

after publication of this final rule (application period start date) and ends December 31, 2003.

(1) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 4 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 4 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(2) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 4 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 4 until the 2004 fishing season.

(viii) Participation requirements for EEZ Nearshore Management Area 5 (Area 5). To fish for lobster with traps in Area 5, 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 5, the applicant must establish 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 5 by the qualifying vessel during a two consecutive calendar month period in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period 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).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 5 during the qualifying

year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 5, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 5 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(viii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number.

(2) As proof of 200-trap/2-consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30), Federal Port Agent Vessel Interview forms (NOAA Form 88-30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years.

(3) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88-30); Federal Port Agent Vessel Interview Forms (NOAA Form 88-30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88-176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the

number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(viii)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(4) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(5) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(i) The name, address, lobster permit number and vessel of the applicant;

(ii) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(iii) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(iv) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(6) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(7) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(8) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by