

the operator, and (3) applicants who seek a transfer of permit eligibility as a result of inheritance. Framework Adjustment 3 also establishes a fourth measure, which will allow the owner of a vessel that is denied a Federal limited access lobster permit to continue to fish for lobster while pursuing an appeal of the denial under § 649.4(b)(5) if the vessel was issued a Federal or federally endorsed state permit for the lobster fishery in 1994.

Measure 1 addresses the issue of permit eligibility in the case of harvesters who leased federally endorsed state lobster permits. The Council and NMFS have concurred that this measure is required in order to apply the eligibility criteria equitably to these applicants. The measure entitles the applicant to the fishing right associated with the exercise of the permit, despite the fact that the permit was held through a lease arrangement. This criteria applies only to applicants who have met all other eligibility requirements.

Measure 2 addresses the issue of permit eligibility for vessels that operated legally under federally endorsed state lobster permits issued to the vessel captain. If such vessels meet all other eligibility criteria, the Council believes and NMFS concurs that they should be eligible for the limited access lobster permit because the vessel was operated legally under the existing laws. Permit eligibility for a limited access permit is conferred on the owner of the vessel rather than the vessel captain because the captain who is not the vessel owner cannot satisfy the vessel ownership requirement. This policy is consistent with the Council's policy for limited access permit eligibility for the Northeast multispecies and Atlantic sea scallop fisheries.

Measure 3 was intended by the Council to clarify that the rules relating to permit transfers apply to inheritance of limited access permits. NMFS determined that the existing language specified in § 649.4(b)(3) would apply to transfers through inheritance in a manner consistent with Council intent and that additional regulatory language is not necessary.

Measure 4 allows some applicants to continue to harvest lobsters if they have appealed the denial of their application for the 1995 limited access permit. This action is intended to prevent needless harm to current participants in the fishery. Based on the determination that vessels with a current economic dependence upon the EEZ lobster fishery would have obtained permits in 1994, this provision is restricted to vessels that were issued a 1994 Federal

or federally endorsed state lobster permit.

Disapproved Measure

Framework Adjustment 3 included one measure that was disapproved by the Director, Northeast Region, NMFS (Regional Director). The proposed measure would have allowed vessel owners who could show that their vessel landed lobster from the EEZ before the control date, to qualify for a limited access permit, despite never having had a permit to fish in the EEZ. This measure was disapproved because, in part, there is no apparent justification for such an exception in the lobster limited access fishery given that this exemption was not included in the recently implemented amendments establishing limited access programs in the Northeast Multispecies and Atlantic Sea Scallop FMPs. Without justification, NMFS would not implement a measure inconsistent with other similar fishery regulations. In addition, the measure would undermine the perceived importance and the effective enforcement of Federal permitting requirements by appearing to grant a benefit to harvesters who acknowledge that they fished illegally in Federal waters. Moreover, given the indefiniteness of the proposed logbook criterion for establishing an applicant's participation in the Federal lobster fishery, it would be very difficult, if not impossible, to administer this measure consistently, fairly, and equitably, and it is likely that the measure would invite fraud and abuse.

The Council followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by notifying the public of the proposed actions and providing opportunities for comment at two Council meetings, on February 16 and March 30, 1995. Ten members of the industry made comments at these meetings. Most commenters supported the proposed measures. However, there were two commenters who opposed the proposal that would have allowed vessel owners who could show that their vessel landed lobster from the exclusive economic zone (EEZ) before the control date to qualify for a limited access permit, despite never having had a permit to fish in the EEZ.

This adjustment is being made through the framework process (§ 649.44) and is within the scope of analyses contained in Amendment 5 and the FSEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting

documents for Framework Adjustment 3 (see ADDRESSES).

There are four factors that the Council and NMFS are required to consider in order to publish a framework adjustment as a final rule: (1) Whether the availability of data allows for adequate time to publish the action as a proposed rule, (2) whether there has been adequate notice and opportunity for public participation in the development of the measures, (3) whether there is an immediate need to protect the resource, and (4) whether there will be a continuing evaluation of management measures adopted following publication of the final rule.

The Council recommended publication of these measures as a final rule, rather than as a proposed rule, in order to minimize disruption in the fishery and clarify the administrative requirements associated with the limited access permit requirement. Implementation of these measures is not dependent upon data availability. The Council determined, and NMFS agrees, that adequate notice and opportunity for public participation was provided in the development of the measures. The measures in Framework Adjustment 3 are necessary to administer effectively the management measures contained in the FMP, which was developed in response to the need to protect the resource. The Council will be carrying out continuing evaluation of the management measures adopted under this action.

Comments and Responses—Framework Adjustment 3

Comment—Measure 1: An applicant who is a vessel owner who only leased a federally endorsed permit did not actually have a Federal permit and therefore should not qualify for a limited access lobster permit.

Response: The person who owned and operated the boat and leased the legal rights associated with the permit should be eligible for the limited access permit as a result of exercising the permit because that person legally operated the vessel with authority to fish in the EEZ.

Comment—Measure 2: The operator and not the owner should be eligible for a Federal limited access lobster permit.

Response: Fishing operations are permitted directly under the Federal permit system. The Council's intent is to base eligibility for limited access lobster permits on whether the vessel qualifies, not the operator. This measure attempts to make eligibility criteria based on federally endorsed state permits operate in an identical way. Moreover, to allow operators to qualify independently