

left unchecked, could inadvertently increase the complexity of Federal regulatory involvement and undermine the management of a resource which is harvested predominantly in waters under state jurisdiction.

To address this concern, regulatory action will clarify a procedure by which NOAA Fisheries will consider such recommended conservation equivalent modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s). Specifically, NOAA Fisheries will only consider future Commission conservation equivalency recommendations that are formally submitted to the agency in writing by the Commission and that contain supporting information deemed necessary to address federal rulemaking requirements. NOAA Fisheries believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NOAA Fisheries to respond to recommendations for Federal rulemaking in a more timely and efficient manner. Procedures to address future conservation equivalency recommendations have not changed from procedures identified in the proposed rule (67 FR 287) completed for this action, and are specified in § 697.25(b) of this final rule.

Lobster Management Area boundary clarification

In Addendum I to Amendment 3 to the American Lobster ISFMP, the Commission revised the boundary lines for three of the LCMA's 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. There have been no changes in the boundary descriptions from the proposed rule (67 FR 287) completed for this action. Updated boundary coordinates are specified in § 697.18 of this rule.

Summary of Public Comments Received in Response to the American Lobster Proposed Rule Published on January 3, 2002

The Proposed Rule was published in the **Federal Register** on January 3, 2002, and comments were initially solicited until February 19, 2002. Upon request of the Atlantic States Marine Fisheries Commission (Commission) to allow the Commission's Lobster Board to discuss

the rule at their previously scheduled meeting on February 17 and allow ample time to submit written comments, NOAA Fisheries extended the comment period until February 28, 2002.

Comments were solicited on potential changes to the Federal lobster regulations as described in the Proposed Rule including the proposed implementation of a program to control fishing effort as determined by historical participation in Lobster Conservation Management Areas (LCMA's/Areas) 3, 4 and 5; a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit fishing in New Hampshire state waters; and clarification of lobster management area boundaries in Massachusetts waters. The Proposed Rule also included a technical amendment to the Federal 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, including state waters.

A total of 190 comments were received by NOAA Fisheries in response to the Proposed Rule. Twelve of these comments were submitted by six state fisheries agencies, four fishermen's associations, one state senator, and one state governor. The remainder of the comments were received from members of the general public.

Of the 190 total comments, 125 favored either the entire Proposed Rule or, specifically, historical participation as a means of limiting future access to fish with traps in LCMA's 3, 4, or 5. Thirty-one commenters expressed general support for the Proposed Rule with 26 generally opposed to it. Seventeen individuals wrote in general opposition to historical participation as a means of limiting future access to fish with traps in LCMA's 3, 4, or 5, and 35 comments were received in opposition to the historical qualification criteria as presented in the Proposed Rule. Of the total comments, those that specifically related, either pro or con, to a particular lobster conservation management area are as follows. Relative to LCMA 3, 91 comments were received in support of the historical participation recommendations of the Area 3 LCMT and seven were received in opposition to historical participation in LCMA 3. Three respondents support historical participation as a means to limit access to fish with traps for either LCMA 4 or LCMA 5 or both. No comments were received in opposition to historical participation in LCMA 4 and 5. Twenty comments were received in support of the New Hampshire conservation

equivalent trap allocations while 13 respondents commented in opposition to this measure. One individual commented in opposition to the proposed area boundary changes.

All comments were carefully considered. Specific questions, concerns, opposition to elements of the Proposed Rule, and comments on measures not presented in the Proposed Rule such as gauge increases, maximum size requirements and v-notching, are more thoroughly addressed in this section.

Historical Participation Comments (HP)

HP Comment 1: Ninety-one individuals wrote in support of a historical participation program in Area 3 and 78 additional comments were received in support of the Area 3 trap reduction schedule presented in the Proposed Rule. Three respondents support historical participation for either Area 4 or Area 5 or both.

Response: NOAA Fisheries intends to implement a historical participation effort control program in LCMA's 3, 4 and 5 compatible with that recommended by the Commission and developed by the LCMTs and consistent with the National Standards set forth in the Magnuson-Stevens Act (MSA), with some variation. NOAA Fisheries believes that this management program is a fair and equitable means of implementing the necessary management measures in consideration of LCMT and Commission recommendations.

HP Comment 2: Seven comments were received in opposition to historical participation in LCMA 3.

Response: See response to Comment 1.

HP Comment 3: Three supporters of historical participation recommend that historical participation be implemented but that flat trap allocations be maintained.

Response: Historical participation with fixed trap limits was analyzed as non-selected alternative 1C of the FSEIS (see Section 3 of the FSEIS for more detail). This non-selected alternative would impose a greater economic impact, compared to the selected action, on those Federal permit holders who have historically derived a higher income from increased lobster harvest from fishing a number of traps in excess of the fixed trap limits. Also, this non-selected action would impact twice as many Federal permit holders by requiring them to fish a reduced number of traps, than would the proposed action. Historical trap allocations under the proposed action can be effectively enforced through a trap tagging