5 minutes of longitude, from 70° W. Long. to 70° 05' W. Long.

### Revised Boundary Description for Area 1, Area 2, and the Outer Cape Area

#### EEZ Nearshore Management Area 1

EEZ Nearshore Management Area 1 is defined by the area including state and Federal waters that are nearshore in the Gulf of Maine. This proposed rule would re-define Area 1 to be the area bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

Point	Latitude	Longitude
A	43°58' N.	67°22' W.
B	43°41' N.	68°00' W.
C	43°12' N.	69°00' W.
D	42°49' N.	69°40' W.
E	42°15.5' N.	70°40' W.
F	42°10' N.	69°56' W.
G	42°05.5' N.	70°14' W.
G1	42°04.25' N.	70°17.22' W.
G2	42°02.84' N.	70°16.1' W.
G3	42°03.35' N.	70°14.2' W.

From point "G3" along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

#### EEZ Nearshore Management Area 2

EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40' N.	70°05' W.
I	41°15' N.	70°05' W.
J	41°21.5' N.	69°16.5' W.
K	41°10' N.	69°06.5' W.
L	40°55' N.	68°54' W.
M	40°27.5' N.	71°14' W.
N	40°45.5' N.	71°34' W.
O	41°07' N.	71°43' W.
P	41°06.5' N.	71°47' W.
Q	41°11.5' N.	71°47.25' W.
R	41°18.5' N.	71°54.5' W.

From point "R" along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point "H" along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

#### EEZ Nearshore Outer Cape Lobster Management Area

EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10' N.	69°56' W.
G	42°05.5' N.	70°14' W.
G1	42°04.25' N.	70°17.22' W.
G2	42°02.84' N.	70°16.1' W.
G4	41°52' N.	70°07.49' W.
G5	41°54.46' N.	70°03.99' W.
From Point "G5" along the outer Cape Cod coast to point "H"		
H	41°40' N.	70°05' W.
H1	41°18' N.	70°05' W.
From Point "H1" along the eastern coast of Nantucket Island, MA, to Point "I"		
I	41°15' N.	70°00' W.
J	41°21.5' N.	69°16' W.
From Point "J" Back to Point "F."		

#### Clarification of Lobster Trap Tag Requirements

NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not clearly specified in the regulatory text. This amendment would clarify a tagging requirement that was previously specified by reading several sections in combination, including regulations found under 50 CFR 697.7 and 50 CFR 697.19. This technical amendment is intended to make the regulations easier to understand.

#### Classification

This proposed rule has been determined to be significant for the purposes of Executive Order 12866. NMFS prepared a DSEIS/RIR/IRFA for this action; a notice of availability was published on November 24, 2000 (65 FR 70567). The Initial Regulatory Flexibility Analysis (IRFA), in compliance with the Regulatory Flexibility Act, describes the economic impacts of the proposed rule, if adopted, on small entities. A summary of the IRFA follows: Reasons why the action is considered, as well as the objectives and legal basis for this rule, are described in the IRFA and the preamble to this rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. Implementation of historical participation and lobster trap limits in

Areas 3, 4, and 5 is expected to result in a reduction in the number of Federal permit holders qualified to fish for lobster with traps in these management areas. Individuals failing to meet the proposed qualification criteria may: (1) decide to fish in areas not subject to historical participation; (2) decide to retain their lobster fishing permit but not use it; (3) leave the lobster fishery entirely by selling his/her lobster vessel; or (4) fail to renew their Federal lobster permit.

Although it can be assumed that there will be no immediate impact on existing fishing operations that do not harvest lobster in substantial numbers with lobster trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This may affect the economic value associated with their Federal lobster permit in the event that permit holders wish to sell their vessel to buyers who would otherwise desire to fish for lobster with traps. Vessels that qualify to participate in Areas 3, 4, and/or 5 will likely see a reduction in gear conflict and be protected from lobster fishing effort expansion. The proposed action will also alleviate socio-economic impacts from any reduction in lobster harvests which may have resulted if qualifying vessels historically fished a number of lobster traps in excess of the current fixed trap limits. Permit holders who fish greater amounts of gear than allowed by the proposed maximum lobster trap limits may experience a small, yet unquantifiable, reduction in landings if they are unable to alter their fishing practices to mitigate this lower level of lobster trap fishing effort.

The proposed action to allow owners of vessels who are in possession of a Federal limited access lobster permit and who also possess a New Hampshire full commercial lobster fishing license to fish up to 800 lobster traps in Federal waters and a maximum of 400 additional lobster traps in New Hampshire state waters would alleviate adverse impacts on fishing practices and income which would otherwise be imposed by a lower lobster trap limit. Due to more restrictive lobster trap limits imposed on New Hampshire part time commercial lobster permit holders, a potential overall reduction in traps fished by commercial lobster permit holders in that state could result in some unquantified decrease in lobster fishing mortality and marine mammal and sea turtle trap gear entanglements.

The proposed action to revise and clarify the boundary coordinates within the state waters of Massachusetts for Area 1, 2, and the Outer Cape



Management Area would: allow Federal lobster permit holders to maintain traditional fishing practices; avoid confusion and maintain consistency with the ISFMP; and allow Federal American lobster permit holders to fish under lobster management measures associated with the respective management area. If implemented, the proposed boundary revisions would have no direct effect on the lobster resource since it is specific to a minor modification of coordinates for lobster area boundaries in Massachusetts state waters and is not expected to substantially affect marine mammals or sea turtles.

The DSEIS/RIR/IRFA analyzed a preferred alternative which recommended the implementation of historical participation measures to control lobster fishing effort in Areas 3, 4 and 5, with a maximum lobster trap limit and a lobster trap reduction schedule for Area 3; implementation of conservation equivalent trap limits in New Hampshire waters of Area 1; and clarification of boundaries of specific lobster management areas. The DSEIS/RIR/IRFA also analyzed five alternatives to specific components of the preferred alternative. Three of these alternatives propose implementation of historical participation as a means to control lobster fishing effort in Areas 3, 4, and 5. Due to the unique nature of the proposed action relating to Area 1 lobster trap limits for Federal lobster permit holders fishing in New Hampshire waters and management area boundary clarifications, only one alternative (no action-status quo) was presented for each of these two components of this proposed rule.

#### **Impacts of Historical Participation for Areas 3, 4, and 5**

The three alternatives relating to historical participation included: taking no action; implementing historical participation requirements for Areas 3, 4, and 5, but retaining current trap limits; and implementing historical participation requirements as identified under the proposed action, but incorporating a maximum trap allocation for Areas 4 and 5.

Under current Federal regulations, owners of vessels that elect to harvest American lobsters with traps are required to inform NMFS each year of the lobster management area(s) they intend to set trap gear in. The election of one or more LCMA requires only that the vessel possess a current Federal American lobster limited access permit. The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR

70567), used data available to NMFS for the 2000-2001 fishing year, from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMA's. Some owners of vessels in possession of a Federal lobster permit may have elected LCMA's after August 2000, or may have elected LCMA's with no intention to fish with lobster traps in one or more of the elected LCMA's. Therefore, the number of vessels electing to fish in LCMA's 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action and the total number that do not qualify may be higher. Following the comment period on this proposed rule, a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) will analyze and evaluate the effects of implementing regulations for this action and will incorporate the most current data available to NMFS at that time.

The DSEIS/RIR/IRFA analysis for this action indicated that approximately 3,361 vessels possess a current Federal lobster permit and fish for lobster with either trap or non-trap gear. Of the 3,361 lobster vessels that possess a current Federal lobster permit, 769 have designated Area 3 as at least one of their areas for trap fishing. Of these, NMFS estimates that the total number of vessels that would qualify under the proposed historical qualification criteria to continue fishing for lobster with traps in the Area 3 lobster trap fishery would range from a low of 53 to a high of 117.

Similarly, of the approximately 405 vessels in possession of current Federal lobster permits that were designated for trap fishing in either Areas 4 or 5, the total number of vessels that would qualify to continue fishing with traps in Areas 4 and 5 on the basis of the proposed qualification criteria for the Areas 4 and 5 lobster trap fisheries would range from 47 to 60. The proposed implementation of a maximum trap limit of 1,440 lobster traps in Areas 4 and 5 is expected to result in a reduction in the number of lobster traps fished in these areas. Although NMFS has no information on the total number of lobster traps fished in those areas, data provided to NMFS by New Jersey, summarizing the results of a survey of New Jersey lobstermen, indicate that approximately 15% (14 individuals) of fishermen responding to the survey who possess both a New Jersey lobster trap license and a Federal lobster permit have fished with greater than 1,440 traps in LCMA 4. The fishing effort for these 14 permit holders has ranged from 1,500 to 2,500 (with an

average of 1,868) traps. On the basis of this information, establishment of a maximum trap limit for LCMA 4 would result in at least a reduction of 26,152 traps, with a corresponding, but unquantifiable, reduction in lobster fishing mortality.

The exact degree of lobster trap reductions in Areas 4 and 5 is unquantifiable because, in the Federal American lobster fishery, there are currently no requirements to submit vessel trip reports. In Area 3, where lobster traps will be reduced over a 4-year period, the scheduled lobster trap reductions are likely to result in a small, yet unquantifiable, reduction in Area 3 landings. If markets are affected, the effect is likely to be small. Landings in Areas 4 and 5 accounted for less than 10 percent of total domestic lobster landings in 1999, and market effects from lobster trap reductions in Area 3 may occur in a limited segment of the market for larger lobsters (i.e., the offshore fishery lands larger lobsters, on average, than other components of the lobster fishery as a whole). If lobster prices do increase, vessels fishing in areas not subject to historical participation and where expansion of trap effort is possible (i.e., up to the 800 lobster trap limit) may increase their effort and offset any reduction in landings from Areas 3, 4, and 5. In this dynamic setting, lobster prices are likely to be unaffected by regulatory action under this proposed rule.

The effect of limiting access to historical participants in Areas 3, 4, and 5 is expected to have two major economic effects. First, limiting access in these areas will protect qualifiers from effort expansion. Second, lobster trap allocations in Areas 3, 4, and 5 and overall trap reductions in Area 3 over a 4-year period based on historical participation will preserve the competitive position and structure of the offshore fishery. Although it can be assumed that there will be no immediate impact on current fishing operations that do not harvest lobster in substantial numbers with trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This situation may also impact the "economic value" associated with these permits in the event that permit holders wish to sell their vessels to buyers who would otherwise desire to fish in the lobster trap fishery, but would be unable to do so. Economic effects will be greater for those vessels that are currently fishing lobster traps in Areas 3, 4, or 5, but will not qualify for historical participation in these areas because they will not be able to meet

one or more of the qualification criteria. Effective on May 1, 2000, Federal lobster permit holders are required to elect on their permits the lobster management areas in which they intend to fish for lobster with traps. However, NMFS does not have adequate data on the extent to which permit holders, although authorized, actually fish with traps in the elected management areas. Given this uncertainty, Federal lobster permit data indicates that a maximum of 769 permit holders elected to fish for lobster with traps in Area 3. On the basis of NMFS analyses, a low of 652 to a high of 716 Federal permit holders, who would meet the qualification criteria to fish with lobster traps in Area 3 under this proposed rule, would no longer be able to continue fishing with lobster traps in this management area.

Analyses of impacts for current participants in the Areas 4 and 5 lobster trap fisheries are combined because of the lack of more precise information on lobster trap fishing locations in these areas. Federal lobster permit data indicates that, under current Federal regulations, 405 vessels in possession of current Federal lobster permits were designated for lobster trap fishing in Areas 4 and/or 5. NMFS estimates that a low of 47 to a high of 60 vessels would be able to meet the proposed qualification criteria for Areas 4 and/or 5 under this proposed rule and, consequently, would be able to continue fishing with lobster traps in Areas 4 and 5. Lobster vessels that do not qualify will still be able to fish for lobster with traps, but they will have to do so by moving their traps into lobster management areas (other than Areas 3, 4, and 5) that may already be congested, likely resulting in increased fishing effort, additional congestion, and a potential reduction in overall productivity and profitability. The extent to which non-qualifiers would potentially decide to move trap operations to other management areas is unknown. Furthermore, moving may be most difficult for non-qualifying lobster permit holders who fish traps in inshore areas and have vessel ports south of New York, since Area 2 (waters between Cape Cod and Long Island Sound) would be the closest lobster management area not requiring historical participation.

Based on available information, approximately 14 vessels fished more than 1,440 lobster traps in Areas 4 and 5 combined, out of the total number of vessels electing to fish in Areas 4 and/or 5. On average, these vessels fished 1,868 lobster traps prior to the implementation of a fixed trap limit in January 2000. However, current

regulations limit vessels electing to fish in Areas 4 and/or 5 to 800 lobster traps. There may be a small, yet unquantifiable, reduction in landings if impacted vessels are unable to alter their fishing practices to mitigate this lower level of trap fishing effort compared to historical trap levels. Yet, given that the current regulations limit these vessels to 800 lobster traps, some qualifying vessels that previously fished traps in excess of the current fixed trap limit may be able to increase the number of traps fished up to the proposed trap cap of 1,440 lobster traps for Areas 4 and 5, assuming they are allocated 1,440 lobster traps under a historical participation regime.

The incentive and/or ability to increase traps fished would depend on the scale of operation and other socio-economic factors. Incentives may include a desire to establish and document a history of lobster trap fishing in anticipation of future fishing effort reduction measures and of a decline in alternative fishing opportunities in other fisheries. Since the lobster trap fishery is a territorial fishery, removal of traps by non-qualifiers or by vessels fishing in excess of the proposed 1,440 lobster trap cap will open up territory that other vessels may exploit.

In addition, an increase in the number of lobster traps fished does not automatically translate to higher gross revenue; other factors such as market conditions and operating costs have to be evaluated. Fishermen setting lobster traps close to shore are likely to be able to maintain landing levels because they can tend their lobster traps more often. Harvest costs may decline for vessels that have historically fished more than 1,440 lobster traps prior to the implementation of a fixed trap limit; however, revenues may decline if fishing fewer lobster traps translates into fewer lobster being landed. Assuming non-qualifiers cannot or will not move trap operations to other management areas, they would no longer be able to fish for lobster with trap gear. Some such fishermen may be able to switch to other fisheries.

#### **Historical Qualification Costs**

Vessel owners would be required to provide an affidavit and supporting documentation to substantiate their historical participation application when attempting to qualify in one, two, or in all three of the lobster management areas proposing to implement historical participation in this proposed rule. The estimated time required to provide an affidavit and supporting documentation to substantiate the historical

participation application are specified under collection-of-information requirements, while historical qualification costs are primarily associated with costs to locate, copy, telephone, and mail the submission of the supporting documentation. The average historical qualification cost, per vessel, for vessel owners who have been notified by NMFS that they pre-qualify for historical participation in Areas 3, 4, and/or 5, based on data available to NMFS, is estimated to be \$5.45 to provide an affidavit concurring with the NMFS pre-qualification determination.

Vessels that do not pre-qualify need to submit the necessary forms and all supporting documentation. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in one area ranges from \$7.38 for Areas 4 and 5 to \$8.89 for Area 3. Documentation costs are higher for Area 3 due to the requirement to show landings of at least 25,000 pounds during the qualifying year, while criteria for Areas 4 and 5 have no minimum landings requirement. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in two lobster management areas reflects the higher documentation costs associated with the Area 3 minimum landings criteria. The per vessel qualification costs range from \$9.98 for vessels submitting documentation to qualify for Areas 4 and 5 (but not Area 3), to \$10.45 for vessels submitting documentation to qualify for Area 3 and either Areas 4 or 5. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in all three lobster management areas is \$14.35. These costs are considered insignificant relative to other costs of doing business.

The proposed action concerning New Hampshire conservation equivalent trap limits would allow those Federal lobster permit holders who are also authorized by the State of New Hampshire to fish more lobster traps in state waters (1,200 rather than 600 lobster traps) to maintain or increase their relative share of landings in state waters and to preserve the competitive position of that industry sector. It is expected that Federal permit holders who are authorized to fish only 600 rather than 1,200 lobster traps in state waters under New Hampshire state regulations would also be able to retain their historical competitive position but will be unable to expand fishing operations above 600 lobster traps.

Revision and clarification of the boundary coordinates for lobster management areas in Massachusetts waters will allow fishermen to maintain

traditional fishing practices and fish under the lobster management measures associated with the respective management area. Implementation of the proposed revision to these boundary lines will also maintain consistency with the identification of lobster management areas as established under the ISFMP and will avoid the confusion that could result if ISFMP and Federal area boundaries and their associated lobster management measures differ.

This proposed rule, supplemented by the DSEIS, describes associated reporting, record keeping, and compliance requirements. Special professional skills would not be required to fulfill these requirements. There are no other Federal regulations that overlap or duplicate measures under this proposed rule. This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements are being restated and have already been approved by the Office of Management and Budget (OMB) as shown: vessel permit applications approved under OMB control number 0648-0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications; and a lobster trap tag requirement approved under OMB control number 0648-0351 with a response time of 1 minute per tag.

This proposed rule also contains new collection-of-information requirements subject to the PRA which have been submitted to OMB for approval. The public reporting burden for each collection of information per response is indicated in parentheses in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The new requirements are as follows:

1. Provision of documentation of possession of a current valid Federal lobster permit (5 minutes);
2. Provision of documentation to demonstrate at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999 (15 minutes);

3. (For Area 3 only) Provision of sales receipts or other documents pertaining to the sale of lobsters indicating the landing of at least 25,000 pounds of lobster from any location during the year used as the qualifying year from

March 25, 1991, to September 1, 1999 (10 minutes);

4. Provision of documentation for proof of historical participation in two rather than one lobster management area (additional 15 minutes if different consecutive two-month periods of trap fishing are used);

5. Provision of documentation for proof of historical participation in three rather than one lobster management area (additional 30 minutes if three different consecutive two-month periods are used);

6. Completion of lobster trap fishing area eligibility application form (2 minutes for each area selected);

7. Provision of affidavit stating total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 at any one time during the qualifying year (15 minutes); and

8. Provision of a written appeal request to the Regional Administrator by non-qualifying permit holders (15 minutes).

Public comment is sought regarding: whether these proposed collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including information through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFIS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a 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.

An updated Biological Opinion under Section 7 of the Endangered Species Act (ESA) was issued for the American lobster fishery on December 17, 1998. A formal consultation concluded that the continued operation of the American lobster fishery operating under new measures implemented to reduce entanglements, "may affect but is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale,

sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle and is not likely to destroy or adversely modify critical habitat that has been designated for the northern right whale." In June 2000, formal consultations on the lobster fishery were reinitiated. An updated Biological Opinion under Section 7 of the ESA was issued for the Federal American lobster fishery on June 14, 2001. The updated Biological Opinion concluded that the Federal American lobster fishery is likely to jeopardize the continued existence of the western North Atlantic right whale, but is not likely to destroy or adversely modify critical habitat designated for the right whale. The Biological Opinion also concluded that the Federal American lobster fishery is not likely to jeopardize the continued existence of humpback, fin, sei, blue, and sperm whales; or loggerhead, Kemp's ridley, green, leatherback, and hawksbill sea turtles. Following release of the updated Biological Opinion on June 14, 2001, a formal consultation was initiated on the effects of this proposed action on endangered and threatened species.

#### List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

**Rebecca Lent.**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

#### **PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

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

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

2. In § 697.4, paragraphs (a)(7)(vi) through (xi) are added to read as follows:

#### **§ 697.4 Vessel permits and trap tags.**

(a) \* \* \*

(7) \* \* \*

(vi) *Participation requirements for EEZ Nearshore Management Area 4.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 4 (Area 4), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster

traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year (hereinafter, "the qualifying year") during the period from March 25, 1991, through September 1, 1999 (hereinafter, "the qualification period") excluding the time periods 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). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 4 at any one time during the chosen qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vi)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vi)(B) of this section.

(vii) *Participation requirements for EEZ Nearshore Management Area 5.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 5 (Area 5), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year (hereinafter, "the qualifying year") during the period from March 25, 1991, through September 1, 1999 (hereinafter, "the qualification

period") 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). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 5 at any one time during the qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vii)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vii)(B) of this section.

(viii) *Participation requirements for EEZ Offshore Management Area 3.* For fishing year 2002 and beyond, to fish for lobster with traps in EEZ Offshore Management Area 3 (Area 3), a Federal lobster permit holder must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year (hereinafter, "the qualifying year") during the period from March 25, 1991, through September 1, 1999 (hereinafter, "the qualification period") excluding the time periods 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). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing

Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation that indicate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any chosen qualifying year during the qualification period.

(C) Sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the calendar year used as the qualifying year from March 25, 1991, through September 1, 1999, to qualify to fish for lobster with traps Area 3; and

(D) A signed affidavit to NMFS, certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation identified in paragraph (a)(7)(viii)(B). Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(viii)(B) of this section.

(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 under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas, to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year.

(x) *Notification of eligibility to fish for lobster with lobster traps in 2002 in Areas 3, 4, and 5.* (A) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet some or all of the qualification criteria described in paragraph (a)(7)(vi), (a)(7)(vii), or (a)(7)(viii) of this section and that they may qualify for a limited access American lobster permit for one or more of Areas 3, 4, and/or 5. Vessel owners must still provide documentation indicating that the vessel meets the qualification criteria for which NMFS lacks information, complete an affidavit

certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year, and apply for a limited access lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to be considered for an Areas 3, 4, and/or 5 limited access lobster permit. Consistent with paragraph (a)(7)(ix) of this section, any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year. In addition, Federal lobster permit holders who elect to fish in multiple lobster conservation management areas are required under paragraph (a)(7)(iv) of this section to abide by the most restrictive regulations of all areas elected, regardless of which area the permit holder is fishing in at any given time.

(B) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access American lobster permit for Areas 3, 4, and/or 5, and the vessel owner believes that there is credible evidence that the vessel does qualify under the listed criteria, the vessel owner must apply for a limited access American lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to fish for lobster with traps in Areas 3, 4, and/or 5 after that date and submit documentation substantiating that the vessel meets the area qualification criteria as described in paragraphs (a)(7)(vi)(A) and (B); (a)(7)(vii)(A) and (B); and (a)(7)(viii)(A) through (C) of this section; and submit a signed affidavit certifying the total number of lobster traps he/she set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year as described in paragraphs (a)(7)(vi)(C), (a)(7)(vii)(C), and (a)(7)(viii)(D) of this section.

(xi) *Appeal of denial of permit.* (A) Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal must be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(vi), (vii), and/or (viii) of this section. The appeal must set forth the basis for the applicant's belief that the Regional

Administrator's decision was made in error.

(B) *Appeal review.* (1) The Regional Administrator will appoint a designee who will make the initial decision on the appeal.

(2) The appellant may request a review by the Regional Administrator of the initial decision on the appeal by so requesting such a review in writing within 30 days of the date on the notice of the initial decision on the appeal. The appellant may present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer must make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator must decide on the appeal, which will be the final decision of the Department of Commerce. If the appellant does not request a review of the initial decision on the appeal within 30 days of the date on the notice of the initial decision on the appeal, then the initial decision is the final administrative action of the Department of Commerce.

(C) *Status of vessels pending appeal.* A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 may fish in Areas 3, 4, and/or 5, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish in the area for which access is sought through the appeals process, unless otherwise determined by the Regional Administrator. The Regional Administrator will issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal is pending, the vessel may fish up to 800 lobster traps, unless the vessel's Federal lobster permit has designated only Area 3 for lobster trap fishing, whereby, the vessel may fish up to 1,800 lobster traps in Area 3 only. If the appeal is finally denied, the Regional Administrator must send a notice of final denial to the vessel owner; the letter of authorization will become invalid 5 days after receipt of the notice of denial or 15 days after the date it is sent, whichever occurs first.

\* \* \* \* \*

3. In § 697.18, paragraphs (a), (b), and (h) are revised to read as follows:

**§ 697.18 Lobster management areas.**

\* \* \* \* \*

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are nearshore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

Point	Latitude	Longitude
A	43°58' N.	67°22' W.
B	43°41' N.	68°00' W.
C	43°12' N.	69°00' W.
D	42°49' N.	69°40' W.
E	42°15.5' N.	70°40' W.
F	42°10' N.	69°56' W.
G	42°05.5' N.	70°14' W.
G1	42°04.25' N.	70°17.22' W.
G2	42°02.84' N.	70°16.1' W.
G3	42°03.35' N.	70°14.2' W.

From point "G3" along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40' N.	70°05' W.
I	41°15' N.	70°05' W.
J	41°21.5' N.	69°16.5' W.
K	41°10' N.	69°06.5' W.
L	40°55' N.	68°54' W.
M	40°27.5' N.	71°14' W.
N	40°45.5' N.	71°34' W.
O	41°07' N.	71°43' W.
P	41°06.5' N.	71°47' W.
Q	41°11.5' N.	71°47.25' W.
R	41°18.5' N.	71°54.5' W.

From point "R" along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point "H" along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

\* \* \* \* \*

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10' N.	69°56' W.
G	42°05.5' N.	70°14' W.
G1	42°04.25' N.	70°17.22' W.
G2	42°02.84' N.	70°16.1' W.
G4	41°52' N.	70°07.49' W.
G5	41°54.46' N.	70°03.99' W.

Point	Latitude	Longitude
From Point "G5" along the outer Cape Cod coast to point "H"		
H	41°40' N.	70°05' W.
H1	41°18' N.	70°05' W.
From Point "H1" along the eastern coast of Nantucket Island to Point "I"		
I	41°15' N.	70°00' W.
J	41°21.5' N.	69°16' W.
From Point "J" Back to Point "F."		

\* \* \* \* \*

4. Section 697.19 is revised to read as follows:

**§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.**

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Through April 30, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying one or more EEZ Nearshore Management Area(s), whether or not in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 lobster traps.

(2) Beginning May 1, 2002, vessels fishing in or issued a valid limited access American lobster permit

specifying one or more of EEZ Nearshore Management Areas 1, 2, or the Outer Cape Management Area, regardless of whether it is in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area(s) more than 800 lobster traps, except as noted in paragraph (d) of this section.

(3) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 4 may not fish more lobster traps in Area 4 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vi), which will not exceed 1,440 lobster traps.

(4) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 5 may not fish more lobster traps in Area 5 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vii), which will not exceed 1,440 lobster traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore*

*Management Area.* (1) Through April 30, 2002, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than 1,800 lobster traps.

(2) Beginning May 1, 2002, for fishing years 2002, 2003, 2004, 2005, and beyond until changed, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps indicated in Table 1 for the appropriate fishing year with respect to the number of lobster traps approved by the Regional Administrator under § 697.4(a)(7)(vii) for each vessel. Area 3 lobster trap allocations for the initial fishing year, beginning May 1, 2002, will not exceed 2,656 lobster traps.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

Number of Traps Approved by the Regional Administrator	Trap Allocation by Fishing Year*			
	2002	2003	2004	2005 and beyond until changed
1200-1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300-2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267

\* Trap allocations below 1,200 will not be subject to further reductions.

(3) For example, if a limited access Federal lobster permit holder elects 1991 as the qualifying year, and is assigned a fishing effort level of 2,323 lobster traps under §697.4(a)(7)(viii),

then the lobster trap allocation for that vessel would be 2,003 lobster traps during fishing year 2002 and would decrease annually by incremental reductions until reaching a lobster trap

allocation of 1,789 lobster traps in fishing year 2005. Thus, each lobster trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale over 4 years. The

respective lobster trap reductions will not go below a baseline of 1,200 lobster traps. Each initial allocation in Area 3 of fewer than 1,200 lobster traps will remain at that allocation.

(c) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ Management Area.* A vessel owner who elects to fish in more than one EEZ Management Area may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(d) *Notwithstanding any other provision, lobster trap limits in New Hampshire state waters.* Any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, as may be authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps at any one time in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1. When fishing in the Federal waters of EEZ Nearshore Management Area 1, any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in excess of the maximum number

of lobster traps specified at paragraph (a)(2) of this section.

(e) *Trap tag requirements for vessels fishing with lobster traps.* 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. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(f) *Maximum Lobster Trap Tags Authorized for Direct Purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

(g) *EEZ Management Area 5 Trap Waiver Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

5. In § 697.25, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and new paragraph (b) is added to read as follows:

**§ 697.25 Adjustment to management measures.**

\* \* \* \* \*

(b) Conservation equivalency measures. A conservation equivalency measure is defined as a measure adopted by a state that differs from the specific requirements of the interstate

fishery management plan, but achieves the same quantified level of conservation for the resource under management. Under this section, the Regional Administrator may consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to him/her in writing by the ASMFC and that contain the following supporting information:

- (1) A description of how Federal regulations should be modified;
- (2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;
- (3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

\* \* \* \* \*

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