

for qualifiers into Area 3 should be of a smaller range to avoid a disadvantage to smaller operations that will have to work harder to be competitive against those with larger allocations.

Response: NOAA Fisheries intends to execute the historical participation program fairly and to not give any single type of business an unfair competitive advantage over another. Regarding the commenter's point concerning Area 3 trap allocations, NOAA Fisheries points out that number of traps fished, not necessarily vessel size, is the factor that will determine the initial trap allocation of a qualified vessel. The historical participation program will not discriminate against small vessels. It will allow any vessel with demonstrated participation during the qualification period to fish its historical allocation of traps up to 1,440 in LCMAs 4 and 5, and up to 2,656 (with subsequent reductions) in LCMA 3, in order to most accurately represent the historical aspects of the trap fishery. See previous response. Further, NOAA Fisheries notes that it does not necessarily follow that smaller operators have to work harder to compete against larger operations that may have higher business overhead and other expenses.

HP Comment 30: A 25-year lobster diver with a state and Federal lobster permit believes that history in the fishery should be based on participation in general, not just on numbers of traps fished. This fisherman is concerned that as age forces him to move from diving, his opportunity to fish with trap gear may be lost since he has no trap fishing history.

Response: The selected action is intended to cap effort in the lobster trap fishery in LCMAs 3, 4 and 5 in order to rebuild growth-overfished stocks of American lobster, while reflecting the historical make-up of the trap fishery as such occurs. Non-trap fishermen, such as those in the otter trawl and dive fisheries, have been, alternatively, regulated by possession limits and will continue to have access to any or all LCMAs. Further, present information suggests that there is a market for vessels and their accompanying Federal lobster permits. Therefore, non-qualifiers into the trap fishery in Area 3, 4 and 5 still have the option to purchase a permit that has previously qualified to fish trap gear in these areas.

HP Comment 31: One individual commented that consideration should be given to permit holders who could not fish during the qualification period due to illness.

Response: Comments received by NOAA Fisheries do not indicate that long absences in the trap fishery,

particularly for 8 or more years, were typical. Regardless, the intent of the historical participation management program is to decrease fishing mortality by capping and reducing trap fishing effort, while allowing those permits that currently, and have historically, fished for lobster with trap gear in these areas to continue to do so. NOAA Fisheries believes its qualification period to be quite fair and will result in qualification based upon historical participation in the area fisheries. The first date of the qualification period, 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 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 (i.e., illness, etc.), and that it will result in the accurate qualification of permit holders based upon historical participation.

HP Comment 32: One individual and a state agency commented that the 25,000 lb (11,340 kg) landing requirement for Area 3 is too high.

Response: The 25,000 lb (11,340 kg) landing requirement is intended to be used as an eligibility requirement for LCMA 3 only, and was specifically recommended as an appropriate measure of economic reliance on lobstering by the industry experts on the Commission's Area 3 LCMT. In opposition, NOAA Fisheries notes that the commenters did not indicate why they disagree with these experts. Under the NOAA Fisheries proposed action, these landings may have occurred from anywhere within the range of the lobster resource, not just LCMA 3. NOAA Fisheries has not included a landing requirement for determining eligibility in LCMAs 4 and 5. Available information indicates that LCMA 4 and 5 fishermen generally participate in a directed trap fishery for lobster on a seasonal basis and rely on other fisheries throughout the year in addition to lobster. For example, only a relatively small percentage of the lobster resource has been historically harvested from LCMAs 4 and 5, which is consistent with seasonal fishing activity. Accordingly, a 25,000 lb (11,340 kg)

landing threshold may unnecessarily restrict and not accurately reflect the historical nature of the fishery in those areas. Such is not the case, generally, for historical participants of the Area 3 offshore fishery who tend to fish directly for lobster on a more full-time basis throughout the year.

HP Comment 33: An Area 6 Federal permit holder opposes historical participation because it will prevent him from being able to shift into Federal waters especially now after Long Island Sound lobster die-off has substantially reduced lobster abundance in that area. Other gear types can move freely, and lobster trappers should be able to do the same.

Response: NOAA Fisheries sympathizes with all those affected by the Long Island Sound lobster die-off and notes that it helped administer Federal funds to assist those affected who sought assistance. However, NOAA Fisheries intends to adhere to the control dates and qualification periods as proposed in the FSEIS to decrease fishing mortality by reducing fishing effort in LCMAs 3, 4 and 5. To do otherwise as the commenters suggest would create an unmanageable exemption incompatible with the lobster ISFMP that could significantly undermine the effectiveness of the proposed action. These control dates provided notice and are, in fact, more liberal than those dates originally proposed by the Commission.

HP Comment 34: One commenter states that several fishermen who fished for lobster in Long Island Sound purchased Federal lobster permits in 1999 after the die-off, now will not be able to fish in LCMAs 3, 4 and 5 because they won't meet the eligibility criteria.

Response: NOAA Fisheries believes that the selected action set forth in this final rule is fair, legal and appropriate. Further, depending on when, and the extent to which these individuals began fishing in Areas 3, 4 or 5 in 1999, there still remains the potential to qualify based upon historical participation depending on the individual circumstances. See previous response.

HP Comment 35: One state agency (New Jersey) recommends an extension of the NMFS September 1, 1999, control date and disagrees with the proof of fishing 200 lobster traps over a 2-consecutive month period as an eligibility criterion for historical participation and recommends documentation by annual landings instead.

Response: As to the control date, see response to HP Comment 31. With regard to the 200 lobster traps fished over a 2-consecutive month period