

Area 4, and Area 5 lobster trap fishery; to extend the timeframe during which applicants can submit associated applications to qualify for trap allocations; to re-align qualification criteria and documentary proof under two major sub-headings; to require the submission of an affidavit (previously proposed to apply only to the certification of the number of traps fished in Area 3, Area 4, and/or Area 5 during the qualifying year) that attests that the applicant meets the qualification and trap allocation criteria for participation in the Area 3, Area 4, and/or Area 5 trap fishery, and that the supporting information being provided is truthful, accurate, and was created contemporaneously in the qualifying year; and to allow the submission of tax returns and sales receipts to the extent that such documents support the requested trap allocation(s) - to help demonstrate the number of traps fished in each lobster management area during the qualifying year.

In § 697.4, a new provision at (a)(7)(vi)(C)(5), (a)(7)(vii)(C)(4) and (a)(7)(viii)(C)(4), was added to require a signed cover letter along with the needed documentation which potential qualifiers must provide for explaining the nature of proof being submitted for qualification in the lobster trap fishery in Area 3, Area 4, and/or Area 5.

In § 697.4, paragraph (a)(7)(x) was deleted, and associated provisions for notification by NMFS were moved to paragraphs (a)(7)(vi)(C)(8), (a)(7)(vii)(C)(7), and (a)(7)(viii)(C)(7).

In § 697.4, paragraph (a)(7)(xi) is redesignated as (a)(7)(x) and revised to modify procedures for appeal of denial of an American lobster limited access request for use of trap gear in Area 3, Area 4 and/or Area 5, to allow only two grounds for appeal and to change the period of appeal from 30 days to 45 days from the date of the notice of denial.

In § 697.19, paragraphs (a) and (b) were revised to change the implementation date for limited access changes in the Area 3, Area 4, and Area 5 lobster trap fishery from May 1, 2002 to August 2, 2003.

In § 697.19, paragraph (b)(2) was revised to change the implementation period for the referenced Area 3 trap reduction schedule from fishing years 2002–2003 to fishing years 2003–2006.

In § 697.19, the cross reference to lobster trap allocations approved by the Regional Administrator for qualifiers in Area 3 in paragraph (b)(2) was changed from 697.4(a)(7)(vii), incorrectly referenced in the proposed rule, to § 697.4 (a)(7)(vi) and the sliding maximum trap limits identified in Table 1.

In § 697.19, paragraphs (e) through (g) were redesignated as paragraphs (f) through (h), respectively, and a new paragraph (e) was added to explain that the Regional Administrator may issue temporary interim permits prior to completion of NMFS review of qualification applications for the Area 3, Area 4, and/or Area 5 lobster trap fishery, and how this may affect allowable levels of trap fishing effort prior and subsequent to the NMFS review.

In § 697.25, the definition for “Conservation equivalency” is moved to § 697.2, and requires that, for consideration by the Regional Administrator of associated recommendations by ASMFC for American lobster, specific supporting information be provided.

#### Classification

The Assistant Administrator for NOAA Fisheries determined that the measures specified in this final rule are necessary for the conservation and management of the American lobster fishery and that these measures are consistent with the Atlantic Coastal Act, the Magnuson-Stevens Act, and other applicable laws.

The selected management actions in this final rule have been determined to be significant for the purposes of Executive Order 12866.

#### National Environmental Policy Act

NMFS prepared a Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) for this action; a notice of availability was published in the **Federal Register** on November 24, 2000 (65 FR 70567). Public comments on the DSEIS/RIR/IRFA were addressed, and NMFS prepared a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) following publication of a proposed rule on lobster management in Federal waters in the **Federal Register** on January 3, 2002 (67 FR 282). A notice of availability for the FSEIS/RIR was published in the **Federal Register** on November 8, 2002 (67 FR 68128). NOAA Fisheries determined that implementation of this action is environmentally preferable to the status quo. The FSEIS/RIR/FRFA demonstrates that, notwithstanding potential, yet unknown, changes in fishing practices and behavior, this action contains management measures able to mitigate, to the extent possible, overfishing and begin to rebuild stocks of American

lobster; protect marine mammals and sea turtles; and provide economic and social benefits to the lobster industry in the long term.

The Final Regulatory Flexibility Analysis (FRFA), prepared in compliance with the Regulatory Flexibility Act, describes the economic impacts of the management measures on small entities. A summary of the FRFA follows. Reasons why the action is considered, as well as the objectives for this final rule, are described in the FRFA and the preamble to this final rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. A description of and an estimate of the number of small entities to which this final rule will apply is discussed below.

#### Public Comments

One hundred and ninety comments were received on the measures contained in the proposed rule. Because all entities affected by this final rule are small entities, all of the comments and responses are considered to pertain to small entities. While none of the comments specifically referred to the IRFA, there are eight comments that discuss economic impacts on small entities in the Comments and Responses portion of this final rule (see comments numbered - HP Comment 6, HP Comment 18, HP Comment 32–34, HP Comment 37, NH Comment 2, and NH Comment 5).

In this section, the economic impacts of the selected regulatory action and the non-selected alternatives potential economic effects are examined from the perspective of the individual firm or business. For purposes of this section, a small entity is defined as being any vessel with gross sales not exceeding \$3.5 million annually, consistent with that of the size standards of the Small Business Administration. Under this definition, all entities that are permitted to fish and that participate in the American lobster fishery are small. The economic impacts associated with the selected management actions and the non-selected alternatives are described in the FSEIS, and are incorporated herein by reference. The selected regulatory action and the non-selected alternatives would affect only those entities that hold a Federal lobster permit.

#### Number of Small Entities

Based on permit application records analyzed at the time the environmental impacts of this action were completed, a total of 2,901 vessels held Federal lobster permits. Of these vessels, 18 held only charter or head boat non-trap