

assist the fishing industry, such as a buy back program. This may only occur if the Secretary, at his or her discretion, or at the request of the Governor of an affected state, declares that a commercial fishery failure has occurred as the result of a fishery resource disaster. This was done in 1999 to alleviate impacts to commercial lobster fishermen in Connecticut and New York due to the Long Island Sound lobster fishery disaster (see responses to HP Comments 33 and 34). Although all three stocks of American lobster are overfished, it is not evident that a commercial fishery failure is occurring in the lobster fishery in Areas 3, 4 or 5, which are the subject of this final rule. The Secretary of Commerce may consider such an option if warranted under the requirements of Section 312(a) of the MSA. Regardless, current Federal lobster permits remain transferrable if the permitted vessel is sold to another individual or entity. Therefore, there is nothing that would prohibit, under current Federal regulations, a permit holder from selling his or her vessel and Federal lobster permit and gear to a willing buyer.

*GC Comment 4:* One opponent of historical participation states that the LCMTs don't represent the entire body of lobstermen.

*Response:* The LCMTs were established under Amendment 3 of the ISFMP, each acting in an advisory role to the Commission's Lobster Management Board. Their participation in the lobster management process is intended to ensure that the industry has a voice in how the resource is managed and allows the diverse nature of individual fishing operations, economic considerations and the unique issues of the specific areas to be addressed in the lobster management program. As mandated by the ISFMP, each LCMT must be comprised of a specific number of members from the associated states that represent the fleet in that particular management area. NOAA Fisheries is obliged under the Atlantic Coastal Act to implement regulations that are compatible with Commission recommendations as they relate to the ISFMP and includes acknowledging the LCMT's as a legitimate advisory body of the Commission. NOAA Fisheries suggests that any member of the lobster industry interested in becoming involved in the LCMT process contact their state fisheries agency or the Commission's American Lobster ISFMP Coordinator to inform them of that interest.

*GC Comment 5:* One individual commented that there is no scientific

data to suggest that the lobster stock is depleted.

*Response:* The latest lobster stock assessment conducted in March 2000 indicates that all three stocks of American lobster are growth overfished and overfished according to the overfishing definition in the ISFMP. A subsequent peer review of that assessment by an external stock assessment peer review panel supported the conclusions of the 2000 stock assessment and determined that additional regulatory measures are necessary. The review panel also concluded that, although the resource is not recruitment overfished, recruitment overfishing is occurring, which could result in recruitment failure. The panel further noted that shifts in fishing effort from nearshore areas to offshore areas has occurred. Allowing such effort shifts to continue could negatively impact lobster egg production. Refer to FSEIS Section I.1, Science, and Section IV.3.(B), Stock Assessment. The measures in the Commission's ISFMP, including historical participation for Areas 3, 4 and 5, have been determined to be effective in ending overfishing and rebuilding the lobster resource. Further, more recent anecdotal information and reports from state agencies indicate that lobster catches in southern New England are on the decline and the presence of shell disease is increasing. A massive die-off in Long Island Sound in 1999, although not proven to be directly related to overfishing, has substantially reduced lobster abundance, especially in western Long Island Sound.

#### Marine Mammal Comment (MM)

*MM Comment 1:* One individual cannot understand why NOAA Fisheries would allow a significant number of vessels to double their trap allocations compared to current allocations, given the increasing concern for protecting right whales.

*Response:* The selected action is anticipated to at least cap, and potentially reduce, levels of trap fishing in Areas 4 and 5 and reduce trap fishing levels in Area 3. Therefore, this should diminish the effects of trap gear on right whales. Further, the Atlantic Large Whale Take Reduction Plan is a major component of NOAA Fisheries' activities to cetaceans listed under the Endangered Species Act using a multi-faceted approach that includes fishing gear modifications and time-area closures, supplemented by gear research to reduce the risk of entanglement of whales in fixed fishing gear.

#### V-notching Comments (V-notch)

*V-notch Comment 1:* Six comments were received in favor of v-notching.

*Response:* Current Federal lobster regulations at 50 CFR 697.7 prohibiting the retention, landing or possession of any v-notched female American lobster. Based on recommendations by the Commission in Addenda II and III to Amendment 3 of the ISFMP, NOAA Fisheries is in the process of analyzing the mandatory v-notching requirement for Areas 1 and 3, and the zero-tolerance v-notch definition for Area 3, adopted in the ISFMP. These measures will be addressed in a separate rulemaking action.

*V-notch Comment 2:* NOAA Fisheries should rectify the discrepancy between the Maine V-notch regulation and the Federal v-notch regulation. The Federal regulation is too broad and encompassing and only applies to lobsters that have recently been notched.

*Response:* NOAA Fisheries believes that the current Federal definition of v-notch is sufficient and is enforceable since it provides specifics on what is recognized as a v-notch. This definition is consistent with that adopted by the Commission in the ISFMP. NOAA Fisheries may look more closely at this issue in future rulemaking actions when Commission recommended measures such as zero-tolerance v-notching and mandatory v-notch requirements are analyzed.

#### Changes from the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the qualification and appeals process for determination of historical participation in Areas 3, 4, and 5; to respond to public comments; and to increase the period, from 30 to 45 days, during which appeals may be made subsequent to any associated notice of denial of permits for trap fishing in these lobster management areas. Changes were made as follows:

In § 697.2, definitions are added for "Conservation equivalency" and "Qualifying year."

In § 697.4, paragraph (a)(7)(ii) is revised to describe how qualification for historical participation will impact annual permit renewal procedures for fishing with traps in Lobster Conservation Management Areas 3, 4, and 5.

In § 697.4, paragraphs (a)(7)(vi), (a)(7)(vii), and (a)(7)(viii) were revised to clarify and restrict the type and nature of documentation that is required to meet qualification and trap allocation criteria for participation in the Area 3,