

implement closed areas in other LCMAs that contain deep water canyon environments, such as in LCMAs 3 and 5. Therefore, closed areas were not further analyzed as a potential management option outside the scope of the Commission's recommendations in Addendum I and are not incorporated as an element in this Final Rule. Addendum III to Amendment 3 of the ISFMP does contain provisions for a maximum size requirement in LCMAs 4 and 5 if deemed necessary. NOAA Fisheries will analyze these measures under a separate rulemaking action.

New Hampshire Conservation Equivalency Comments (NH)

NH Comment 1: Twenty comments were received in support of the New Hampshire conservation equivalent trap allocations and thirteen respondents commented in opposition to this measure.

Response: The best available information supports the Commission's finding that New Hampshire's proposal is a conservation equivalent to current management measures. In fact, available information suggests that it will actually reduce effort. As such, this action satisfies NOAA Fisheries' legal obligations insofar as it is consistent with the National Standards and is supportive of the Commission's ISFMP that allows conservation equivalency. Accordingly, the NOAA Fisheries' final action will allow a New Hampshire full commercial license holder fishing aboard a federally permitted lobster vessel to fish an additional 400 lobster traps in New Hampshire state waters. This action will not result in more traps fished in the Federal waters of LCMA 1.

NH Comment 2: Three individuals stated that the New Hampshire two-tiered trap limit that would allow full commercial lobster license holders in New Hampshire to fish up to 1,200 traps in New Hampshire state waters violates National Standard 4 of the Magnuson-Stevens Fishery Conservation and Management Act.

Response: As a preliminary matter, New Hampshire full commercial license holders can fish 1,200 traps irrespective of Federal action because the ASMFC's Lobster Board has already approved New Hampshire's conservation equivalency request and the state has already implemented the program. In any event, National Standard 4 is not triggered because this final rule involves no Federal allocative measures. That is, this final rule does not create New Hampshire's equivalency program, but merely waives the most restrictive Federal regulatory language in order to prevent the potential for trap

proliferation that would result if NOAA Fisheries took no action. In other words, this final rule simply reflects the Federal Government's conservation response to a formal conservation equivalency recommendation made by the ASMFC pursuant to the Atlantic Coastal Act. Put another way, this final rule does not endorse or advance the program's measures so much as it deals with them.

The current 800-trap limitation existing in the EEZ in Area 1 remains unchanged and would not allow any additional lobster traps in Federal waters. In fact, analysis of available information suggests an actual decrease in traps fished in Area 1, both in the EEZ and in New Hampshire State waters. As such, the state measure is self-contained and reflects an internal repositioning of traps within New Hampshire borders that is not expected to have any extraterritorial impacts or to impact citizens of other states. In other words, to the extent, if at all, that the increase to 1,200 traps benefits some New Hampshire permit holders (see FSEIS Section V.1. for discussion on economic effects of trap limitations), then that benefit is not excessive and is internally counterbalanced by the New Hampshire permit holders whose trap limits will decrease to 600 traps. Accordingly, the measure does not differentiate among citizens in different states (which could also seek conservation equivalency from the Lobster Board) or advantage the citizens of one state over another. Overall, conservation benefits are expected in furtherance of National Standard 1 with no corresponding degradation of the standards set forth in National Standard 4.

NH Comment 3: One commenter opposed the New Hampshire conservation equivalent trap measures because it will benefit only 22 Federal permit holders from New Hampshire and questions its effectiveness in contributing toward rebuilding lobster stocks.

Response: The New Hampshire two-tiered trap allocation program was determined to be conservation equivalent to the fixed trap limits in LCMA 1 by the Commission's Lobster Board. NOAA Fisheries' analysis concurs with this finding. In fact, analysis suggests that the measure will not simply be equivalent, but will actually benefit the resource by decreasing the overall number of traps in the water. As such, those not participating in this program also gain potential relative benefit. The most recent information provided by New Hampshire Fish and Game Department

supports this premise: Recent data indicates that this measure is accountable for a reduction in the number of traps fished by New Hampshire fishermen to date, compared to what would currently be allowed under the fixed trap limits in area 1, despite the absence of a cap on limited licenses. Specifically, according to updated information provided by New Hampshire Department of Fish and Game for the period between 2000 and 2002, the number of limited licenses increased by approximately 11 percent, or 30 licenses. However, since these licenses are capped at only 600 traps, it resulted in 1,800 additional traps into the fishery, rather than 2,400 that would otherwise have been allowed if the limited license category was allowed the standard 800 traps. In any event, NOAA Fisheries recognizes that any state can utilize the adaptive management provisions of the ISFMP to present a conservation equivalent alternative to the approved management scenario, as applicable.

NH Comment 4: A Maine lobsterman stated that he had to reduce his traps by 400 three years ago when the state of Maine implemented a trap limit and now would not want to see a New Hampshire fisherman be able to fish that extra 400 traps under New Hampshire's conservation equivalent trap allocation program.

Response: The Federal trap limit in Area 1 remains at 800 traps regardless of whether an individual resides in the State of Maine or the State of New Hampshire. Individual states may, however, choose to implement more restrictive measures or conservationally equivalent measures, which is the scenario currently described by the commenter. The New Hampshire measure is a state measure approved by the Commission's Lobster Board of which the State of Maine is a member. In any event, NOAA Fisheries' best information suggests that the measure will result in an overall reduction of traps being fished by New Hampshire lobster fishers. Accordingly, while a very few New Hampshire permit holders may choose to fish 400 extra traps, an overall reduction in traps in the area should result that would benefit Maine lobster fishers. Certainly, if NOAA Fisheries did not approve the measure, New Hampshire's conservation equivalency program would nonetheless exist. That is, the Lobster Board already approved New Hampshire's conservation equivalent measure and the State of New Hampshire already promulgated regulations consistent therewith before issuance of this final rule. As such,