Appendix 1

Addendum XV to Amendment **3 to the Interstate Fishery Management Plan for American Lobster**

Limited Entry for Federal Waters of LCMA 1

***ASMFC Vision Statement*:**

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015

Approved November 3, 2009

Appendix 1

1.0 Statement of the Problem

In the Gulf of Maine (GOM) there has been an increase in fishing effort in the lobster fishery since 2000 and those effort levels are the highest levels since 1981 (ASMFC, 2009). Overall, GOM stock abundance is relatively high with recent fishing mortality comparable to the past (since 1981). The GOM stock encompasses all of Lobster Conservation Management Area (LCMA) 1, and part of both LCMA 3 and the Outer Cape Management Area. There is concern that high lobster fishing effort levels in GOM are not likely to be supportable if abundance returns to long-term median levels. Limited access programs in other lobster management areas have the potential to cause fishermen who do not qualify in that area to shift trap fishing operations to LCMA 1 where prior to the adoption of this addendum, there was open access. In addition, recent constraints on participation in several traditional otter trawl fisheries, and broader use of area closures may result in a shift in non-trap lobster fishing effort to the lobster trap fishery by vessels that have traditionally harvested lobsters by non-trap methods. An unchecked increase in effort in the lobster trap fishery, as a result of a shift from non-trap to trap gear and/or as a result of an influx of fishing operations from other areas to LCMA 1, may jeopardize current efforts to achieve the objectives of the ISFMP and rebuild stocks.

2.0 Introduction

This addendum maintains the historic level of trap fishing effort and curtail a potential influx of new Federal lobster vessels in the LMCA 1 EEZ fishery. The addendum limits entry of vessels which have not fished with traps in Area 1 in the past from fishing in Area 1 with traps in the future.

3.0 Background

The LCMA 1 Lobster Conservation Management Team (LCMT) met in May and June of 2008 and in April of 2009 to discuss concerns of increasing fishing effort in to the EEZ waters of LCMA 1, as noted in section 1.0-Statement of the Problem. The LCMT worked to identify qualification criteria that would effectively capture current participation in the LCMA 1 EEZ lobster trap fishery and limit future trap fishing effort to current LCMA 1 participants to recommend to the Board. The intent of the LCMT was to limit future access based eligibility criteria that are universally available to all LCMA 1 participants, regardless of their state of residency. The LCMT evaluated several potential eligibility criteria that would document a trap fishing history in LCMA 1, including the requirement to elect LCMA 1 on the Federal lobster permit and purchase of lobster trap tags endorsed for the EEZ portion of LCMA 1.

There were several challenging issues the LCMT discussed over the course of the Area 1 meetings in 2008 and 2009. One area of discussion involved the potential use of lobster landings to document past performance in Area 1. After the LCMT was informed there was not a universal reporting system across all state and Federal regulatory jurisdictions to consistently capture lobster landings by individual fishing vessels, the LCMT agreed not to require documented landings as one of the qualification criteria.

Limited use of medical and/or military exceptions was also discussed. Concerns were voiced that a medical condition or military service could potentially exclude active Area

1 participants, if the qualification period was limited to only to a one or two year period. On the other hand, there was concern that a qualification process that included a medical waiver or military exemption could prove problematic and had the potential to allow for additional fishing effort in Area 1. Ultimately the Area 1 LCMT opted to recommend the Board expand the length of the qualification period from two to five years (fishing years 2004 – 2008 as of January 2, 2009), rather than allow for a medical waiver or military exemption. The Area 1 LCMT felt a five year time period would be adequate to address any difficulty meeting the qualification requirements that participants may have experienced due to illness or military service.

Based upon the Area 1 LCMT recommendations, in a letter dated October 22, 2008, the ASMFC lobster board requested NMFS implement a control date to limit or restrict future access into the lobster trap fishery in the EEZ waters of LCMA 1. On January 2, 2009, NMFS published in the Federal Register an Advance Notice of Proposed Rulemaking (ANPR) on Federal American lobster management in the EEZ . The ANPR publication date, January 2, 2009, is proposed as a "control date" and could potentially be used to discourage American lobster non-trap vessels from entering the lobster trap fishery, and discourage American lobster trap vessels fishing in other lobster management areas from entering the Area 1 lobster trap fishery, based upon economic speculation while NMFS, in consultation with the ASMFC, considers whether and how access and effort should be controlled.

Federal American Lobster Permits*				Area 1 Federal Lobster Permits				
Fishing Year**	Total	Non-Trap Only		Total	ME	NH	MA	Other
2004	3069	650		1885	1303	432	73	77
2005	3049	643		1857	1305	409	73	70
2006	3054	649		1879	1331	404	69	75
2007	3014	660		1844	1318	383	71	72
2008	3008	647		1841	1310	391	71	69

*Preliminary Data
** May 1 - April 30

4.0 Management Measures

The measures contained in section 4 only affect those fishing with a federal permit in federal waters of LCMA 1. Measures identified in this section would become effective upon promulgation (enactment) of associated Federal regulations by the National Marine Fisheries Service.

Under these management measures Federal LCMA 1 permits are capped at current (2004-2009) levels. Qualified Area 1 Federal permit holders will continue to be able to transfer Federal lobster trap permits within LCMA 1. In addition, these management measures limits entry of Federal lobster non-trap vessels which have not fished with traps in the EEZ waters of Area 1 in the past from fishing with traps in Area 1 in the future.

Appendix 1

4.1 Qualification

A. Possession of a valid Federal American lobster permit

B. Proof of LCMA 1 designation on the Federal lobster permit, as of January 2, 2009

C. Proof of purchase of lobster trap tags for the waters of LCMA 1 for any one fishing year between the fishing years 2004 through 2008 as of January 2, 2009

4.2 Compliance

State agencies with a Trap Tag Memorandum of Understanding with NMFS, by February 1, 2010, will review state records of lobster trap tag orders for the fishing years 2004 through 2008 (as of January 2, 2009), and shall provide NMFS with detailed information to allow NMFS to accurately identify all LCMA 1 lobster participants that meet the qualification criteria specified in Section 4.1. Identification by state agencies of each LCMA 1 participant shall include owner and address information and the Federal permit number of the Federally permitted fishing vessel the LCMA 1 trap tags are assigned to.

5.0 Recommendations for Actions in Federal Waters The Atlantic States Marine Fisheries Commission believes that the measures contained in Amendment 3 and Addenda I-XV are necessary to limit the expansion of effort into the lobster fishery and to rebuild lobster stocks to recommended levels. ASMFC recommends that the Federal government promulgate all necessary regulations to implement the measures contained in Section 4 of this document.

6.0 Reference

ASMFC, 2009. American Lobster Stock Assessment report for peer review. Stock Assessment Report No. 09-01(Supplement). ASMFC, Washington, DC 155pp.

co-equal priority). The service area of the replacement translator shall be limited to only a demonstrated loss area. The license for the replacement digital television translator will be associated with the full power station's main license and may not be separately assigned or transferred and will be renewed with the full-service station's main license.

(ii) Each original construction permit for the construction of a replacement digital television translator station shall specify a period of six months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of § 74.788(c) shall apply for stations seeking additional time to complete construction of their replacement digital television translator station.

(iii) A public notice will specify the date upon which interested parties may begin to file applications for replacement digital television translators. Such applications shall be filed on FCC Form 346, shall be subject to the appropriate application fee and shall be accepted on a first-come, first-serve basis. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 *et seq.* and § 73.5000 *et seq.* of this chapter.

* * * * *

[FR Doc. E8–31227 Filed 12–29–08; 4:15 pm]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 0812121592–81605–01]

RIN 0648–AX40

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; Consideration of a control date for the American lobster fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on a proposed rulemaking that would limit or restrict future access to the American lobster (*Homarus americanus*) trap fishery in the Federal waters of Lobster Management Area 1 (Area 1), the inshore Gulf of Maine, based upon a permit holder's ability to document a history of fishing with lobster traps in Area 1 prior to the date of this notice . This notice should discourage American lobster non-trap vessels from entering the lobster trap fishery, and discourage American lobster trap vessels fishing in other lobster management areas from entering the Area 1 lobster trap fishery, based upon economic speculation while NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission), considers whether and how access and effort should be controlled. This document, therefore, gives the public two-fold notification: first, that interested participants should locate and preserve records that substantiate and verify their past participation in the American lobster trap fishery in Federal waters; and second, that new participants to the Area 1 lobster trap fishery may be restricted from fishing in Area 1 with traps in the future depending upon the limited access criteria developed if, in fact, NMFS proceeds forward in this rulemaking.

DATES: Comments must be received no later than 5 p.m. eastern standard time on or before February 2, 2009.

ADDRESSES: You may submit comments, identified by RIN number 0648–AX40, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal http://www.regulations.gov.
- Fax: (978) 281–9117, Attn: Bob Ross.
- Mail: Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on Lobster Control Date.''

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Supervisory Fishery Management Specialist, 978–281–9234.

SUPPLEMENTARY INFORMATION: The American lobster fishery in the United States takes place from North Carolina to Maine. Over three-quarters of all American lobsters are landed in Maine, with most of the other landings occurring in or from Massachusetts, Rhode Island, Long Island Sound, and Georges Bank. The majority of American lobsters are taken in state waters, which extend from the coast to 3 nautical miles (5.56 kilometers) from shore. The offshore trap fishery, which occurs primarily in the offshore canyon areas at the edge of the continental shelf, has developed in the past 25 years and accounts for most of the remaining landings. The American lobster fishery is a year-round fishery in the United States, including the summer and fall months when the lobsters are molting. Approximately 96 percent of lobsters are taken in lobster traps. The rest are taken in trawls, gillnets, dredges, and by divers.

The Commission develops fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission, under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), decides upon a management strategy and then forwards that strategy to the states and Federal Government, along with a recommendation that the states and Federal Government take action (e.g., enact regulations) in furtherance of this strategy. The Federal Government is obligated by statute to support the Commission's American Lobster Interstate Fishery Management Plan (ISFMP) and overall fishery management efforts. At its October 2008 Annual Meeting, the Commission voted to initiate an addendum to the ISFMP that includes options for a limited entry program for Area 1. In the same motion, the Commission voted to request the Secretary of Commerce publish a control date in the **Federal Register** that may be used to limit future participation in the Area 1 Federal American lobster trap fishery to those Federal permit holders who could document trap fishing history prior to the control date. The control date is the publication date of this advance notice of proposed rulemaking in the **Federal Register**.

There has been a dramatic increase in fishing effort since the 1970s and effort

continues at historically high levels. NMFS estimates that each American lobster trap remains in the water about 30 percent longer than in 1970 before being hauled. Current fishing effort removes a large proportion of lobsters before they have had a chance to spawn even once, and the average size of lobsters landed continues to drop. The most recent peer-reviewed lobster stock assessment, completed in 2005, showed that the American lobster resource presents a mixed picture (see the Commission Stock Assessment Report No. 06–03, published January 2006 at www.asmfc.org). One theme throughout the assessment was the high fishing effort and high mortality rates in all three stock areas. The assessment indicated that there is stable abundance for the Georges Bank (GBK) stock and much of the Gulf of Maine (GOM) stock and decreased abundance and recruitment, yet continued high fishing mortality rates, for the Southern New England (SNE) stock and in Statistical Area 514 (Massachusetts Bay and Stellwagen Bank) in the GOM stock. Of particular concern in the 2005 stock assessment report is the SNE stock, where depleted stock abundance and recruitment coupled with high fishing mortality rates over the past few years led the stock assessment and peer review panel to recommend additional harvest restrictions. The SNE stock encompasses all of Areas 4, 5, and 6, and part of Areas 2 and 3. Overall, stock abundance in the GOM is relatively high with recent fishing mortality comparable to the past. The GOM stock encompasses all of Area 1, and part of both Area 3 and the Outer Cape Management Area. Currently, high lobster fishing effort levels in GOM continue in concert with high stock abundance, although high effort levels are not likely to be supportable if abundance returns to long-term median levels. The GBK stock seems stable, with current abundance and fishing mortality similar to the 20–year average. The GBK stock encompasses part of Areas 2, 3, and the Outer Cape Management Area. While the assessment noted the female proportion of the GBK stock is increasing slightly, it also cautioned that further increases in effort are not advisable, hence, the need for additional effort reduction and broodstock protection.

NMFS is also aware that recent constraints on participation in several traditional otter trawl fisheries, including the Mid-Atlantic summer flounder, scup, and black sea bass fisheries and the New England multispecies fisheries, and broader use of area closures may result in a shift in non-trap lobster fishing effort to the lobster trap fishery by vessels that have traditionally harvested lobsters by non-trap methods. Further, limited access programs in other lobster management areas have the potential to cause fishermen who do not qualify in that area to shift trap fishing operations to Area 1, the last remaining open access area. An unchecked increase in effort in the lobster trap fishery, as a result of a shift from non-trap to trap gear and/or as a result of an influx of fishing operations from other areas to Area 1, may jeopardize current efforts to achieve the objectives of the ISFMP and rebuild stocks.

For these reasons, NMFS, in consultation with the Commission, is considering proposed rulemaking to address whether and how to limit entry of vessels which have not fished with traps in Area 1 in the past from fishing in Area 1 with traps in the future, or which have not fished with traps in the past from fishing with traps in the future. The proposed rulemaking may include potential eligibility criteria that would prove trap fishing history or trap fishing history in Area 1 prior to the date of this notice. Such proof might include, but is not necessarily limited to documentation of fishing for lobster with traps, documentation of the purchase of lobster trap tags, and/or the election of Area 1 on their Federal lobster vessel permit. Further, proof may or may not be required for multiple years preceding the date of this notice, for example, proof of Area 1 trap fishing history for the 2008, 2007 and/or 2006 fishing seasons.

Consideration of a control date does not commit the Commission or NMFS to any particular management regime or criteria for entry into the fishery. Fishermen would not be guaranteed future participation in the fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. NMFS, in consultation with the Commission, may choose to use a different control date, or to give variably weighted consideration to fishermen active in the fishery before and after the control date. NMFS subsequently may choose a different control date or may choose a management regime that does not make use of a control date. Other qualifying criteria, such as, but not limited to, documentation of landings and sales, may be applied for entry. NMFS may also choose to take no further action to control entry or access into the lobster management areas or address the shift in effort from non-trap to trap gear, in which case the control date may be rescinded. Any action will be taken pursuant to the requirements established under the Atlantic Coastal Act. This document, therefore, gives the public notification that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery in Federal waters.

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Dated: December 24, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8–31235 Filed 12–31–08; 8:45 am]

BILLING CODE 3510–22–S

Appendix 3

Public Comment Summary of Draft Addendum XV to the American Lobster FMP

Public Hearings

Five public hearings were held in the states of Massachusetts, New Hampshire and Maine (3 hearings held in Maine).

Massachusetts

7 total Attendees: 3 members of MA Marine Fisheries Advisory Commission, 3 public, 1 NOAA Representative

One comment that many fishermen are not aware of the issue/proposal; investments have been made in federal permits.

Questions about federal rulemaking timeline and why states couldn't take action themselves based on oversight of trap tags.

New Hampshire

9 Attendees

BN: The LCMT was very concerned about the potential increase in effort due to the relocation of individuals from closed areas and entry into the trap fishery from non trap fishermen without any trap history prior to the control date. The qualification process discussed at the LCMT was the fairest we could get and this addendum reflects what The LCMTs intent to control entry into the EEZ of area 1.

Received letter from Eric Anderson that can be found in written comments.

Maine

Portland and Ellsworth hearings there were no attendees.

Rockland

1 attendee.

Favors moving forward with a limited entry program for Federal waters of LCMA 1.

Written Comments

Two written comments were received.

Appendix 3

W. William Anderson
702 Dixie Road
So. Trescott. Maine 04652
USA
Phone 207-733-2179
Fax 207-733-2442

RECEIVED
OCT 05 2009
Atlantic States Marine Fisheries Commission

September 28, 2009

Toni Kerns
Atlantic States Marine Fisheries Commission
1444 'Eye' Street, Northwest #600
Washington, D. C. 20005

Dear Ms. Kerns:

I received from your public hearing notice on Lobster Draft Addendum XV. I thought I would comment that you wait until the effort and investment in a fishery reaches its highest level on record and go on to admit that this high level of effort and investment is not likely to be sustainable. Then you propose to hold effort at this extremely high level.

Sounds to me like we manage our fisheries the same way we manage our banks. There is no FDIC for fisheries and we can not print out fish like our government prints out money.

Sincerely,

W. William Anderson

W. William Anderson

Appendix 3

Erik Anderson
38 Georges Terrace
Portsmouth, NH 03801

PUBLIC COMMENT TO ASFMC

Re: Comments to Addendum 15 of Amendment 3 of the Lobster Management Plan

These comments are offered for consideration to the qualification criteria for Area 1 federal lobster permits.
As expressed in the current proposed rule for Addendum 15 qualifications for fishing for lobsters by means of traps would require am LCMA 1 federal fishery permit and proof of purchase of trap tags for that area.
I offer as a public comment / recommendation to the current wording regarding this qualification criteria that:
***Comment / Recommendation* - A person who holds and LCMA 1 federal fishery lobster permit designated with a trap endorsement would qualify by showing proof of purchase of lobster trap tags either in the federal area 1 zone, state & federal area 1 zone, <u>or state trap tags in a state within the boundaries of LCMA 1.</u>**
Rational – While the actions of this proposed rule appear to be intended to control access and thus mortality for lobsters in LCMA 1, an individual who holds a federal permit for LCMA 1 but elected to fish exclusively in state waters and purchased only state trap tags would not be able to qualify their federal permit under the proposed criteria.
In essence they have contributed to lobster harvesting effort and it makes no real difference where that effort took place (state or federal waters). Disqualifying that participant with the correct LCMA 1 trap endorsement federal lobster permit who fished in state waters and only purchased state trap tags would appear to be unfair and inappropriate.
***Additional Comment / Recommendation* - If it is necessary to require a person within this category to show proof of lobster fishing activity to consider this additional qualification request I suggest that a minimum of 5000 lbs of landings within any of the time frame years established in the addendum be a condition of this request.**
Rational – As currently written in the proposed addendum the qualification criteria really does not require proof of fishing activity. An appropriate federal fishery permit and proof of purchase of trap tags bases the qualification. No proof of fishing activity is required by documentation of landings. This request for additional qualification would potentially require such proof and thus show that the applicant is legitimized in the fishery beyond the base qualification requirements of other individuals.
I thank you for this time and consideration of this public comment.

Sincerely,
Erik Anderson

Appendix 3

American Lobster ASMFC Public Comment

Atlantic States Marine Fisheries Commission
October 8, 2009
New Hampshire

-- PLEASE PRINT CLEARLY --

Name	Company/Organization	City, State
IRV CAMER		GREENLAND, NH
Maxine Raymond	F/V Determined	S Berwick ME
PATRICE WHITTEN	NMFS	GLOUCESTER, MA
Bob Ross	NMFS	Gloucester MA
Jack Cunner		Greenland, NH
JOHN J. KELLEHER JR	—	OGUNQUIT, ME.
Bryan Bickford	—	Newmarket NH
Lia Bickford	—	Newmarket NH

Appendix 3

SCUP/BSB Add XX

Public Hearing for American Lobster Draft Addendum XV

Atlantic States Marine Fisheries Commission

September 30, 2009
Gloucester, MA

-- PLEASE PRINT --

Name	Company/Organization	City, State
VITO J CALOMO		GLOU. MASS
Ben Martens	CCCHPA	Chatham MA
BOB ROSS	NMFS	Gloucc. MA

Appendix 3

Public Hearing for American Lobster Draft Addendum XV

Atlantic States Marine Fisheries Commission

September 21, 2009
Rockland, ME

-- PLEASE PRINT --

Name	Company/Organization	City, State
Sarah Cotnoir	Dept of Marine Resources	Hallowell, ME
Bob Baines		

Appendix 3A

PUBLIC SUBMISSION

As of: February 09, 2009
Received: January 16, 2009
Status: Pending_Post
Tracking No. 80822cb9
Comments Due: February 02, 2009
Submission Type: Web

Docket: NOAA-NMFS-2008-0326
Establish a Limited Access Program for the American Lobster Fishery in Area 1

Comment On: NOAA-NMFS-2008-0326-0001
Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

Document: NOAA-NMFS-2008-0326-DRAFT-0008
Comment from Carl Anderson 3rd, self employed lobster fisherman

Submitter Information

Name: Carl Emil Anderson 3rd
Address:
1452 Harpswell Islands Road
Orrs Island, ME, 04066
Email: southshore34@ymail.com
Phone: 207-833-0602
Organization: self employed lobster fisherman

General Comment

Hi im Carl Anderson im a 24 year old lobster fisherman out of Harpswell, Maine. Im commenting on the proposed rules for the A1 federal lobster trap permits. The way the rules are proposed at this time is very bad for my whole livelyhood. I have a A1 trap permit in the process of transfering at this time. I purchased the permit in September of 2008 before there was a issue of permit history. The permit I purchased was a A1 trap permit and thats what im intending to use it for. A1 trap to A1 trap transfer. When I got the ball rolling on the transfer I also bought all the required gear to operate my boat in federal waters and upgraded my gear to fish in deeper water and comply with whale rules. I have over 14,000 dollars invested in this in a year that was far from stellar for nearly all fishemen. If I cant used this permit it will devistate my business. I have boat payments and house parments and i gotta go fishing to make money. The permit I bought has always been an area 1 trap permit and has a history of tags except for 2008 because the fellow was selling out of the business. i had intended to use the permit for the end of 2008 but the process was taking a extremely long time and i could not use it with out eez tags. I really dont want to get screwed on this. I understand the issues concerning the industry about non trap and other area permits becoming area 1 permits. I dont think I and others should be pentalized for buying a permit and not

being able to use it. Please consider the permits that are in process of transfering and that could not have been used in 2008 because of the transfer process. I believe as long as it was an area 1 trap permit to begin with there should be no issue for me and others in my situation.
I will be following this issue closely. It could seriously impact my business in a very bad way. My phone # is 207-833-0602 and email is southshore34@ymail.com thanks for your time

PUBLIC SUBMISSION

As of: February 09, 2009
Received: January 30, 2009
Status: Pending_Post
Tracking No. 8083f030
Comments Due: February 02, 2009
Submission Type: Web

Docket: NOAA-NMFS-2008-0326
Establish a Limited Access Program for the American Lobster Fishery in Area 1

Comment On: NOAA-NMFS-2008-0326-0001
Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

Document: NOAA-NMFS-2008-0326-DRAFT-0007
Comment from Paul Ferriero, fisherman

Submitter Information

Name: Paul Ferriero
Address:
P.O. box 264
Harrington, ME, 04643
Email: honeyb11@earthlink.net
Phone: 207-483-4392
Organization: fisherman

General Comment

By instituting a control date you will have effectively eliminated the transfer of permits by fishermen. In an industry that is already economically challenged, you will add to the burden of individuals who have invested heavily into their lobster fishing business with little or no chance of ever recouping their capitol. Being able to pass along the permit when retiring is the only incentive a young fisherman would have to buy out the retiree's business. If the true purpose of a control date is to control effort, I'm sure there are other ways to regulate.

Appendix 3A

PUBLIC SUBMISSION

As of: February 09, 2009
Received: January 11, 2009
Status: Pending_Post
Tracking No. 80818af4
Comments Due: February 02, 2009
Submission Type: Web

Docket: NOAA-NMFS-2008-0326
Establish a Limited Access Program for the American Lobster Fishery in Area 1

Comment On: NOAA-NMFS-2008-0326-0001
Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

Document: NOAA-NMFS-2008-0326-DRAFT-0006
Comment from Russell Daggett, Sarah Gale/Anne Marie

Submitter Information

Name: Russell lee Daggett
Address:
110 sinnott road
arundel, ME, 04046
Email: dtroop@roadrunner.com
Phone: 207-632-9832
Organization: Sarah Gale/Anne Marie

General Comment

i have been lobstering/ groundfishing my whole life. i have seen all my groundfish days taken away back in the nineteen ninties because i did not use them. i could not raise my family of 5 so i stayed lobstering with the permit attached to a groundfish permit that was worth nothing. since the last 15 years i have been filling out log books just so i dont have my lobster permit taken awey. since 2005 i have bought my way back in the groundfishing for thousands and more thousands. and now you want to take more by limiting the people that have been lobstering in area 1 by doing what you did to me with my groundfish permit back in the ninties by doing that you will be putting more pressure in the state waters and not to say how many lobstermen and there families out busines and if there like myself thats all they ever done so stop and think real hard.

Appendix 3A

PUBLIC SUBMISSION

As of: February 09, 2009
Received: January 09, 2009
Status: Pending_Post
Tracking No. 808171be
Comments Due: February 02, 2009
Submission Type: Web

Docket: NOAA-NMFS-2008-0326
Establish a Limited Access Program for the American Lobster Fishery in Area 1

Comment On: NOAA-NMFS-2008-0326-0001
Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

Document: NOAA-NMFS-2008-0326-DRAFT-0005
Comment from blaine blackmore, F V DEVOCEAN

Submitter Information

Name: blaine blackmore
Address:
deer isle, ME, 04627
Email: blaine207@verizon.net
Phone: 207-348-6131
Organization: F V DEVOCEAN

General Comment

This proposal slams another door in the face of young fisherman ,trying to get started in comm .fishing. My son has been lobstering dilegently on his own for 5 years with a pay as you go approach. An area 1a lob permit has been on his horizon but not in the budget.[Lets not forget permits are selling for $10k-$15k] Present rules already have him locked out of scallop, multi species,sea urchin&other fisheries. I believe this commission would be better serving the industry by managing lobster populations than young peoples lives.Previous rules have forced more pressure on the state waters fishery and this propossal does more of the same. This would only make the big cat fatter while the aspiring young guy is squished. Lastly I would like to know who is given the GODLY authority to blind side us with such a propossal .Young people are the future.

Appendix 3A

PUBLIC SUBMISSION

As of: February 09, 2009
Received: January 27, 2009
Status: Pending_Post
Tracking No. 8083310d
Comments Due: February 02, 2009
Submission Type: Web

Docket: NOAA-NMFS-2008-0326
Establish a Limited Access Program for the American Lobster Fishery in Area 1

Comment On: NOAA-NMFS-2008-0326-0001
Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

Document: NOAA-NMFS-2008-0326-DRAFT-0009
Comment from Gordon Smith, individual

Submitter Information

Name: Gordon Keith Smith
Address:
P.O.Box 91
Beals, ME, 04611
Email: nancysmith6@netzero
Phone: 207-263-5041
Organization: individual

General Comment

Regarding Control Date for the American Lobster Fishery....I hold a valid Federal Lobster Permit and have and do fish in federal waters in Area 1... I would like to know what you are looking for as proof.. I am not required to file trip reports as my permit is strickly for lobster.I do have sale receipts. Any information you may provide would be greatly appreciated.

Thank you

Appendix 3A

54 Cedar St
Cohasset. Ma 02025
Jan 28. 2009

Dear Mr. Mears & Ms. Kurkul,

The Seal and Cormorant population has greatly contributed to the decline of the fish and Lobster population.

The "NMFS" should put controls on these predators.

Enclosed see photo:

Cormorants feeding on alewives herring and smelts at Weir River. Hingham MA.

Sincerely,
Edward Figueiredo

781-749-4781
781-267-4908

RECEIVED
FEB 02 2009

Appendix 3A

Lobster Institute
210 Rogers Hall
The University of Maine
Orono, ME 04469

Dateline - 1939
Trouble for Seals

(Excerpts from the July 4, 1939 edition of the Courier Gazette, reprinted with permission from Courier Publications. Thanks to Al McNeilly of Owls Head for bringing these articles to our attention.)

Are Now Known To Be a Great Menace to Maine's Lobster Industry

For years lobster fishermen have believed that seals are one of the greatest menaces to their industry and now the Department of Sea and Shore Fisheries has proven this to be true. An investigation directed by Commissioner Arthur R. Greenleaf has revealed that lobsters are a favorite food of the mammals and that they probably eat thousands of pounds yearly. Herring, striped bass, Atlantic salmon and other species are also known to be destroyed in great quantities throughout the spring and summer months.

Greenleaf has examined the stomach contents of several dozen seals, being killed on many sections of the coast. In nearly all instances the remains of from one to three lobsters were found with many of them being of legal size. At least 20 other species of fish were found.

Later this month a statewide bounty on the mammals in all coastal counties except York will go into effect.

Greenleaf is trying to find ways to utilize the bodies on a commercial basis. Experiments are now being made in an attempt to use the hides as leather for various articles, to extract oil and to prepare the flesh as food for dogs, cats, and animal farms.

Editor's Note: In a later article that same month; the *Courier Gazette* reported that a bounty of $1 per seal did, indeed, go into effect on July 21, 1939. ⌘

MASS. PAID $5.00 BOUNTY UNTIL 1962 OUR SO.

Appendix 3A

Appendix 3A

Comments on Proposed Control date for American Lobster fishery

I have lobstered all my life and make 100 percent of my money from lobstering. I have area 1 lobster permit.

I am against this control date and any other. There are alot of permits being transfered within area 1 between lobstermen and alot of money was spent in the process. fishermen could not have known of this date and what the criteria might be to keep these permits active.

If anything is done to limit permits there Should be exceptions for fishermen who bought them or started to transfer permits before a control date.

Lobstermen are in hard times right now with boat prices being low and expenses high. Some have gone out of business and there will be alot more.

This past fall (2008) lobstermen took traps up during good fishing, because there was very little profit. It has left alot for legal size lobsters to breed and egg out; it is probably the biggest conservation messure I've seen since I've been lobstering and the economy did it.

I would like to see the control date dropped and let lobstermen try to make it though these tough times.

Carl E Anderson Jr
8 upland lane
Harpswell ME 04079

207-833-2316

Carl E Anderson Jr 1/25/09

Appendix 3A

Atlantic States Marine Fisheries Commission

1444 Eye Street, N.W., Sixth Floor
Washington, D.C. 20005
(202) 289-6400
(202) 289-6051 (fax)
www.asmfc.org

George D. Lapointe (ME), Chair
Robert H. Boyles, Jr. (SC), Vice-Chair

John V. O'Shea
Executive Director

Working towards healthy, self-sustaining populations for all Atlantic coast fish species, or successful restoration well in progress, by the year 2015

16 January 2009

Patricia A. Kurkul
Regional Administrator
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Northeast Region
55 Great Republic Drive
Gloucester, Massachusetts 01930-2276

Dear Ms. ~~Kurkul~~, Pat

This responds to the Advance Notice of Proposed Rulemaking (ANPR) regarding a control date to limit or restrict future access to the American Lobster trap fishery in the Exclusive Economic Zone (EEZ) of Lobster Conservation Management Area 1. The Atlantic States Marine Fisheries Commission (ASMFC) supports the proposal.

As the ANPR indicates, NMFS is considering this action in response to a specific request from the ASMFC's American Lobster Board, which voted at their October 2008 meeting to request publication of a control date that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ.

The ANPR correctly describes ASMFC's concerns about the consequences of not implementing a control date.

On that basis, we support moving forward with this important action as soon as possible. Thank you for initiating this action and for providing us the opportunity to comment.

Sincerely,

Vince

John V. O'Shea

2009

Appendix 3A

To: Harold Mears
From: Stephen Merrill
Permit # 220266

Dear Harold:

I am currently fishing as a stearnman on a lobster boat trying to complete my apprentice ship so I can get my own Maine Lobster permit.

I think it would be very unfair to make a control date on the Federal Lobster permit because I can't use it till I can get a Maine in Shore Lobster permit.

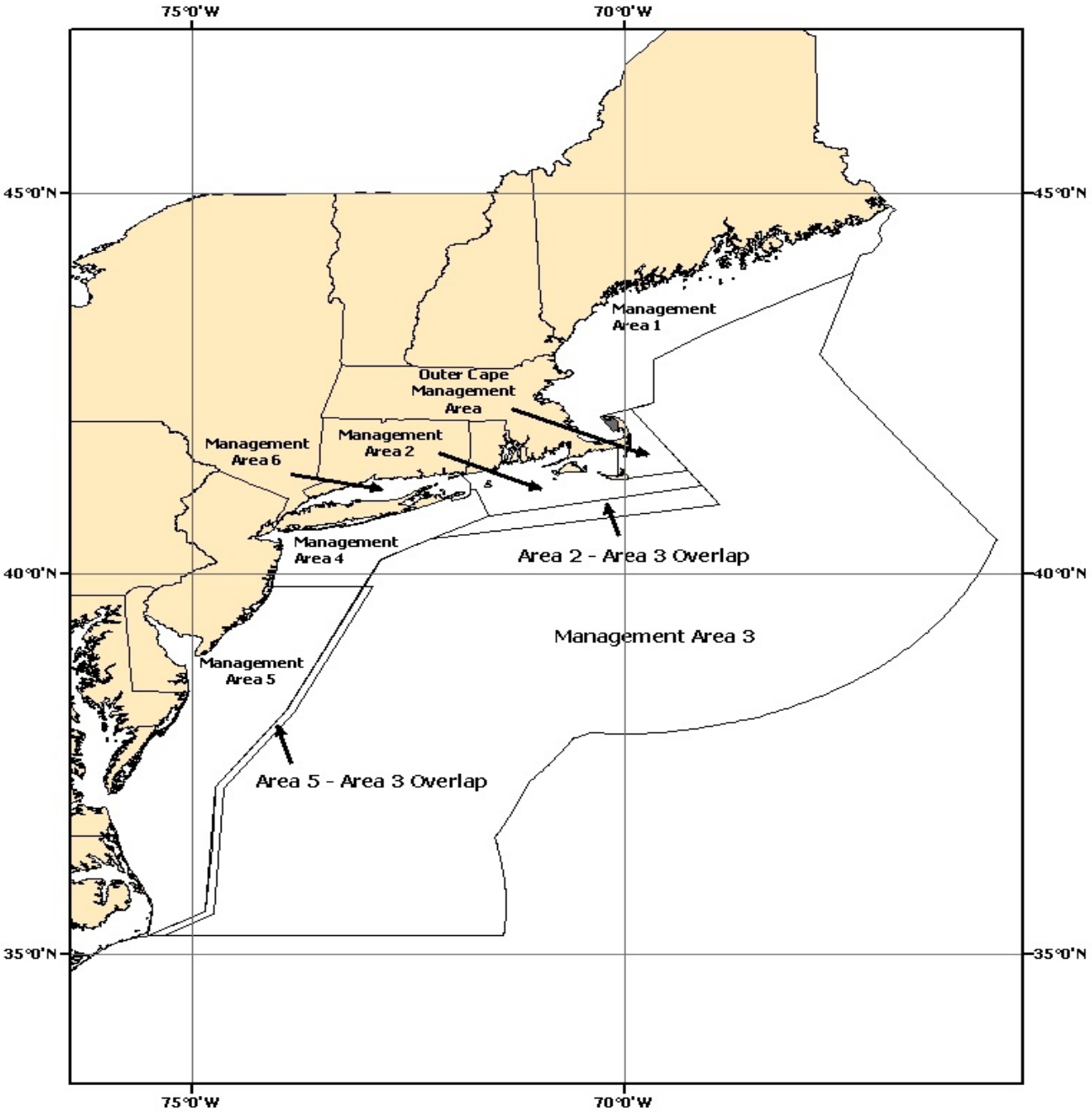
If the time comes and I get my Maine permit I won't have a Federal Lobster permit because you people took it away from me so in turn I will have to try to buy something I all ready have.

F/V Josie B

Stephen H. Merrill

Appendix 4

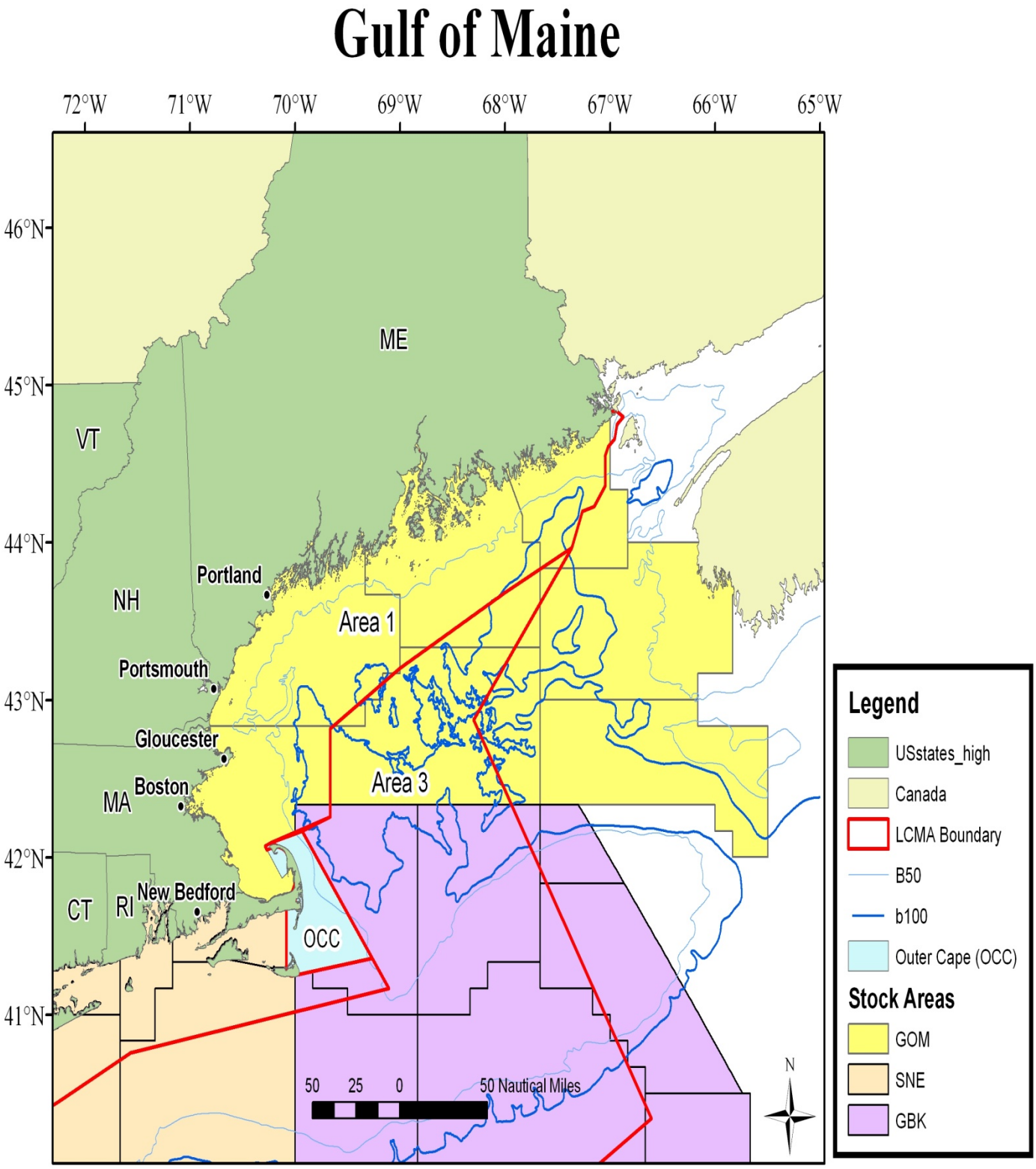
American Lobster Management Areas



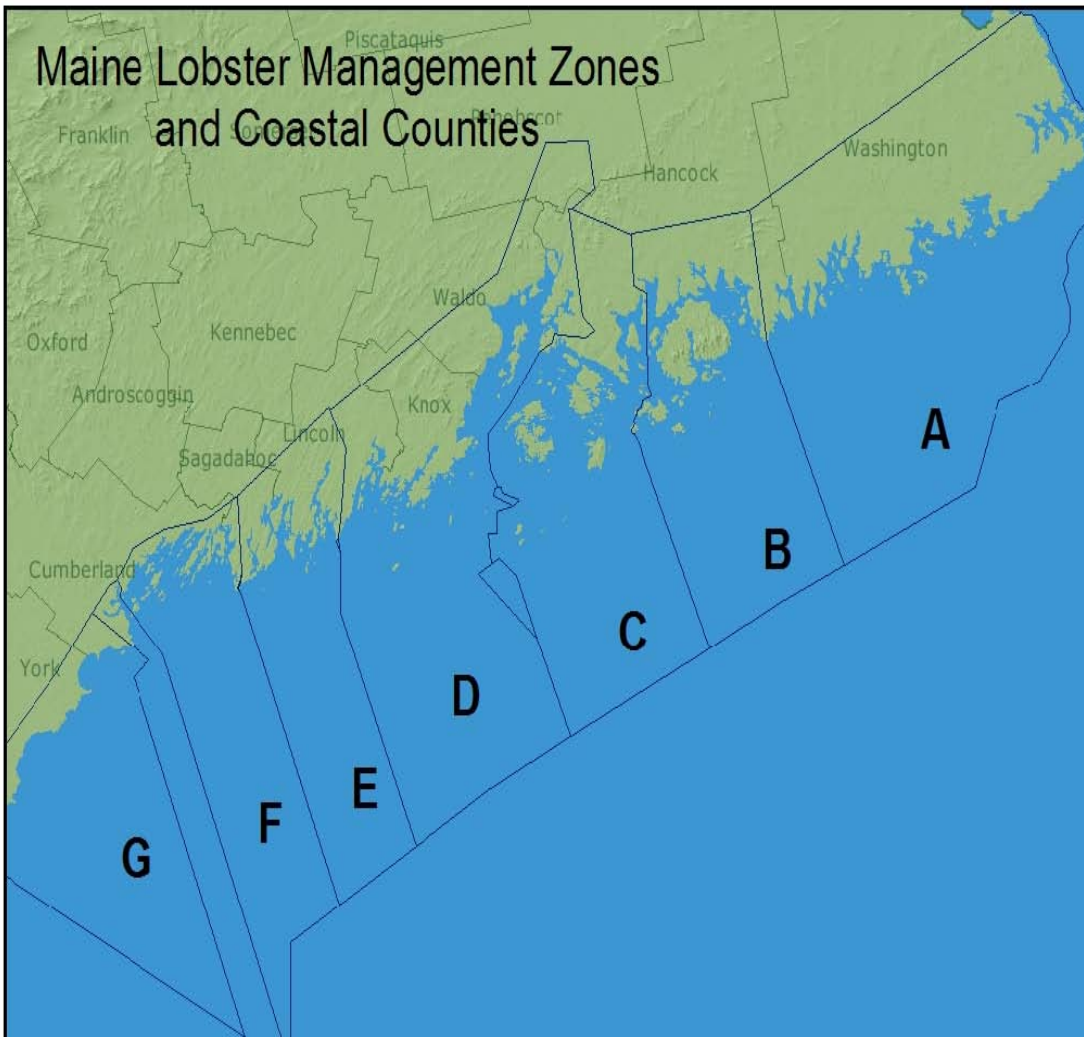
NOAA Fisheries
Northeast Regional Office
Gloucester, MA

9/21/04

Appendix 5


Gulf of Maine
72°W
71°W
70°W
69°W
68°W
67°W
66°W
65°W
46°N
45°N
44°N
43°N
42°N
41°N
ME
VT
NH
MA
CT
RI
Portland
Portsmouth
Gloucester
Boston
New Bedford
Area 1
Area 3
OCC
50 25 0 50 Nautical Miles
N
Legend
USstates_high
Canada
LCMA Boundary
B50
b100
Outer Cape (OCC)
Stock Areas
GOM
SNE
GBK

Appendix 6


Maine Lobster Management Zones
and Coastal Counties
Piscataquis
Franklin
Penobscot
Hancock
Washington
Waldo
Oxford
Kennebec
Androscoggin
Knox
Lincoln
Sagadahoc
Cumberland
York
A
B
C
D
E
F
G

Appendix 6A

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

MEMORANDUM TO: The File MAR 1 2012

FROM: Brett Alger
Fishery Management Specialist

SUBJECT: Analysis of Permits in Confirmation of Permit History Regarding the Final Rule to Implement a Limited Entry Program for Federal Lobster Trap Fishermen in Area 1

The proposed rule would limit entry based upon the following three criteria:

1) applicant must have a valid Federal lobster permit;
2) applicant must have designated Area 1 trap on this permit during the 2008 fishing year (FY); and
3) applicant must have purchased trap tags in any single year from 2004 – 2008;

Of the three criteria, the second is likely to prove most limiting to Federal lobster permit holders. Whereas, criterion one is easily satisfied by any current Federal lobster permit holder anywhere regardless of fishing history, and whereas criterion three gives applicants multiple years from which to provide proof (including 2008 – a year for which they would presumably have proof in order to qualify for criterion two), the managers on the Commission's Lobster Board, as well as the industry members on the Area 1 Lobster Conservation Management Team (LCMT) were resolute and specific in limiting the second criterion to the FY 2008 time period. The Commission and LCMT considered the use of appeals – such as medical or military appeals - to mitigate the specificity set forth in criterion two, but ultimately decided against it because it could provide an exception that might engulf the rule.

NMFS analyzed the impact of criterion two on potential applicants and determined that few, if any permit holders would be impacted. Specifically, NMFS analysis has determined that of the Federal lobster permits in Confirmation of Permit History (CPH) status during FY 2008 (and thus inactive), few had any trap fishing history in Area 1. Of those that did potentially hold such Area 1 history, NMFS' analysis shows that the vast majority either entered CPH before FY 2008 and/or remained in CPH after FY 2008. In other words, NMFS found that FY 2008 restriction in criterion two did not create a significant group of non-qualifying near misses.

Of course, the establishment of any qualifying criteria has the potential to draw lines that include some and exclude others. Criterion number two is no exception. The LCMT and Commission chose, in the exercise of their judgment, to differentiate between those who were, according to them, "active" trap fishers, and those who were not. NMFS finds the choice to be rationally related to its goal, and that the choice does not appear to lead to aberrant, unintended or awkward results. NMFS' analysis is described below.

history of Area 1 trap fishery designations on their permits and been taken out of CPH since FY 2008. We were interested in this category of permit holders as they represent the category of individuals potentially most impacted by the LCMT's and Commission's second criterion. Of these, only a single permit actually bought trap tags (in 2005 only), but did not have an FY 2008 Area 1 designation. Under the LCMT and Commission criteria, it will not qualify, nor would it be considered a near miss since it did not fish with Area 1 traps in FYs 2006, 2007, 2008, 2009, or 2010. Accordingly, our analysis of all 341 CPH records, specifically, the 12 permits that showed some history of Area 1 trap fishery designation, reveals that the criteria set forth by the LCMT and Commission appropriately differentiates between those who were "active" trap fishers, and those who were not.

SUPPORTING STATEMENT
AMERICAN LOBSTER AREA 1 TRAP (ALAT) FISHERY LIMITED ENTRY PROGRAM APPEALS
OMB CONTROL NO. 0648-0202

INTRODUCTION

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is requesting approval of a new information collection, which would allow NMFS to solicit and process applications from Federal lobster permit holders seeking eligibility under a limited access program proposed for the lobster trap fishery in the Federal waters of Lobster Conservation Management Area 1 (Area 1).

NMFS is analyzing three alternatives for a rulemaking (RIN 0648-BA56) based on the recommendations for Federal action by the Atlantic States Marine Fisheries Commission (Commission) in Addendum XV to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (Plan), developed under the authority of the 16 U.S.C. 5101-5109 *et seq*; Title VIII of Pub. L. 103-206, as amended, the Atlantic Coastal Fisheries Management Act (ACFCMA 1993) *et seq.*).* Addendum XV recommends that the Federal Government take action to limit entry into the Area 1 trap fishery, since this area, one of the most lucrative and productive lobster fishing areas, is open to fishing by any vessel that currently holds a Federal lobster permit. One alternative, a no-action alternative, has no collection of information requirements and, therefore, is not referenced in this submission. The other two alternatives consider Federal Area 1 trap fishery eligibility based on the Commission's recommendations in Addendum XV, with a slight variation in the eligibility dates as the only difference between the two alternatives.

The latter two alternatives require a process to determine the eligibility of Federal lobster permit holders for future participation in the Area 1 lobster trap fishery. The total burden estimates on the public and the Federal Government vary slightly for each alternative as the number of applications is expected to differ depending on the alternative chosen for Federal implementation. Those burden estimates are examined in this statement.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Under existing Federal regulations, any Federal lobster permit, whether or not it has a history of trap fishing in Area 1, may be designated by the permit holder, for participation in the lobster trap fishery in Area 1. The Commission has recommended, in Addendum XV, that Federal regulations be implemented to limit future entry into the Area 1 lobster trap fishery to ensure that

*The Atlantic Coastal Act provides authority for NMFS to support state actions, under the umbrella of the Atlantic States Marine Fisheries Commission, for species without a Federal Fishery Management Plan under the Magnuson-Stevens Act. These federal regulations are to complement Commission management actions for species harvested mainly from state waters, and for species where interstate coordination can enhance management and enforcement.

unchecked trap fishing effort does not compromise the sustainability of the Gulf of Maine lobster stock upon which the Area 1 lobster fishery relies.

Area 1 Trap Fishery Eligibility Criteria

Addendum XV sets forth the following criteria for Area 1 trap fishery eligibility: Possession of a current, eligible Federal limited access lobster permit; that the permit was designated for trap fishing in Area 1 prior to January 2, 2009; and that the holder of the Federal permit purchased Area 1 lobster trap tags for the vessel associated with the permit in any one year from 2004-2008, inclusive.

As a result of the Commission's actions in Addendum XV, NMFS is analyzing three alternatives for public comment in response to the Commission's recommendations in Addendum XV. The first alternative is a status quo, no-action alternative which would allow any Federal lobster permit to be designated for trap fishing in Area 1. This alternative would not have any collection of information requirements under the Paperwork Reduction Act (PRA).

The second alternative would qualify permits based on the criteria set forth in Addendum XV and would determine eligibility based on whether a permit holder, with an Area 1 trap fishery designation on the permit, renewed his/her Federal lobster permit for the 2008 Federal fishing year (FY 2008) by January 2, 2009[1]. This date serves as a control date for this action since it is the date that NMFS published an Advance Notice of Proposed Rulemaking to notify the public that the Federal government was considering an Area 1 limited entry program, and to recommend that permit holders preserve records that could serve to qualify their permits for Area 1 should the Federal government decide to take such action.

The third alternative, although consistent with the Commission's recommendations in Addendum XV, liberalizes the qualification dates for the permit renewal component of the eligibility criteria. Simply, it would acknowledge eligibility of Area 1 trap permits which were renewed at any time during FY 2008 and would include vessels with permit renewals which occurred after the January 2, 2009 control date and before the end of the FY 2008 on April 30, 2009. Both Alternative 2 and Alternative 3 would also require an eligible permit holder to have met the trap tag purchase requirements as provided in the Addendum.

For the purposes of the PRA, Alternative 2 and Alternative 3 require a collection of information from those permit holders who wish to pursue eligibility for the Area 1 lobster trap fishery. The application process as detailed in the following paragraphs is the same for both alternatives. The burden per applicant is the same for each alternative.

Area 1 Application and Eligibility Determination Process

NMFS will send a letter to each Federal lobster permit holder based upon review of existing data relative to the Area 1 eligibility criteria, with two possible scenarios. The letter will either state that NMFS has sufficient information to indicate that the permit qualifies for the Area 1 trap fishery or that insufficient information is available to make an eligibility determination.

[1] The 2008 Federal fishing year ran from May 1, 2008 through April 30, 2009.

The timing of the submission of the letters to permit holders will depend on when the final rule for this action is published. However, it is our intent to conduct the application solicitation, review, and determination process during the 2012 calendar year, make final eligibility determinations by the end of 2012. The final eligibility decisions will be applied to the permit beginning with the 2013 Federal fishing year which begins on May 1, 2013, depending on when the applications are submitted. Those permit holders who designate Area 1 for trap gear on their 2012 Federal fisheries permit, will be able to fish with traps in Area 1 through the end of the fishing year (through April 30, 2013). If they do not apply for eligibility or do apply and are deemed ineligible, their permit will not be valid for Area 1 trap fishing during the 2013 fishing year and beyond.
Once the final rule publishes in the Federal Register, permit holders will be notified consistent with the scenarios explained below. The letters will indicate that applications submitted prior to August 1, 2012 will likely be reviewed and processed in time to apply the final determination to the 2013 permit. Applicants will have until November 1, 2012 to submit an application, although any applications received after September 1, 2012 will not be assured of a final determination of eligibility prior to the start of the 2013 fishing year. Once they are finalized, those determinations will be applied to the permit during the 2013 fishing year. Only those permits that are deemed eligible will be able to designate Area 1 trap gear on the 2013 permit. We will send out a reminder letter prior to the application due date to facilitate the submission of applications.

The dates may be adjusted depending on the timing of the publication of the final rule.

Scenario 1 – Pre-Qualified

The letter to permit holders in this case would advise the permit holder that <u>sufficient information exists</u> to pre-qualify the permit for the Area 1 trap fishery. The letter will require the permit holder to check a box on the letter to indicate whether they intend to pursue eligibility for the Area 1 trap fishery and to sign the letter. By checking the box, signing the letter and remitting it to NMFS prior to a due date indicated on the letter, the permit holder will actively be applying for Area 1 access and the pre-printed letter will serve as the application.

Once NMFS receives the application, the applicant's permit and tag data will be quickly reviewed, and if consistent with the initial pre-qualification decision the permit will be deemed eligible for the Area 1 trap fishery. The permit holder will be promptly notified of this decision. Those who fail to return the application form within a month from the due date will again be notified that they have until the prescribed date to submit an application for eligibility. Those who fail to apply by the due date will receive a third letter indicating that they are no longer eligible to participate in the Area 1 lobster trap fishery because they did not submit an application during the designated application period.

Scenario 2 – Not Pre-Qualified

In this case, the permit holder will be notified that NMFS has <u>insufficient data</u> available to support the permit's eligibility based on the criteria set forth in the final rule. Similar to Scenario

1, the permit holder will be required to check a box and sign the letter indicating that they are interested in pursuing Area 1 eligibility despite the lack of data on hand to qualify the permit. The permit holder will have the opportunity to provide documentary proof along with the application to support their permit's eligibility. The permit holder must remit the information required to substantiate that the eligibility requirements are met. The package must be received by NMFS prior to a prescribed deadline.

Upon receipt of the application, NMFS will review the documentation submitted by the applicant. If it is sufficient to address the eligibility criteria, NMFS will notify the applicant that the permit is eligible to fish with up to 800 traps in Area 1. If it is not sufficient, NMFS will render a decision of ineligibility and notify the applicant of the decision. Consistent with Scenario 1, if no response is received within a month of the due date, NMFS will again notify the permit holder that the application deadline is approaching. Those that do not submit an application prior to the deadline will be considered ineligible for future access to the Area 1 lobster trap fishery and will receive no further notification from NMFS.

Appeals Process

The appeal process would allow non-qualifying permit holders a one-time opportunity to appeal the Federal government's determination of ineligibility of the permit for the Area 1 lobster trap fishery. The appellant could appeal in writing to the Regional Administrator within 45 days of the date indicated on the notice of denial sent to the permit holder by NMFS. The only grounds for appeal would be that the Regional Administrator erred clerically in concluding that the vessel did not meet the eligibility criteria specified in the regulations. At any time during the 45-day appeal period, the applicant may request an extension of up to 30 days which would be added to the end of the 45-day period. Upon receipt of an appeal, the Regional Administrator will assign an appeals officer to who will make findings and a recommendation, advisory only, to the Regional Administrator, who will make the final eligibility determination.

2. Explain how, by whom, how frequently and for what purpose will the collected information be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

NMFS will collect the applications from Federal lobster permit holders interested in maintaining access to the Area 1 lobster trap fishery. The information will be used by NMFS to make determinations on a permit's eligibility for the Area 1 trap fishery based on the criteria set forth in the final rule for this action. This will be a one-time opportunity for Federal lobster permit holders to apply for Area 1 trap fishery access.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical

or general informational publications. NMFS does not intend to disseminate the information collected from applicants to the public. However, should NOAA Fisheries Service decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

NMFS has the types of data required to review the current universe of Federal lobster permits to determine whether or not they meet the criteria for each alternative. However, rather than disqualify any permit holders because the information on hand does not show eligibility, NMFS will allow permit holders to apply and provide limited types of documentation that may support the eligibility criteria in situations where NMFS data is not sufficient to do so. NMFS relies on Federal lobster permit data and the tracking of moratorium permit histories through an extensive internal database. Furthermore, NMFS has access to state and Federal lobster trap tag purchase data for the period of interest, i.e, 2004-2008, which will be utilized for the purposes of determining eligibility and used as the basis of making a preliminary determination on the eligibility of each permit. By pre-qualifying those permit holders that meet the eligibility requirements based on NMFS' review of the existing data as described in Scenario 1 in Question 1 of this supporting statement, NMFS will require only that these permit holders sign and remit the application form requesting that their permit be considered for Area 1 eligibility. This process will save a substantial amount of time and economic costs to both the permit holders and the Federal Government in terms of administration and review. Those under Scenario 2 would be required to provide additional documentation to support their eligibility, as would any who are subsequently deemed ineligible and appeal the ineligibility determination. Applications and appeals must be submitted by U.S .mail or other postal method and will not involve the use of electronic submission. Consequently, the review of the documents received will be done by hand, although relevant databases and other sources of electronic data may be used to verify a permit's eligibility.

4. Describe efforts to identify duplication.

There is no duplication of effort in this process. It allows permit holders a one-time chance to apply for Area 1 access and to appeal a decision of ineligibility by the Federal Government. There have not been other attempts or requirements by the Federal Government to solicit information from Area 1 permit holders for this express purpose of determining future eligibility.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The collection of information involves a reporting burden on Federal lobster permit holders, all of whom are considered small entities. NMFS has taken advantage of the availability of routinely-collected permit data and state and Federal trap tag purchase data to implement an internal process to pre-qualify those permits which clearly meet the eligibility criteria based on the review of information already available to NMFS. Therefore, those that pre-qualify (Scenario 1) will need only to indicate on the application form that they intend to pursue Area 1

eligibility and then sign and remit the letter to NMFS, saving them the burden of locating and submitting information for proof of eligibility. Since the majority of the current Federal Area 1 lobster trap permits would qualify under either alternative, the burden is limited to the signing of the letter and costs of submitting it to NMFS. The major component of the collection of information is reserved for the small sub-set of those whose permit status falls under Scenario 2, as described in Question 1, for whom the Federal Government has insufficient information to substantiate eligibility. In such cases, the paperwork requirements for submission of an application are simple and would have negligible time and cost burden on individual small entities, as would be the burdens associated with most appeals, since the range of documentation that could be used to support eligibility, beyond that which NMFS already has, is relatively limited.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

This is a one-time opportunity for Federal permit holders to declare their intent to qualify their Federal lobster permits for the Area 1 lobster trap fishery, so conducting it less frequently than once is not an option. If it was not conducted, NMFS would not be able to identify those permit holders who intend to seek Area 1 access and those who are deemed ineligible would have no means to appeal the denial of the permit for Area 1 access. If NMFS does not conduct this qualification process through the implementation of this low-burden information collection, it could not effectively administer the limited entry program for Area 1 in accordance with the Commission's recommendations for Federal action in Addendum XV, compromising Federal obligations to support the Commission's plan.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Not Applicable.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of the collection, the clarity of the instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Describe efforts to get comments from outside the agency.

A proposed rule, RIN 0648-BA56, was published in the Federal Register on November 18, 2011 and public comments were accepted until January 3, 2012. NMFS received 13 comments on the rule, nearly all of which were in favor of the action. Officials from the state of Maine, a state which is home to the majority of Area 1 Federal lobster trap permits, commented that efforts should be made to have the eligibility decisions made by January 2013 so that the final decisions may be applied to the 2013 Federal permits. Such timing will inform affected state agencies of Federal Area 1 eligibility determinations coincident with the 2013 state lobster fishing year, which begins on January 1, 2013. Nearly all Federal permits are held by state licensees who

obtain lobster trap tags from their respective state fishery agency. Providing the states with eligibility information by the start of the 2013 calendar year (which is also the start of the 2013 fishing year, i.e., January 1, 2013), facilitates the issuance of trap tags to eligible permit holders. NMFS agrees with this approach and has modified the rule in an attempt to meet this timeline (see Item 1).

Maine also inquired why NMFS proposes to pre-qualify permit holders, send them a letter indicating that they pre-qualify, and requires them to apply. The alternative is to simply make a determination on the eligibility of each permit and then simply inform the permit holder whether or not the permit qualifies for the Area 1 trap fishery. We believe that it should be up to the permit holder to decide whether to pursue Area 1 eligibility. There are some permits that may no longer be associated with vessels working in Area 1 due to routine permit transfers as permits and vessels routinely change hands. Also, some permit holders may have elected Area 1 and purchased trap tags (and would potentially pre-qualify) even though they have not, and don't plan to, fish for lobster with traps in Area 1. The proposed pre-qualification process will allow permit holders to make up their own minds as to whether or not to pursue an Area 1 qualification for their permit. It may facilitate effort reduction in the Area trap fishery should the subset of those permits that pre-qualify decline the opportunity to qualify their permits for Area 1 if their businesses are not set up for Area 1 fishing. Further, it could reduce latent trap fishing effort in Area 1 if those whose permits are eligible have not, and don't intend to, fish in Area 1. Therefore, NMFS considered Maine's comment on that issue but has maintained the proposed pre-qualification and notification process.

NMFS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on January 2, 2009, for the express purpose of notifying the public that the Federal Government was considering action to limit entry into Area 1, and to solicit comments. However, the notice did not explicitly request comments on this data collection since the process for determining Area 1 eligibility and accommodation for subsequent appeals had not yet been established.

Eight individuals commented on the Area 1 limited entry program in response to the ANPR. However, none of the comments were related to the data collection described in this submission; rather, they were germane to the concept of implementing a limited entry program for the Area 1 lobster trap fishery. NMFS considered those comments in the development of the draft Environmental Assessment and proposed rule.

Further, the Commission obtained feedback from the industry representatives on the Commission's Area 1 lobster conservation management team (LCMT) – an appointed body of lobster fishers who advise the Commission's Lobster Management Board on various management needs. The LCMT had concerns about the potential for increase lobster trap fishing effort in Area 1 under the current Federal regulations which allow all Federal lobster trap permits to be designated for trap fishing in Area 1. The LCMT meetings were open to the public as were meetings of the Lobster Management Board in 2009 when Addendum XV was contemplated. Further, the Commission made Addendum XV available for public comment in draft form and considered those public comments received prior to the final adoption of Addendum XV into the Plan.

9. Explain any decisions to provide payment or gifts to respondents, other than remuneration of contractors or grantees.

Not Applicable.

10. Describe any assurances of confidentiality provided to respondents and the basis for assuring in statute regulation, or agency policy.

All data will be kept confidential as required by NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and will not be released for public use except in aggregate statistical form (and without identifying the source of the data, i.e. vessel name, owner, etc.).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The individual time and cost burdens associated with the application submission process are the same regardless of whether Alternative 2 or Alternative 3 is selected (see Table 1).

NMFS estimates that it would take an applicant under Scenario 1 (a pre-qualified applicant) approximately **2 minutes** to check the box, sign and mail the application form indicating interest in Area 1 eligibility. NMFS expects that all **1,611 pre-qualified permit holders** will respond affirmatively in favor of seeking Area 1 eligibility. **The total burden for pre-qualified permit holders in Alternative 2 would be 54 hours.**

Under Scenario 2 (non-pre-qualified permit holders) respondents would incur the 2 minutes, plus the time needed to locate any supporting documentation to support the application (e.g., documentation from the state or Federal Government supporting that the permit holder had a valid Area 1 permit during the specified time-frame and that trap tags were purchased) and the costs to include it in the application. The time expected for the document search is 20 minutes. Added on to the standard time burden for an application (2 minutes), **the total time burden for non-pre-qualified applicants is 22 minutes.**

Under Scenario 2, 213 permits that were renewed prior to the control date but don't have a record of purchasing trap tags would not pre-qualify. Additionally, 43 permits whose owners did not renew the permit until after the control date would not pre-qualify, bringing the sub-total under Scenario 2 to 256. Further, 1,285 Federal lobster permit holders, who did not elect Area 1 on their Federal permit at all during 2008, will not pre-qualify. In total, **1,541** permit holders would not be pre-qualified and would be contacted accordingly.

NMFS expects that all 256 that meet at least one of the criteria would submit an application and 5 percent (n= 64) of those from the 1,285 with no Area 1 designation would attempt to qualify.

Based on these estimates, **NMFS expects 320 permits (256 + 64) notified under Scenario 2 would submit an application. Thus, the total burden for this group would be 117 hours.**

Based on these estimates, the total number of Scenario 1 and Scenario 2 applications expected in Alternative 2 is 1,931 (1,611 + 320), with an overall combined burden of 171. hours.

Alternative 3

Alternative 3 would pre-qualify all Federal Area 1 lobster trap permits which were renewed at any time during the 2008 fishing year and also had a record that the owner purchased trap tags during any year from 2004-2008. Therefore, **1,643** permits would pre-qualify and be notified consistent with Scenario 1. These include the 1,611 permits that bought tags and renewed prior to the control date, plus the 32 permits that bought tags and renewed after the control date but before the end of fishing year 2008. These are the pre-qualifiers that would be notified consistent with **Scenario 1**. **The burden for each applicant in Scenario 1 is 2 minutes bringing the total burden for all pre-qualified applicants in Alternative 3 to 55 hours (Table 2).**

In contrast, **1,509** permit holders would be contacted consistent with the process identified for **Scenario 2** in Question 1, since NMFS does not have sufficient information available to show that these permits meet all the eligibility criteria for the Area 1 trap fishery. These include the 213 permits renewed prior to the control date but under which no trap tags were purchased, and 11 permits renewed after the control date but under which no trap tags were purchased, totaling 224 non-qualifiers for Alternative 3 that elected Area 1 in 2008. Added to this, consistent with Alternative 2, are the 1,285 permits without an Area 1 designation in 2008. NMFS expects that all Scenario 2 (non-pre-qualified) permit holders who meet at least one of the criteria, representing 224 permits, would submit an application, along with 5 percent of those under Scenario 2 that did not elect Area 1 and don't meet any of the eligibility criteria, representing 64 permits. Therefore, **the total number of Scenario 2 applications expected under Alternative 3 is 288 (224 + 64). With an estimated time for each Scenario 2 applicant at 22 minutes, the total burden for all applicants combined in this group is 106 hours (Table 2).**

Based on these estimates, the total number of Scenario 1 and Scenario 2 applications expected in Alternative 3 is 1,931 (1,643 + 288), with an overall combined burden of 161 hours.

Appeals

Of the non-pre-qualified group (Scenario 2), there are between 224-256 (depending on whether Alternative 2 or 3 is chosen) permit holders that had Area 1 on their permit in 2008 (meet one of the criteria). NMFS expects all permit holders in this category would submit an eligibility application. Given the restrictive qualification criteria and the fact that NMFS has access to the data needed to determine eligibility, it is unlikely that any of these applicants, with the exception of perhaps a small number, would qualify. Therefore, the majority would not qualify and NMFS expects that about 10 percent of Scenario 2 permit holders would appeal, which works out to either 22 or 26 potential appeals, depending on the alternative chosen. Of the other sub-group of

Scenario 2 permit holders (non-pre-qualifiers that did not elect Area 1 on their permit in 2008, n=1,285 for both Alternative 2 and 3), NMFS expects that about 5 percent (n=64) may apply and all will likely be denied. Of those, if 10 percent appeal, then an additional 6 appeals will be received, bringing **the total number of appeals to 28 for Alternative 3 (22 + 6) and 32 for Alternative 2 (26+6).** NMFS estimates that the time burden to submit an appeal is 20 minutes to locate the necessary documentation to support the qualification criteria and 10 minutes to prepare an appeal letter, **totaling 30 minutes per appeal (Table 1), for a total of 32 x 30 minutes = 16 hours for Alternative 2 and 28 x 30 minutes = 14 hours for Alternative 3.**

Table 1. Estimated Burden on Individual Federal Permit Holders

Eligibility Scenario[2]	Submit Signed Application Letter and Check Box	Locate and Prepare Supporting Documentation	Preparation of Appeal Letter	Total Burden for Each Applicant /Appellant	
	Time (Min.)	Time (Min.)	Time (Min.)	Time (Min.)	Economic* (Dollars)
Scenario 1 (pre-qualified)	**2 minutes**	**N/A**	**N/A**	**2 minutes**	**$0.74**
Scenario 2 (not pre-qualified)	**2 minutes**	**20 minutes**	**N/A**	**22 minutes**	**$1.14**
Appeals	**N/A**	**20 minutes**	**10 minutes**	**30 minutes**	**$4.22**

*Costs are associated with postage, copying fees and envelope costs. See response to Question 13 for details.

The higher burden (Alternative 2), 171 for permits + 16 for appeals = 187, will be requested, as the maximum possible burden. Unduplicated respondents would be 1,931, with 1,963 responses (1,931 applicants/applications and appeals by 32 of the applicants).

13. Provide an estimate of the total annualized cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

To provide an accurate accounting of the cumulative cost burdens for affected permit holders, each management alternative must be analyzed separately since the potential number of applicants is different, albeit slightly, for each alternative.

[2] Scenario 1 – a permit holder receives a letter from NMFS indicating that sufficient information is already available to qualify the permit for the Area 1 trap fishery and the applicant needs only to sign and remit the form to be granted eligibility. Scenario 2 – the permit holder receives a letter from NMFS indicating that insufficient evidence is available to qualify the permit and if interested in pursuing Area 1 eligibility, the permit holder must sign and submit the application form along with any documentation that would support the eligibility criteria.

Alternative 2

Under Alternative 2, NMFS has sufficient data on-hand to pre-qualify **1,611** Federal lobster permits. These are the pre-qualifiers that would be notified consistent with **Scenario 1**. **NMFS estimates that all 1,611 permit holders will respond with an application** and once received, they would qualify since NMFS data supports eligibility for this sub-set of permits. The costs would be limited to the cost of a small envelope ($0.10), a copy of the letter ($0.20), if desired by the applicant, and the price of postage ($0.44 for a one-ounce letter). Therefore, the **total cost for a pre-qualified respondent is $0.74** and the **total cost would be $1,192.14 (Table 2)**. Due to the limited nature of the documents that could support the application, it is expected that each non-pre-qualified applicant would submit approximately 2 documents along with the application form. If the applicant chooses to make a copy of the documents, it would cost about $0.20 per copy. Therefore, the additional cost for non-pre-qualified applicants would be about $0.40. When added to the standard application cost ($0.74) **the total for each non-pre-qualified applicant is $1.14**. **Therefore, NMFS calculates the cost for all 320 Scenario 2 applicants to be $364.80 (Table 2).**

When added to Scenario 1, **the total number of applications expected under Alternative 2 is 1,931 (1,611 + 320). The combined cost burden for all applicants under Alternative 2 is $1,556.94 (Table 2).**

Alternative 3

Under Scenario 1, Alternative 3 would pre-qualify all Federal Area 1 lobster trap permits which were renewed at any time during the 2008 fishing year and also had a record that the owner purchased trap tags during any year from 2004-2008. Therefore, **1,643** permits would pre-qualify and be notified consistent with Scenario 1. These include the 1,611 permits that bought tags and renewed prior to the control date, plus the 32 permits that bought tags and renewed after the control date but before the end of fishing year 2008. With an estimated cost of $0.74 for each of the 1,643 applicants in Scenario 1, **the total cost for all pre-qualified applicants in Alternative 3 to $1,215.82 (Table 2).**

The total number of Scenario 2 applications expected under Alternative 3 is **288 (224 + 64).** With an estimated cost burden for each Scenario 2 applicant at $1.14, **the total cost for all applicants combined in this group is $328.32 (Table 2).**

Based on these estimates, the total number of Scenario 1 and Scenario 2 applications expected in Alternative 3 is also 1,931, with an overall cost of $1,544.14.

Table 2. Total Estimated Application Burdens on Federal Permit Holders

Mgmt Alternative	Scenario (Pre-qualified v. Not Pre-qualified)	Burden per Application			Burden All Applications	
		Number	Time (Min)	Economic (Dollars)	Time (Hours)	Economic (Dollars)
Alternative 2	Scenario 1 – Pre-qualified	1,611	2	$0.74	53.7	$1,192.14
	Scenario 2 – Not pre-qualified	320	22	$1.14	117.3	$364.80
	Alt 2 TOTAL	**1,931**	N/A	N/A	**171.0**	**$1,556.94**
Alternative 3	Scenario 1 – Pre-qualified	1,643	2	$0.74	54.8	$1,215.82
	Scenario 2 – Not pre-qualified	288	22	$1.14	105.6	$328.32
	Alt 3 TOTAL	**1,931**	N/A	N/A	**160.4**	**$1,544.14**

Appeals

The total number of appeals estimated for Alternative 3 is 28 and for Alternative 2, 32.

If a respondent whose eligibility application is denied chose to submit a letter of appeal along with supporting documentation, then additional postage and copying expenses may be incurred. Given the simplicity of the qualification criteria which are limited to permit and trap tag data only, the documentation needed to support an appeal is not likely to exceed 5 pages of documentation including the letter of appeal. The cost of copying five one-page documents, including the appeal letter, would be approximately $1.00 (5 x $.20 per copy). Further, the additional documents may require a larger envelope measuring 8.5" x 11" which is expected to cost about $2.00. The postage on a letter weighing up to 3 ounces is $1.22. **Therefore, a typical appeal package would cost a respondent approximately $4.22.**

Given the estimated number of appeals and the estimated cost per appeal, the **total burden for all appellants would be $118.16 for Alternative 3 (28 appeals), and 14 hours and 135.04 for Alternative 2 (32 appeals) (Table 3).**

Table 3. Total Estimated Appeals Burdens on Federal Permit Holders

Mgmt Alternative	Estimated Burden Per Appeal			Total Burden for All Appellants	
	Number	Time (Min.)	Economic (Dollars)	Time (Hours)	Economic (Dollars)
Alternative 2	32	30	$4.22	16 hours	$135.04
Alternative 3	28	30	$4.22	14 hours	$118.16

Table 4 provides the total burden for each alternative which includes the overall burden for submitting an application and filing an appeal. **For Alternative 2, NMFS estimates that the**

total burden on Federal permit holders would be 187 hours and $1,691.98 and the burden for Alternative 3 is calculated as 174 hours and $1,662.23 (Table 4).

Table 4. Total Burdens on Federal Permit Holders by Alternative

Mgmt Alternative	Total Application Burden (Tables 1 and 2)		Total Appeals Burden (Table 3)		Total Burden by Alternative	
	Time (Hours)	Economic (Dollars)	Time (Hours)	Economic (Dollars)	Time (Hours)	Economic (Dollars)
Alternative 2	171 hours	$1,556.94	16 hours	$135.04	**187 hours**	**$1,691.98**
Alternative 3	160 hours	$1,544.14	14 hours	$118.16	**174 Hours**	**$1,662.23**

The higher cost to the public for Alternative 2, $1,691.98, will be requested, as the maximum possible cost.

14. Provide estimates of annualized costs to the Federal Government.

Scenario 1 Processing, Review and Determination

NMFS will establish an internal review process for handling applications under the Area 1 limited entry program. NMFS will receive a maximum of between 1,611 and 1,643 applications[3], depending on the management alternative chosen. One employee, equivalent to a GS-12 level, with a salary of approximately $85,251[4] (GS-12 Step 5, equivalent to $40.98 per hour) will be tasked with receiving, logging in, cataloguing and reviewing the applications as they are received. The log-in and initial review process will take approximately 10 minutes per application. All the Scenario 1 applications are known qualifiers – the only action needed is that the permit holder requests eligibility via the application. Therefore, once the Scenario 1 applications are received and documented, a letter will be generated to inform the applicants that their permits are eligible for the Area 1 lobster trap fishery. The generation of the letter is expected to take another 10 minutes, totaling **20 minutes** for the review and response per application, totaling **$13.52 per application**. For the total number of **Scenario 1 applications**, that total time burden for the 1,611 to 1,643 applications would be **between 537 and 548 hours**, depending on the alternative chosen, costing between **$7,260.24 - $7,408.96 (Table 5)**.

Scenario 2 Processing, Review and Determination

Scenario 2 applications will take longer to evaluate, since the employee will need to review each application to determine whether the documentation provided by the applicant is sufficient to support the eligibility criteria. Therefore, for each Scenario 2 application, it will take the GS-12

[3] The government burden analysis considers the range of the maximum number of applications and appeals expected for each scenario under each management alternative and will calculate the burdens using the range of expected submissions for both alternatives.

[4] Pay estimates for GS-12 and GS-14 employees obtained from Federal Government Pay Schedule for January 2011 for the Boston, MA locality pay rate (frozen at 2010 level), obtained from Office of Management and Budget, www.opm.gov.

employee approximately 45 minutes to log in and review the application and make an eligibility recommendation to the Regional Administrator. Additionally, it will require a 10 minute review and clearance by both a Supervisory Policy Analyst (GS-14 Step 1, $105,702 per year and $50.80 hourly) and Attorney Advisor (GS-14 step 5, $119,794 per year, $57.60 hourly) prior to submission for a final determination by the Regional Administrator (149,627[5], or about $71.94 per hour) who, in turn would require 10 minutes to review the package and make a determination on the permit's eligibility.

Given these estimates, each application will require 45 minutes at $40.98 per hour ($30.74), 10 minutes at $50.80 per hour ($8.64), 10 minutes at $57.60 per hour ($9.79), and 10 minutes at $71.94 per hour ($12.23). Overall, **each Scenario 2 application** will take **75 minutes** for review and disposition, estimated **at $61.40 per application**. Thus, the overall burden to review **the 288-320 Scenario 2 applications** expected under either alternative is **between $17,683.20 and $19,648, and 360-400 hours**.

The material (non-labor) costs to the Federal Government for soliciting, processing and responding to applications would be restricted to costs of paper, envelopes and postage for an initial mailing to all 3,152 Federal lobster permit holders. Each Scenario 1 applicant will receive a follow up mailing indicating that their application was approved and up to 320 Scenario 2 applications will receive a second mailing indicating the determination of eligibility of their permit. About one month before the application deadline, NMFS may choose to do a follow-up mailing – a reminder letter - to those permit holders who have yet to respond to the initial request for applications. We estimate that approximately 50% of the permit holders may not have responded to the initial request for applications prior to 30 days before the application deadline. Therefore, if NMFS opts to send this reminder letter, it would be mailed to approximately 1,576 permit holders.

The items needed for the mailings include envelopes at $0.09 per envelope ($9.00 per box of 100 envelopes), one sheet of paper per response at $.01 per sheet (500 sheets per one ream at $5.00 per ream). Postage for each response could be covered with a single letter sized envelope and approximately 1 ounce in weight, for a postal charge of $0.44 per response. Therefore, the total material costs of mailing a letter to each applicant is approximately $0.55 ($0.09 + $0.02 + $0.44). To accomplish the initial mailing to all 3,152 permit holders and the subsequent mailings to the 1,931 applicants (total 5,083 mailings), **the total material costs for the initial mailing and determinations are estimated at $2,795.65. If the reminder letter is sent to approximately 1,576 permit holders, it would cost the Federal Government an additional $866.80, totaling 6,659 mailings, totaling $3,662.45 (Table 5)**. The additional costs of the reminder letter would also be the same for Alternative 3 at $866.80.

Total costs for labor, paper and envelopes, and postage: $30,570.69 for Alternative 2 and $28,754.61 for Alternative 3.

[5] Based on average salary of SES range for Federal agencies with a certified SES performance appraisal system, effective January 2011 (rates frozen at 2010 levels), www.opm.gov.

Table 5. Estimated Time and Cost Burdens of Applications on the Federal Government

Mgmt Alternative	*Receipt, Review and Response Cost for Each Application*	Burden per Application			Burden All Applications	
		Number	Time (Min)	Economic (Dollars)	Time (Hours)	Economic (Dollars)
Alternative 2	Scenario 1 – Pre-qualified	1,611	20	$13.52	537	$7,260.24
	Scenario 2 – Not pre-qualified	320	75	$61.40	400	$19,648.00
	Materials	N/A	N/A	$1.10[6]	N/A	$2,795.65
	Materials-Reminder Letter	1,576	N/A	$0.55	N/A	$866.80
	Alt 2 TOTAL	**3,457**	**95**	**$76.02**	**937**	**$30,570.69**
Alternative 3	Scenario 1 – Pre-qualified	1,643	20	$13.52	548	$7,408.96
	Scenario 2 – Not pre-qualified	288	75	$61.40	360	$17,683.20
	Materials	N/A	N/A	$1.10	N/A	$2,795.65
	Materials – Reminder Letter	1,576	N/A	$0.55	N/A	$866.80
	Alt 3 TOTAL	**3,507**	**95**	**$76.02**	**908**	**$28,754.61**

Appeals

NMFS estimates that it would take approximately 30 minutes for the GS-12 employee to log in and catalogue the appeal, review the documents provided by the appellant, analyze the documents in comparison to those used to make the initial agency determination of denial, provide a written recommendation to the Regional Administrator for either approval or denial of the appeal and to draft and mail to the appellant the documentation on the final decision and review of the appeal. At a pay rate of $40.98 per hour, the labor costs of each appeal to the Federal government would be approximately $ 20.49.

The appeal package would be reviewed by an Appeals Officer who is likely a NOAA Attorney with an average salary of $119,794, and hourly wage of $57.60 per hour. It would take the appeals officer about 30 minutes to review each appeals package and make a recommendation to the Regional Administrator. The cost for each appeal to be reviewed by the Appeals Officer is $28.80.

The appeals package and the Appeals Officer's recommendation will be reviewed by the Regional Administrator. Average annual salary is calculated at 149,627, or about $71.94 per hour. It is estimated that the Regional Administrator would take about 10 minutes to review the recommendations of the Appeals Officer and render a decision. The total labor cost of the Regional Administrator's review and decision on each appeal is $12.23.

[6] Assumes the cost of two mailings per application at $0.55 each.

Therefore, the total cost to review each appeal equals the cumulative cost of the GS-12 review ($20.49), the Appeals Officer review ($28.80) and the Regional Administrator's review ($12.23), which is $61.52. **The cumulative labor costs to review 28-32 appeals is $1,722.56 -$1,968.64**.

Total time to review each appeal is 1 hour and 10 minutes and the cumulative review time needed for **28-32 appeals is 33–37 hours**.

The material costs associated with responding to each appellant regarding the disposition of the appeal is limited to the costs of postage, paper and envelopes (see breakdown under application burden earlier in this item) which is approximately **$0.55 per appeal response**. **For 28-32 appeals, the material burden is estimated to be $15.40-$17.60 (Table 6)**.

Table 6. Estimated Time and Cost Burdens of Appeals on the Federal Government– Range Provided for Both Alternatives.

Federal Burden	***Receipt, Review and Response Cost for Each Appeal***		***Total Appeals Burden***	
Costs	Time (hours)	Economic (dollars)	Time (hours)	Economic (dollars)
Labor	1.17	$61.52	32.8-37.4	$1,722.56 -1,968.64
Materials	N/A	$0.55	N/A	$15.40-17.60
TOTAL	1.17	$62.03	32.8-37.4	$1,737.96-1,986.24

Table 7 summarizes the combined overall labor and material costs to the Federal Government associated with this program by calculating the cumulative costs to handle the applications and appeals. Overall, Alternative 3, the Preferred Alternative, is much more cost effective since it qualifies more permit holders (and, therefore has less social impact) and does so at lower cost to the Federal Government. The overall time burden for Alternative 2 is about 974 hours compared to about 941 hours for Alternative 3. From a cost perspective, **Alternative 2 is expected to cost the Federal Government about $32,557 while Alternative 3 would cost an estimated $30,493.**

Table 7. TOTAL Program Time and Cost Burdens on the Federal Government

Mgmt Alternative	*Federal Burden*	*Application Burden*		*Appeals Burden*		*Overall Program Burden*	
Alternative 2	Costs	Time (hours)	Economic (dollars)	Time (hours)	Economic (dollars)	Time (hours)	Economic (dollars)
	Labor	937	$26,908.24	37.4	$1,968.64	974.4	$28,876.88
	Materials	N/A	$3,662.45	N/A	$17.60	N/A	$3,680.05
	TOTAL	937	$30,570.69	37.4	$1,986.24	**974.4**	**$32,556.93**
Alternative 3	Costs	Time (hours)	Economic (dollars)	Time (hours)	Economic (dollars)	Time (hours)	Economic (dollars)
	Labor	908	$25,092.16	32.8	$1,722.56	940.8	$26,814.72
	Materials	N/A	$3,662.45	N/A	$15.40	N/A	$3,677.85
	TOTAL	908	$28,754.61	32.8	$1,737.96	**940.8**	**$30,492.57**

15. Explain the reasons for any program changes or adjustments.

This is a new information collection.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to use any of the information provided to the Federal government through this programmatic appeals process for statistical purposes or publication, other than for the purposes of tabulating the total number of qualifying permits, non-qualifying permits, and appeals. Results from this collection may be used in scientific, management, technical or general publications such as Fisheries of the United States which follows prescribed statistical tabulations and summary table formats. Data are available to the general public upon request in summary form only; data are available to NMFS employees in detailed formats on a need-to-know basis. Permit information, including the status of a permit based on the review of any applications submitted under this collection of information action is available on the Internet.

17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification requirement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods will be employed for the purposes of this information collection requirement.

Appendix 7A

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

MAR 16 2012

MEMORANDUM FOR: The Record

FROM: Rachel Neild, Research Associate

SUBJECT: Lobster Area 1 Limited Entry Area Qualification Program - Data Quality Analysis

SUMMARY

Our draft Environmental Assessment (EA) analyzed the impacts of the proposed Area 1 limited access program and concluded that approximately 1,643 Federal permit holders would qualify. We double-checked the EA's analysis using different analytical methodologies to see if the results would be consistent with the EA (i.e., that approximately the same number of permit holders would qualify under either analysis). After double-checking with the alternative analysis, we found that the expected number of qualifiers was consistent and thus we were able to confirm that the EA's analysis was accurate and meaningful. This memorandum summarizes the process we used in double-checking the EA's methodology.

BACKGROUND

The Area 1 lobster trap fishery qualification process relies on the use of Moratorium Right Idenitifiers (MRI's), a unique five-digit number used to track and account for the history associated with each Federal fishing permit. The three criteria explained in the proposed rule would limit entry to the Lobster Management Area 1 (Area 1) lobster trap fishery based upon: 1) possession of a Federal limited access lobster permit; 2) proof of an Area 1 designation on the Federal lobster permit from May 1, 2008 through April 30, 2009; and 3) proof of purchase of an Area 1 lobster trap tag during any fishing year from 2004-2008.

NMFS analyzed MRI's based on these criteria, which are consistent with those recommended by the Atlantic States Marine Fisheries Commission (Commission) in Addendum XV to the Commission's Interstate Fishery Management Plan for American Lobster, to track and preserve each Federal lobster permit's eligibility for Area 1. The Commission approved Addendum XV to maintain the sustainability of the Gulf of Maine Lobster Stock and Fishery by capping the number of Federal lobster trap permits in Area 1 to prevent other Federal lobster permits from migrating into the area which could, potentially, destabilize the fishery through lack of controls on fishing effort. Upon publication of a proposed rule for this action a Regional internal working group was convened to determine whether the methods and data used to preliminarily qualify Federal lobster permits for the Area 1 lobster trap fishery are sound. The data review confirmed the utility and accuracy of the data and methods used for this program. The data review process is set forth out in this memorandum and allows us to continue to move forward with a final rule

on this action without the need for substantive revisions to the process used to determine permit eligibility.

ANALYSIS

Federal fishery permits are transferrable, meaning that they may be transferred from one vessel to another and a permit's history is considered to be the combined fishing history of all the vessels it was ever associated with. To capture, track, and account for each permit's history, the Northeast Region established a system whereby the history associated with each permit could be tracked using a unique identification number, or Moratorium Right Identifier (MRI). The MRI was used as the basis for determining each permit's history as it relates to the Area 1 lobster trap fishery eligibility criteria.

Environmental Assessment: Area 1 Lobster Trap Permit Eligibility Determination Process

In the draft EA, we queried the MRIs in the Regional Moratorium Rights Qualification System (MQRS), the Oracle database which tracks MRIs, to determine which Federal lobster permits meet criteria 1 and 2 – current Federal lobster permits which had an Area 1 lobster trap gear designation during the 2008 Federal fishing year which occurred from May 1, 2008- through April 30, 2009. The query revealed that approximately 1,867 permits met those criteria. Next, we used trap tag purchase data from the Area 1 states and the coastwide trap tag vendor to determine which of the permits that met the initial criteria also met the trap tag purchase requirements. We determined that about 1,643 permits of the 1,867 also purchased a trap tag during the designated period and would, therefore, potentially qualify for continued access to the Area 1 lobster trap fishery.

Our identification of these 1,643 individuals as "potential qualifiers" is a loose characterization. The analysis identified in the EA was general and done for the purpose of giving the agency and the public a general understanding of the potential impacts of the proposed rule; it was not done to create a list of specific individuals who were in and who were out. In other words, the purpose was to get a general sense of the total number of potential qualifiers; we were not interested in which specific permits might preliminarily qualify and which permits would not. In fact, under the presently proposed rule, the agency rules nobody out preliminarily - even if a permit holder is not on a pre-existing qualifier list, the permit holder may still apply with no presumption being held against them. As such, because nobody is being pre-judged and because the Area 1 application process is open to any Federal permit holder, any list of qualifiers cannot be known for certain until the rule is in place, applications have been submitted and decisions upon them have been finalized.

The reason the EA set forth a general analysis was due, in part, to the different way in which the states and Federal governments track data. In both the state and federal systems, data is associated with the permit, but in the state system, the permit tracks to the individual whereas in the federal system, the permit tracks to the vessel. The difference is inconsequential where dual state/Federal permit holders remain in a single static business. But when an individual with dual state/Federal permits splits and moves those permits (through sale or transfer), it can be difficult tracing the history given that the state might operate under one set of rules (e.g., permit rights

staying with the individual) and the Federal Government might operate under a different set of rules (e.g., that the history stays with the vessel).

This dichotomy presents itself in the use of trap tag data. The majority of lobster trap tags issued to Federal permit holders are issued by the permit holder's state fishery agency and issued to each vessel based on the vessel's Federal permit number. So, the trap tag data we relied on for this process used in the EA did not initially include the MRI for each permit. The permit number is specific to the vessel and unlike the MRI, is relevant only to the permit history that is associated with its current vessel (as well as the collective history of all the vessels it was previously associated with). Therefore, we needed to track each permit back to its current MRI and then determine whether it was the same MRI associated with that vessel when the trap tag purchase was made and whether the MRI at the time of the tag purchase is the same MRI associated with the vessel when the permit was renewed with the Area 1 designation during the 2008 fishing year.

The permit number cannot be used to track a permit's history, only a vessel's history. A vessel retains the same permit number throughout its life, regardless of which permit history is associated with the vessel at a given time. Therefore, since we are interested in qualifying permits and not vessels, we needed to track the permit numbers back to the relevant MRI to ensure that the trap tag purchase associated with each vessel could be accurately matched with the relevant MRI or permit history. This was a relatively straight-forward process for the majority of the permits. We worked with our programming staff (IRM) to accomplish this for more than 60 percent of the permits (if their MRI had not changed since 2004, we knew that it was the same permit history on the vessel throughout the eligibility period) but needed to track the others permits (with evidence of more than one MRI associated with it) by hand using the MRI and vessel permit system databases. These initial determinations of Area 1 eligibility formed the basis for the Environmental Assessment to support the proposed rule.

Accordingly, we were comfortable that the qualification numbers presented in the EA were generally correct, and that it certainly presented a clear and useful overview of the expected situation in the Area 1 fishery both before and after qualification. Given the nature of potential administrative disconnects, including the state/Federal disconnect described above, we expected there to be some variation in the final numbers as we examined each permit's history on a more case-by-case basis. As described below, this variation proved to be minor.

Data Quality Review Phase 1 – MRI Audit Reconciliation

After completing the draft EA, regional staff began, separate from the purpose of this subject action, an extensive review of the permit histories in MQRS. Federal lobster permits became limited access permits around 1995, meaning that permit holders needed to meet specific eligibility criteria to maintain future access to the Federal American lobster fishery. At that time a moratorium was established to cap the number of permits and no new permits could be issued after the initial qualification process. Subsequently, it became a common practice in the regional databases to change the MRI when a permit was transferred or replaced for the first time after its initial qualification. The purpose of the MRI review was to revert these permit histories back to

their original MRI's. When this process was completed in 2011, it was revealed that some of the Area 1 permit histories identified in our Area 1 eligibility review needed to be changed.

The first phase of the Area 1 permit data quality review was established to analyze the potential impact of this regional MRI audit on our initial list of Area 1 qualifiers. Some of the MRIs on our initial potential qualifiers list - the list of 1,643 potential qualifiers as identified in our EA - changed as a result of the MRI audit. Lobster Program staff conducted an exhaustive review of the new MRIs using the MQRS and Vessel Permit System databases to ensure that the new MRIs reflected the same permit histories as the original MRIs. The majority of those were verified as accurate and the new MRI's were then incorporated into our list of qualified Area 1 MRI's. Though there were a few MRI's that needed more in-depth review to determine their disposition, it was found that the regional MRI audit did not substantially alter the qualification list (approximately 20 additional qualifiers) of permit histories (MRIs) that were identified in the draft EA.

Data Quality Review Phase 2 – Audit of Eligibility Determination Process and Outcomes

Once we determined that the MRI review did not substantially affect our list of qualified MRIs and our list was updated to reflect the new MRI numbers, we embarked upon the second phase of the data quality review. This stage of the review intended to test our methodology for making the initial eligibility determinations.

Over and eight-week period, we convened a regional working group that included our lobster program staff, general counsel, the oracle programmer who helped with our initial eligibility determination process, and the permit office staff. To check the validity of our initial eligibility determination methodology, the permit office staff developed an alternative method to determine whether each MRI meets the eligibility criteria. The permit office staff elected a different approach and worked backwards in comparison to our method, using the permit numbers from the trap tag data to identify all the MRIs that were associated with each permit number that had a trap tag purchase. These MRIs were then matched with those that had an Area 1 permit designation during the 2008 federal fishing year. The permits office came up with 37 permit histories that were not on our initial qualification list. Upon further investigation, approximately 20 of these might qualify for Area 1 compared to the initial lobster qualification list estimate, but it may be even less. Given the differing Administrative processes and data bases, we believe that many of the 20 may be duplicates of already counted permits and therefore, that the actual variability will likely be less. These permit histories will be further investigated during the final eligibility review.

Although the methodology test revealed some discrepancies with our initial list of qualifiers, it results only in the investigation of only about 20 permits out of about 1,867 that had an Area 1 designation in 2008. This slight discrepancy in the number of potentially eligible permits is not unexpected since changes to the status of permits is continuous due to permits not being renewed, placed in confirmation of permit history, or transferred to another vessel, actions which occur on a daily basis. Overall, the permit office's audit was used as a test that validated that the initial dataset queries in 2010 for the Area 1 qualifiers was a sound process and one that showed insignificant changes to the everyday permit alterations. Consequently, the data review

served its purpose, revealing that the alternative method for determining the set of eligible MRIs was relatively consistent with the initial method, allowing us to move forward with a final rule for this action without any substantive changes to the process of eligibility determination.

Appendix 8

ACRONYM	DEFINITION
ACA	Atlantic Coastal Act (Short for Atlantic Coastal Fisheries Cooperative Management Act)
ACL	Annual Allowable Catch
ACFCMA	Atlantic Coastal Fisheries Cooperative Management Act
ALWTRP	Atlantic Large Whale Take Reduction Plan
AM	Accountable Measures
ANPR	Advanced Notice of Proposed Rulemaking
ASMFC	Atlantic States Marine Fisheries Commission
CEA	Cumulative Effects Analysis
CeTAP	Cetacean and Turtle Assessment Program
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CM	Centimeter
CL	Carapace Length
CPH	Confirmation of Permit History
CPUE	Catch Per Unit Effort
CZMA	Coastal Zone Management Act
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
E.O.	Executive Order
ESA	Endangered Species Act
FMP	Fishery Management Plan
FR	Federal Register
GBK	Georges Bank
GOM	Gulf of Maine

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ACRONYM	DEFINITION
ISFMP	Interstate Fishery Management Plan
KG	Kilograms
KM	Kilometers
LBS	Pounds
LCMA	Lobster Conservation Management Area
LCMT	Lobster Conservation Management Team
LIS	Long Island Sound
MAFMC	Mid-Atlantic Fishery Management Council
M	Million
M	Natural Mortality
m	Meter
m^2	Square Meter
MT	Metric Tons
MMPA	Marine Mammal Protection Act
MOU	Memorandum of Understanding
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MQRS	Moratorium Rights Qualification System
MRI	Moratorium Right Identifier
NEFMC	New England Fishery Management Council
NEFSC	Northeast Fishery Science Center
NEPA	National Environmental Policy Act
NERO	Northeast Regional Office
NMFS	National Marine Fisheries Service
NOAA	National Oceanic & Atmospheric Administration
OMB	Office of Management and Budget
P	Past

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ACRONYM	DEFINITION
Pr	Present
PRA	Paperwork Reduction Act
PCEs	Primary Constituent Elements
RFF	Reasonably Foreseeable Future
SP	Species
SNE	Southern New England
STSSN	Sea Turtle Stranding and Salvage Network
VPS	Vessel Permit System
USFWS	United States Fish and Wildlife Service
VECs	Valued Ecosystem Components
VTRs	Vessel Trip Reports