

disallowance of the measure in this final rule could result in trap proliferation if New Hampshire full license holders retained their 1,200-trap state permit and sold their Federal permit to another.

NH Comment 5: A state commented that with the uncertainty surrounding the impact of the proposed New Hampshire trap limit conservation equivalency on the resource, the negative socio-economic impact on Maine and Massachusetts fishermen should become the deciding factor. Allowing this measure to go forward will undermine support for the Area 1 plan and may lead to additional requests for exemptions that may reverse progress to date.

Response: NOAA Fisheries acknowledges the right of New Hampshire or any other state to utilize the process for alternative state management regimes outlined in the law and Amendment 3 of the ISFMP to address specific socio-economic or industry-related situations. Importantly, New Hampshire's conservation equivalency proposal is a self-contained measure that is not expected to create extra-territorial responsibilities for her sister states or the Federal Government, nor is it expected to have any extra-territorial impacts. Overall, if there is an impact as a result of the measure, it should be positive for Maine and Massachusetts fishers since overall trap usage should decrease. However, NOAA Fisheries does note that continued creation and approval of conservation equivalent measures by the Commission could, depending on the measure, unintentionally increase the complexity of the present management system, burdening all parties, including sister states, industry and the Federal Government, and thereby greatly decreasing the efficiency and effectiveness of the overall ISFMP.

NH Comment 6: Allowing the New Hampshire conservation equivalency plan would be waiving the most restrictive rule in the ISFMP that requires lobstermen to fish the most restrictive of trap limits regardless of whether they fish in state or Federal waters.

Response: 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. In the meantime, NOAA Fisheries

acknowledges the right of New Hampshire to implement an alternative trap allocation system in state waters only, as approved by the Commission's Lobster Management Board, and consistent with the adaptive management measures set forth in the ISFMP.

NH Comment 7: The New Hampshire plan has greatly limited the number of traps fished by New Hampshire lobstermen. If it hadn't been implemented there would be about 20,000 traps fished by New Hampshire lobstermen compared to the approximately 10,000 that are currently estimated to be fished.

Response: Recent data from the New Hampshire Fish and Game Department indicate the state's plan reduces the potential number of traps fished in New Hampshire waters. See response to NH Comment 4.

Area Boundary Changes (AB)

AB Comment 1: One individual wrote in opposition to the proposed revisions to the Area 1, Area 2, and Outer Cape Area boundary lines as recommended by the Commission.

Response: NOAA Fisheries will implement compatible boundary lines for Area 1, Area 2 and the Outer Cape Area to maintain consistency with the ISFMP and to avoid confusion if the Federal and Commission area boundaries and their associated lobster management measures differ.

Gauge Size Comments (GS)

GS Comment 1: Nine individuals support some manner of a gauge increase.

Response: NOAA Fisheries will analyze minimum gauge size increases along with other measures adopted by the Commission in Addenda II and III to Amendment 3 of the ISFMP in a future Federal rulemaking package. The impacts of a gauge increase in Federal waters will require a thorough examination of the biological and socio-economic impacts of such a measure, including the interstate and U. S.-Canada trade implications.

GS Comment 2: Three individuals support a maximum carapace size requirement.

Response: The Federal lobster regulations currently do not allow a vessel fishing in or permitted to fish in LCMA 1 to possess lobster larger than 5 inch (13 cm) carapace length. Potential implementation of maximum gauge sizes as they pertain to those measures adopted in Addenda II and III to Amendment 3 of the ISFMP will be addressed by NOAA Fisheries in a separate rulemaking action.

GS Comment 3: One individual is opposed to a gauge increase in Area 1.

Response: Currently, the ISFMP does not include a requirement for gauge increases in LCMA 1 so this issue is not addressed in this Final Rule.

Vessel Upgrade Comments (VU)

VU Comment 1: One person suggested that NOAA Fisheries allow a 10–20 percent increase in vessel length and horsepower.

Response: NOAA Fisheries does not intend to limit lobster vessel size or horsepower requirements since these parameters are not indicative of fishing effort, as are numbers of traps.

General Comments (GC)

GC Comment 1: One commenter suggests a closed lobster season beginning December 1 rather than January 1. Another commenter suggests closed seasons from December 1 through March 1.

Response: Closed seasons were not included in the Commission's recommendations for Federal action in the EEZ in Addendum I and, therefore, were not analyzed as part of this rulemaking action. An annual closed season from January 1 through March 31 was adopted by the Commission in Addendum III to Amendment 3 of the ISFMP for the Outer Cape Management Area only. The Commission has recommended that NOAA Fisheries implement compatible measures into the Federal regulations, however, this will be addressed in future rulemaking.

GC Comment 2: Two individuals believe the rule violates the Magnuson-Stevens Act.

Response: NOAA Fisheries notes that the commenters make no specific reference as to how the proposed rule violates the MSA. Federal American lobster management is authorized under the Atlantic Coastal Act which requires that NOAA Fisheries, acting on behalf of the Secretary of Commerce, implement management measures that are compatible with the Commission's ISFMP and consistent with the National Standards set forth in the MSA. The manner in which this final rule addresses all 10 of the National Standards is detailed in the Classification section of this final rule and in section V.(5) of the FSEIS, Relationship to Other Applicable Law.

GC Comment 3: One commenter recommends that NOAA Fisheries implement a buy back program to allow industry members a way out of the business.

Response: Under section 312(a) and (b) of the MSA, the Secretary of Commerce may make funds available to