

fishing permit data from the 2001 Federal fishing year, indicating the area designations of Federal lobster permit holders who indicated traps as a gear type. Prior to that fishing year, Federal lobster permit holders were not required to designate the areas they fished in and, therefore, limited data was available on the actual areas that Federally permitted lobster vessels fished in. Consequently, the newly available area designation information proved useful to NOAA Fisheries in determining a basis for analyzing the potential number of qualifying and non-qualifying vessels based on recent activity and the most current data available. Conversely, the estimate of an expected range of 53 to 117 qualifying vessels was initially used in developing the Draft Supplemental Environmental Impact Statement (DSEIS) in 2000. At that time no Federal permit data was available regarding specific lobster management areas fished on a vessel-specific basis since Federal lobster permit holders were not required to designate lobster management areas. Therefore, this data, provided by the Area 3 LCMT, served as the best available data at that time to determine how many vessels might qualify. The two data sets are, therefore, not mutually exclusive; that is, they support one another in that the LCMT data represent actual fishing activity and the permit data represent both actual and potential fishing activity. Further, NOAA Fisheries will not be basing qualification in Area 3 on the permit area designations as this requirement was established after the September 1, 1999, control date. A vessel that historically fished in LCMA 3 and in, for example, Area 1, will be considered for eligibility under the same criteria as a vessel that historically fished in Area 3 exclusively.

*HP Comment 15:* A small boat operator in Area 3 feels the trap limit is biased in favor of large operators who have historically reaped the greatest amount of the resource.

*Response:* The proposed action is intended neither to punish nor reward past actions, but is a measure directed to ending overfishing henceforth. Additionally, it does not necessarily correlate that those with larger operations (i.e., bigger boats, more traps) harvest a proportionately larger total of the stock than those who fish less traps because of a number of variables relating to gear efficiencies, tending time, area fished, etc. See FSEIS Section V.1. for more detail. To the extent that a vessel historically fished at high trap levels (e.g., more than 3,000 traps) that vessel, may experience greater cut backs

than those vessels fishing less traps, albeit at proportional levels. Finally, allowing eligible vessels to fish their historical trap allocations, up to a maximum level, is compatible with the Commission's recommendations for Federal action in the EEZ.

*HP Comment 16:* One individual opposed historical participation because it will force lobster fishermen to downsize their operations.

*Response:* NOAA Fisheries acknowledges that some fishermen may have to downsize given that this action is an effort reduction measure recommended by the LCMTs and the Commission. However, if a fisher is allocated less traps than currently allowed, then such a reduction will be both proportional and consistent with that vessel's historical effort. Further, downsizing should not be likely unless that fisher increased effort after the control date. See previous response.

*HP Comment 17:* One supporter of historical participation recommends that qualified permits and the associated trap allocations be published in the **Federal Register** to allow any qualified stakeholder to challenge anyone on the list.

*Response:* NOAA Fisheries considered but rejected the Commission's recommendation to publish a notice that would specify individual trap allocations for each Federal permit holder that qualifies to fish LCMA 3, 4 and 5 under the historical participation program because this raises privacy issues, would serve no constructive purpose and may give way to a "witch trial" atmosphere. Further, the respondent's comment, if different from that recommended by the Commission in this regard, offers neither protocol for challenging the eligibility of a permit holder nor supporting reasons for incorporating such a measure into the qualification process.

*HP Comment 18:* One commenter believes that all those who qualify for LCMA 3 be subject to the trap reduction schedule, not just those that have allocations above 1,200 traps.

*Response:* NOAA Fisheries will use the LCMA 3 trap reduction schedule, initially adopted into the ISFMP by the Commission in Addendum I to Amendment 3 and further modified in Addendum II. That schedule did not include provisions for reducing allocations at or below the 1,200-trap mark. This is due to the diminishing utility of returns from such subsequent trap reductions that are not expected to assist in effectively reducing trap fishing effort given the additional economic impacts to qualified fishermen. Further,

this measure wasn't recommended by the Commission for Federal action and, therefore, implementation through this final rule would result in inconsistencies with the Commission's approved trap reduction measures.

*HP Comment 19:* One commenter recommended that only logbooks be used as the basis for qualifying permit holders and that no one be admitted based solely on an affidavit to substantiate history.

*Response:* Due to the varying degree to which certain types of documents were historically used throughout the fishery, the proposed action gives the potential qualifier flexibility in document submission. The use of Federal Vessel Trip Report (VTR) documents to support historical fishing effort (number of traps fished and location) in the lobster fishery will be possible for the majority of the Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A review by NOAA Fisheries indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62percent) 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). Therefore, allowing more than just logbooks to be submitted will provide more flexibility for Federal permit holders given the inconsistencies in logbook reporting requirements, will avoid bias on those who held only a Federal lobster permit during the eligibility period, and will result in a more accurate qualification process.

*HP Comment 20:* Seventy-eight comments were received in support of the accelerated trap reduction schedule for LCMA 3.

*Response:* NOAA Fisheries incorporated the revised Area 3 trap allocations and the accelerated 4-year sliding scale trap reduction schedule into the final rule to be compatible with the trap reduction schedule as updated in Addendum II to Amendment 3 of the ISFMP. The updated schedule reduces the maximum trap allocation in Year 1 from 2,920 to 2,656 traps and accelerates the sliding scale trap