

with regulations in the Final Rule on December 6, 1999 (64 FR 68228), 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. The Commission's Addendum I recommendations to NOAA Fisheries were the first attempt in the lobster ISFMP to begin controlling effort through trap limits based on historic participation. To support the Commission, and as a result of the Commission's recommending compatible measures in Federal waters, NOAA Fisheries published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need under the Atlantic Coastal Act to restrict access of Federal permit holders in the lobster EEZ fishery on the basis of historical participation. The ANPR also notified the public that NOAA Fisheries established September 1, 1999, the publication date of the ANPR, as a potential control date, or cut-off date, to be used to determine eligibility for future access to lobster management areas, and to discourage shifts into new areas by lobster trap vessels subject to Federal lobster regulations.

NOAA Fisheries subsequently published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on December 10, 1999 (64 FR 69227). NOAA Fisheries later published a notice of availability for a Draft Supplemental Environmental Impact Statement (DSEIS) on November 24, 2000 (65 FR 70567). The DSEIS responded to recommendations made by the Commission, and considered the biological, economic, and social impacts of several alternative actions for waters under Federal jurisdiction. The preferred alternatives in the DSEIS included implementation of a historical participation management regime to control lobster fishing effort and preserve the socio-economic character of the associated lobster fisheries in Lobster Management Areas 3, 4 and 5; modification of trap limit restrictions for Federal Lobster permit holders who also hold a New Hampshire state lobster license, to be consistent with New Hampshire regulations, which were determined by the Commission to be conservation equivalent to the ISFMP; and modifications to the coordinates of lobster management areas in Massachusetts state waters, for clarity,

and to be consistent with past fishing practices. In November and December 2000, NOAA Fisheries held public meetings in Maine, Rhode Island, New York, and New Jersey, to receive comments on the biological, economic and social impacts addressed in the DSEIS. A total of 153 individuals attended the public meetings, which were held in November and December 2000, and 225 written comments were received by January 9, 2001, the closing date for public comment on the DSEIS.

NOAA Fisheries published its Proposed Rule in the **Federal Register** on January 3, 2002 (67 FR 282). The Proposed Rule addressed management measures identified in the DSEIS, and included a technical amendment to the regulations to clarify 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). NOAA Fisheries received 190 comments on the American lobster proposed rule during the comment period which ran from January 3–February 28, 2002. The comment period on the proposed rule was extended from February 19, 2002, to February 28, 2002, to ensure all interested parties adequate time for review of the document, and, in part, to allow the Commission opportunity to discuss during the Commission American Lobster Board Meeting held February 20, 2002, in Washington, D. C. All of the public comments were carefully considered and a summary of comments and NOAA Fisheries responses are provided later in this document. On November 8, 2002, NOAA Fisheries published a notice of availability for a Final Supplemental Environmental Impact Statement (67 FR 68128). The deadline for acceptance of public comment in response to the biological, economic, and social impacts addressed in the FSEIS was December 9, 2002. NOAA Fisheries received 82 comments on the FSEIS.

Alternatives Evaluated

The DSEIS and FSEIS presented several alternatives for each of the major measures addressed by this regulatory action, within the parameters of the Atlantic Coastal Act and Magnuson-Stevens Act requirements. Four of these (Alternatives 1A - 1D) address alternatives relating to implementation of historical participation as a means to control lobster fishing effort in LCMA 3, 4, and 5. The preamble and classification section of this final rule summarize the impacts and the cost effectiveness of the selected management actions on small entities

and the economy. The FSEIS for this action thoroughly discusses and evaluates the effectiveness of each of the four historic participation alternatives to achieve the ISFMP and Atlantic Coastal Act objectives (see **ADDRESSES**).

Effort Control Alternatives in Areas 3, 4, and 5

Final Measures Selected

NOAA Fisheries will implement measures aligned with alternatives identified in the FSEIS for this action. Note that most measures will apply to Federal permit holders who fish only in specific management areas. The following is a summary of the major actions, each action will be discussed in further detail later in this document.

1. NOAA Fisheries will implement measures to control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Area 3 and in the nearshore Areas 4 and 5, but will also establish a maximum trap limit of 1,440 traps for vessels qualifying to fish with traps in LCMA 4 and 5 as outlined in the DSEIS selected Alternative 1D. Although not recommended by the Commission, NOAA Fisheries will implement the trap limit to preclude excessive trap fishing effort to the lobster resource and comment received during this rulemaking. NOAA Fisheries 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. A maximum trap limit in Areas 4 and 5 may also alleviate marine mammal and endangered species interactions with lobster trap gear.

There were three other significant alternative solutions considered for this action in addition to the selected alternative 1D. With non-selected alternative 1A, there would be a maximum trap limit and a sliding scale trap reduction schedule associated with each vessel qualifying to fish with traps in LCMA 3, but this non-selected alternative would not establish a maximum trap limit of 1,440 traps for vessels qualifying to fish with traps in LCMA 4 and 5. Under the No Action non-selected alternative 1B, American