

program, similar to what is currently in place coastwide. The non-selected alternative 1C would impose a lower administrative burden since documentation in support of historical trap levels would not need to be submitted or analyzed. On balance, the proposed action is more compatible with the recommendations of the Commission for Federal management.

HP Comment 4: One Commenter suggests that the current Federal trap limits be maintained without historical participation.

Response: This scenario was analyzed and rejected in the FSEIS as non-selected DSEIS alternative 1B. (No Action/Status Quo). By not implementing historical participation in Areas 3, 4 and 5, NOAA Fisheries would not be compliant with the mandate to implement measures compatible with the Commission's ISFMP as mandated in the Atlantic Coastal Fisheries Cooperative Management Act (ACA). Further, the process of analyzing the specific options used the best available data and it is NOAA Fisheries' best estimate that trap reductions are likely under the selected action and that an appropriate reduction in fishing effort will be realized when these measures are implemented. Fixed trap limits without historical participation will not cap trap fishing effort and reduce effort shifts to other management areas and will compromise the ability of the ISFMP to rebuild American lobster stocks and end overfishing of the lobster resource.

HP Comment 5: Eight respondents are opposed to the qualification period for determining eligibility under historical participation that would require a vessel to have participated in the lobster trap fishery in Areas 3, 4 or 5 during the period from March 25, 1991, to September 1, 1999.

Response: NOAA Fisheries believes this qualification period is fair and will result in the qualification of a set of vessels that reflects the historical nature of this fishery. The first date, March 25, 1991, was recommended by the Commission and was originally established as a control date by the New England Fishery Management Council to determine eligibility for future access to the Federal lobster fishery. The second date, September 1, 1999, is the date of publication of an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** that informed the public that NOAA Fisheries was considering that date as a potential cut-off date for determining eligibility for future access to LCMAs 3, 4 and 5. Accordingly, NOAA Fisheries believes that all had notice of the potential for

limited access, that the period is broad enough to include those whose personal circumstances required unavoidable temporary absence (e.g. illness, etc.), and that it will result in the accurate qualification of permit holders based upon historical participation. If the commenters are suggesting that those who fished in these areas prior to 1991 but abandoned the fishery thereafter, NOAA Fisheries disagrees that these permit holders should qualify based on the historical participation model recommended by the Commission. If, however, these commenters are only referring to those who fished both prior to 1991 as well as currently, then NOAA Fisheries believes that these individuals will, in fact, qualify because they likely fished at least one season during the nine years in between. Certainly, NOAA Fisheries received no comments suggesting that long absences were typical, or that they even occurred at all for those who historically fished in these areas.

HP Comment 6: One individual commented that he would support historical participation in Area 3 if the 2,656 maximum trap allocation was reduced to 1,800—traps. Offshore lobstermen have been making a living at the 1,800 trap level since the year 2000 and a return to higher trap allocations will increase the gap between large and small operations and create discontent within the fleet.

Response: If this Commenter is suggesting that historical participation be implemented in Area 3 with a fixed trap limit of 1,800 traps for all qualified vessels, then this concept is the same as the non-selected alternative 1C analyzed in the FSEIS—historical participation with fixed trap limits (see section 3 of the FSEIS for more detail and note the response to HP Comment 3). 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 current 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 selected action. On balance, the selected action is more compatible with the recommendations of the Commission for Federal management.

However, the commenter may be suggesting that the maximum trap allocation associated with historical participation in Area 3 in the NOAA Fisheries selected alternative be substituted with an 1,800—trap maximum subject to annual reductions

under the Commission's Area 3 trap reduction schedule. In this case, the commenter's scenario is likely even more restrictive than non-selected alternative 1C in the FSEIS, since it would subject qualifying vessels to even lower maximum trap allocations.

HP Comment 7: One trawl fisherman, although an advocate of historical participation in the lobster fishery, believes that otter trawl fishermen with a history of catching lobster should also be included in this program and that all gear types be subject to the same possession and access limits.

Response: The LCMTs for Areas 3, 4 and 5 did not develop, and the Commission did not recommend to NOAA Fisheries that non-trap gear be included in the historical participation program. The NOAA Fisheries selected alternative implemented in this final rule is aimed at reducing trap fishing effort in the lobster trap fishery and will not affect Federal lobster vessels that fish with non-trap gear. Under the selected action, non-trap gear lobster vessels will not be required to qualify for access to LCMAs 3, 4 and 5 and will not be excluded from fishing with non-trap gear for lobster in these areas, or any other portion of the EEZ. NOAA Fisheries previously included in the Federal regulations a landing limit of 100 lobster per day/500 lobster per trip of 5 days or more to address lobster fishing effort in the non-trap sector, consistent with the ISFMP.

HP Comment 8: Discrimination against certain gear types is not reasonable, as determined by a recent court decision on monkfish concerning differential trip limits. Therefore, allowing a lower possession limit for non-trap lobster vessels violates this principal established by the court. As such, those who fished non-trap gear during the qualification period and had Federal lobster permits should retain their right to fish traps if they so choose.

Response: This final rule is designed to address trap reductions and no specific recommendations were provided by the Commission concerning Federal action with respect to the lobster non-trap gear sector. See previous response.

HP Comment 9: Two individuals suggest that NOAA Fisheries allow those who have always had a Federal lobster permit but do not qualify to fish with traps under historical participation (i.e., trawl gear fishermen) to have a limited level of participation initially and then have full participation in Area 3 once the resource is rebuilt.

Response: Allowing a baseline number of traps for non-trap gear vessels or for non-qualifying trap vessels