

criterion, the LCMTs recommended, and the Commission adopted this criterion as part of Addendum I. NOAA Fisheries is required to implement regulations that are compatible with the Commission's ISFMP. Third, the State of New Jersey offers no evidence to suggest that landings would be a more accurate indicator of trap fishing effort, which is the focus of New Jersey's criterion. See responses to HP Comments 12, 13 and 31.

HP *Comment 36*: A state recommends that NOAA Fisheries replace the 1,440–maximum trap allocation in Areas 4 and 5 with 3,250–maximum trap allocation since many vessels that historically fished in those areas had fished more than 1,440 lobster traps.

*Response*: See responses to HP Comments 23 and 24.

HP *Comment 37*: Historical participation will negatively affect value of vessels and permits for those who don't qualify and will benefit only the few fishermen that have access to the resource in certain areas.

*Response*: This comment is hypothetical and engages in characterizations, although NOAA Fisheries acknowledges that any limited access program could, in certain instances, negatively affect the value of non-qualifying permits and positively affect the value of qualifying permits. However, the commenter is implying an element of unfairness, which NOAA Fisheries disagrees with (see HP Comments 28 and 29).

HP *Comment 38*: One commenter stated that current fixed trap limits are working and only more effective enforcement of the trap limits is needed.

*Response*: Fixed trap limits in the EEZ portions of Areas 3, 4 and 5 were implemented as an interim measure by NOAA Fisheries to cap effort in these areas until the concept of historical participation could be adequately analyzed and to allow for public comments on the issue. The latest stock assessment information indicates that the lobster resource is overfished and the measures adopted in the ISFMP, including historical participation in Areas 3, 4 and 5, were adopted to end overfishing and rebuild the lobster resource. Further, the Commission has adopted a trap tagging requirement to enforce trap limits coastwide. NOAA Fisheries has implemented this measure and will carry this forward as a means of enforcing historical trap allocations, with effective results expected. NOAA Enforcement has consistently cooperated with state marine enforcement agencies to enforce the trap limits with commendable results and will continue to do so.

HP *Comment 39*: Two individuals commented that NOAA Fisheries should cooperate more with state agencies in an effort to better enforce trap limits.

*Response*: As stated in the previous response, NOAA Fisheries intends to continue to cooperate with state and other Federal agencies in enforcing trap limits. NOAA Fisheries has proactively pursued such a relationship by initiating and continuing communications with state agencies and the Commission regarding the implementation and enforcement of trap limits through the coastwide trap tag program. This action has resulted in the development of memorandums of understanding between NOAA Fisheries and several of the lobster producing states to facilitate the issuance and enforcement of trap tags and to promote the exchange of the resulting data between agencies. However, NOAA Fisheries believes that this issue extends beyond the mere state/Federal relationship. The states must also cooperate with each other and with the Commission to ensure that both the stated directives and unstated intents of Amendment 3 and Addenda I–III are carried out.

HP *Comment 40*: The owner of a Federal lobster permit with Area 3 history may not qualify because although history was retained, he does not have the records to document it since he did not own the vessel at that time and previous owner will not authorize NOAA Fisheries to release any related documentation. This permit holder recommends that NOAA Fisheries use data from previous permit holders to qualify vessels while keeping that information confidential, allow affidavits from fishermen and dealers, implement less restrictive documentation requirements for vessels purchased at state or Federal auctions between 1991 to 1999, consider a hardship clause in consideration of years fished, capital investments, and economic impact on the community, use port agent data or sworn statements from Port Agents regarding permit activity during the qualification period.

*Response*: NOAA Fisheries acknowledges that, due to a lack of mandatory reporting for all Federal lobster vessels and in consideration of confidentiality, some permit holders who should qualify may have difficulty obtaining the necessary documentation. As a preliminary matter, NOAA Fisheries urges permit holders in this situation to work with the permit's previous owners to get the necessary documentation. NOAA Fisheries, however, is developing a moratorium

rights qualification system to track the history of a permit that submitted Federal VTR data. That information may be disseminated to the current permit holder without breaching confidentiality and may be used by the current permit holder to substantiate the permit's eligibility. As a result of this final rule, the Federal lobster regulations at 50 CFR 697.4(a)(7)(vi)(vii) and (viii) identify the explicit types of documentation for Areas 3, 4 and 5, respectively, that are acceptable to demonstrate the permit's lobster trap fishing history, and consider the recommendations of the industry and recognize the inconsistent reporting requirements amongst Federally permitted vessels. With respect to consideration of hardship, NOAA Fisheries has addressed this in the Final Rule by implementing a documentary hardship provision as a basis for appeal. This would apply in such cases where a permit holder applies for access to Areas 3, 4 or 5 and is denied because insufficient documentation in support of the qualification criteria is provided. If the necessary documentation no longer exists due to no fault of the permit holder, he/she may submit affidavits from Federal permit holders attesting to the permit's fishing activity and the nature of the loss of the documentation as specified in 50 CFR 697.4(a)(7)(x).

HP *Comment 41*: Two commenters suggest that NOAA Fisheries assure that those who bought a vessel with history but the associated documentation is not available be able to get the vessel's full historical allocation.

*Response*: NOAA Fisheries devised a qualification program that would consider the potential difficulties that some permit holders may have in locating and compiling existing documents. First, the final rule incorporates flexibility as to the type of documentation allowable, thus increasing the likelihood that an applicant will have one category of document if not another. Second, the final rule establishes a long qualification period (1991–1999), thereby increasing the opportunity that a qualified applicant will have documents for at least one of the years. Third, the application submission and extension timeline is purposefully broad to provide applicants ample time to compile and submit documentation during the application period if they do not have ready access to the necessary information. Additionally, frequent and timely notification has been provided to permit holders and the public since September 1, 1999, that NOAA Fisheries was considering a historical