

would compromise the intent of the Addendum I to Amendment 3 of the ISFMP to reduce trap fishing effort in order to decrease lobster fishing mortality. See previous response.

HP Comment 10: One state agency that supports historical participation opposes the transfer of historic trap allocations for Areas 4 and 5 because it may make it more difficult to implement trap reductions through regulations in the future if these permits and associated allocations are transferred (sold). The transfer of history-based trap limits may also create discrepancies between state and Federal regulations if a permit holder who qualifies under the NOAA Fisheries for historical participation program in Area 4, for example, does not qualify under the State's plan which used a 1991–1998 qualification period, which differs from the NOAA Fisheries qualification period.

Response: The comment refers to the concept of individual transferrable quotas (ITQs), a highly controversial management tool and the subject of ongoing Congressional, agency and Commission deliberations. The concept of ITQs was not proposed by the Commission as part of this action and public comment has not yet been proposed by the Commission on this issue. NOAA Fisheries would consider ITQs in future rulemaking if recommended by the Commission at a later time.

HP Comment 11: One state recommends that NOAA Fisheries allow all vessels that qualify for access under the historical participation program receive a baseline number of traps and then also be eligible for their historical allocation. If the Federal permit is subsequently transferred, the associated trap allocation reverts to the baseline level. The most restrictive of state or Federal regulations can't be enforced because NOAA Fisheries issues 880 tags to everyone regardless of their state historical allocation. Then, a long-term framework such as a total allowable trap allocation program for each management area should be considered. That total allocation could be distributed equitably as active fishermen divest from the fishery.

Response: NOAA Fisheries acknowledges the concerns raised by this state and is confident that such issues can be resolved through more effective state and Federal coordination, including revisiting the trap tag memorandums of understanding that NOAA Fisheries has with the fisheries agencies of the major lobster harvesting states.

The State's concept of a baseline allocation for all lobster permit holders, while interesting, could compromise the long-term effectiveness of historical participation effort reduction measures by not restricting access to only those fishermen who have historically fished in specific management areas. The Commission has created a task force to research and provide recommendations to the Lobster Board concerning the "most restrictive" rule. NOAA Fisheries intends to remain involved in future discussions concerning this and other novel management measures such as total trap allocations and trap transferability as the Commission moves forward in addressing these issues for consideration in the ISFMP. NOAA Fisheries did not extensively analyze the State's proposal because it was largely conceptual and is outside the recommended management regime adopted under Addendum I to Amendment 3 to the ISFMP, the focus of this rulemaking and associated analyses, and is believed to be incompatible with the recommendations made by the Commission.

HP Comment 12: One state agency opposed the qualification period for Areas 4 and 5. Since there was no prior notification to the industry prior to the September 1, 1999, control date that a vessel may be restricted from access to certain areas if there was no documented history of fishing in that specific area. Federal lobster permit holders were advised by the New England Fishery Management Council in 1991, that they should purchase a vessel with a documented catch and effort history, could be limited to that history in the future if necessary, and that they could fish anywhere in Federal waters but would be held to the more restrictive of state or Federal regulations.

Response: NOAA Fisheries believes that the qualification period for eligibility under this Final Rule is appropriate and consistent to the Commission's recommendations, to the extent practicable. Even under the State's scenario, a permit holder that followed the Council's recommendation to purchase a vessel with history in a specific area, and if those areas included either one or more of Areas 3, 4 or 5, that vessel would likely qualify for participation under this Final Rule if it actively fished (consistent with the qualification criteria established in this action) in those areas after 1991 and prior to September 1, 1999.

HP Comment 13: A state agency commented that with the September 1, 1999, control date vessels with Federal permits that were purchased from an

area other than Areas 4 or 5, but are now fishing in those areas may not qualify for access under this final rule.

Therefore, NOAA Fisheries should modify the Federal management program to allow any individual who purchased a vessel prior to 1999 and relocated that vessel to a state abutting Area 4 or 5 to qualify for access to those areas based on its fishing and effort history of its previous area. This should not be done for Area 3 since this is a coastwide along the range of the resource and a vessel with an Area 3 fishing history which is relocated to another state at the opposite end of the range and the history would be aptly transferrable to the new state.

Response: NOAA Fisheries believes that the state's suggestion is counter to the intent of the historical participation management regime. The Respondent is stating that vessels that were purchased with a Federal permit with Area 1 history, for example, and began fishing for lobster with traps in Area 4 or 5 after September 1, 1999, be considered eligible for future access in Areas 4 or 5 because they historically fished in Area 1. The historical participation program for lobster in Areas 3, 4 and 5 was crafted by the lobster fishing industry in these areas in response to the need to end overfishing and rebuild stocks of American lobster consistent with the ISFMP and in keeping with the advice of the most current stock assessment. While directed at capping fishing effort to reduce fishing mortality, historical participation is also intended to prevent effort shift into other management areas and allow the historical participants of the fishery in these respective areas to resume fishing their historical trap allocations.

HP Comment 14: A commenter referenced information in an industry newspaper regarding NOAA Fisheries' proposed rule. The article indicated that, based on information available to NOAA Fisheries as of June 18, 2001, NOAA Fisheries expected between 53 and 117 vessels to qualify for Area 3, that 769 vessels elected Area 3 as at least one of the areas they desired to fish in, and that 112 vessels selected only Area 3. The commenter interpreted this to mean that only those that designated exclusively Area 3 would qualify since the 112 estimated to qualify falls within the expected range of qualifiers (53 - 117), and those electing Area 3 in combination with other areas would not qualify.

Response: The data indicating that 769 vessels had selected Area 3 as at least one of the fishing areas, and the estimate of 112 vessels that elected only Area 3, are derived from actual Federal