

and a formal intra-service section 7 consultation with NOAA Fisheries' Northeast Region Protected Resources Division.

Informal consultation on the actions described in this final rule concluded on March 1, 2001, that parts of the action, as proposed, were likely to adversely affect ESA-listed right whales, humpback whales, fin whales, sei whales, sperm whales, leatherback sea turtles and loggerhead sea turtles as a result of displacement of lobster trap gear from LCMAs 3, 4, and 5 to nearshore lobster management areas where these species are known to occur.

Formal intra-service ESA section 7 consultation on NOAA Fisheries' implementation of new management measures described in this final rule was initiated on July 11, 2001. The most recent section 7 consultation for this action is based on information developed by NOAA Fisheries' State, Federal and Constituents Programs Office, and other sources of information.

The formal section 7 consultation concluded on October 31, 2002, that the selected management measures described in this final rule are not likely to jeopardize the continued existence of right whales, humpback whales, fin whales, sei whales, or sperm whales, loggerhead or leatherback sea turtles. Critical habitat for right whales has been designated within the action area, but the action is not likely to affect that critical habitat. Therefore, the management measures described in this final rule are not likely to destroy or adversely modify designated critical habitat.

The management measures described in this final rule are expected to result in a reduction of effort as a result of limiting participation in LCMAs 3, 4 and 5 and requiring trap reductions over a 4-year period for LCMA 3. Protected species known to become entangled in lobster trap gear, namely right, humpback, and fin whales as well as leatherback sea turtles, are expected to benefit from trap gear reductions in LCMAs 3, 4, and 5. Historic participation in LCMAs 3, 4, and 5 may also result in a shift in effort to nearshore areas. However, additional entanglements of ESA-listed cetaceans and sea turtles are not expected given that the overall effort in the fishery will decrease and there are management measures in place to reduce the number and severity of large whale entanglements in lobster gear. Some of these management measures are expected to be of benefit to sea turtles as well, such as by reducing the amount of line in the water. Sperm whales, and sei whales are not expected to occur in

sufficient numbers in affected nearshore areas such that an increase in lobster gear in these areas will result in the addition of adverse affects to these species.

The management measures described in this final rule for conservation equivalency for New Hampshire, while likely reducing the combined overall number of traps fished by state and Federal permit holders combined, could potentially result in the addition of lobster trap gear fished solely by these few Federal permit holders in New Hampshire state waters. The Biological Opinion for this action has identified that the activity for implementation of conservation equivalency for federal lobster fishers who also possess a full-time commercial New Hampshire lobster license will directly affect leatherback sea turtles as a result of entanglement in lobster trap gear set in New Hampshire waters. NOAA Fisheries has determined that this level of anticipated take is not likely to jeopardize the continued existence of leatherback sea turtles. Reasonable and Prudent Measures and Terms and Conditions are provided with the opinion to minimize the take of sea turtles in the lobster trap fishery.

For additional discussion on the most recent ESA section 7 consultation for this action, a complete administrative record of this consultation is on file at the NOAA Fisheries, Northeast Regional Office, Office of Protected Resources, One Blackburn Drive, Gloucester, Massachusetts, 01930 [Consultation No. F/NER/2001/01263].

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U. S. C. 5101 *et seq.*

■ 2. In § 697.2, definitions for "Conservation equivalency" and "Qualifying year" are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Conservation equivalency means a measure adopted by a state that differs from the specific requirements of an interstate fishery management plan, but achieves the same level of conservation for the resource under management.

* * * * *

Qualifying year means any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991, and September 2, 1999, through December 31, 1999), and refers to the specific year selected by the applicant for the purposes of qualifying for access to the lobster trap fishery in Areas 3, 4 and/or 5 under the requirements set forth in 697.4(a)(7)(vi-x).

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■ 3. In § 697.4, paragraph (a)(7)(ii) is revised and paragraphs (a)(7)(vi) through (x), and (f)(1)(v) are added to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) * * *

(7) * * *

(ii) Each owner of a fishing vessel that fishes with traps capable of catching American lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. The ability to declare into Lobster Conservation Management Areas 3, 4 and/or 5, however, will be first contingent upon a one time initial qualification as set forth in paragraphs (a)(7)(vi) through (a)(7)(viii).

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(vi) *Participation requirements for EEZ Offshore Management Area 3 (Area 3).* To fish for lobster with traps in Area 3, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 3, the applicant must establish with documenting proof the following:

(1) That the applicant possesses a current Federal lobster permit;

(2) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991