

**1522.1003 Applicability.**

Requests for limitations, variances, tolerances and exemptions shall be submitted to the Chief of the Contracting Office for signature and through the agency labor advisor in the Grants Administration Division to the Department of Labor in accordance with FAR 22.1003-4.

11. Section 1525.102 is revised to read as follows:

**1525.102 Policy.**

The Chief of the Contracting Office is designated to approve determinations required by FAR 25.102(b)(2).

**1542.708 [Amended]**

12. Section 1542.708 is amended by removing the dollar figure "\$500,000" in paragraph (a)(1) and replacing it with the dollar figure "\$2,000,000" and by removing the dollar figure "\$1,000,000" in paragraph (a)(2) and replacing it with the dollar figure "\$5,000,000".

**1552.210-75 [Amended]**

13. Section 1552.210-75 introductory text is amended by removing "1510.011-74" and adding in its place "1510.011-75."

**1552.210-76 [Amended]**

14. Section 1552.210-76 introductory text is amended by removing "1510.011-75" and adding in its place "1510.011-76."

**1552.210-77 [Amended]**

15. Section 1552.210-77 introductory text is amended by removing "1510.011-76" and adding in its place "1510.011-77."

**1552.210-78 [Amended]**

16. Section 1552.210-78 introductory text is amended by removing "1510.011-77" and adding in its place "1510.011-78."

Dated: April 24, 1995.

**Betty L. Bailey,**

*Director, Office of Acquisition Management.*

[FR Doc. 95-10877 Filed 5-3-95; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 651**

[Docket No. 950410096-5096-01; I.D. 042695A]

RIN 0648-AH66

**Northeast Multispecies Fishery; Framework 9 Measures; Reporting Requirements**

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

**ACTION:** Final rule; effectiveness of collection-of-information requirements.

**SUMMARY:** NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in Framework Adjustment 9 to the Northeast Multispecies Fishery Management Plan (FMP). This rule makes effective several reporting requirements that are associated with regulations that provide significant regulatory relief to fishermen, including transiting certain closed areas under specified conditions, fishing by vessels in a given state's winter flounder fishing program under certain conditions using net mesh size less than the minimum mesh size, and fishing by party and charter boats in the Nantucket Lightship Closed Area under certain conditions.

**EFFECTIVE DATE:** Sections 651.20(a)(6)(iii)(B), 651.20(j)(1), and 651.21(c)(2)(iv)(A) published at 60 FR 19364 (April 18, 1995) are effective on April 28, 1995.

**ADDRESSES:** Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to the Regional Director, Northeast Regional Office, National Marine Fisheries Service, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, (Attention: NOAA Desk Officer), Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Susan A. Murphy, Fishery Policy Analyst, 508-281-9252.

**SUPPLEMENTARY INFORMATION:** A final rule that implemented the measures contained in Framework 9 to the FMP was published in the **Federal Register** on April 18, 1995 (60 FR 19364), and most of those measures were made effective on April 13, 1995. However, because OMB approval of the reporting requirements contained in Framework 9

had not yet been received as of the effective date of that rule, effectiveness of those measures was delayed. OMB approval for those measures was received on April 26, 1995. Consequently this rule makes the three reporting measures (§§ 651.20(a)(6)(iii)(B), 651.20(j)(1), and 651.21(c)(2)(iv)(A)), which were codified in the April 18 final rule, effective.

**Classification**

The Assistant Administrator for Fisheries, NOAA, finds that, under 5 U.S.C. 553(d)(1), because immediate implementation of this rule relieves restrictions on the industry with virtually no impact on the conservation objectives of the FMP, there is no need to delay the effectiveness of the reporting requirements contained herein.

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by the Office of Management and Budget under OMB control number 0648-0202. The public reporting burden for each of these collections of information is estimated to be 2 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

NOAA codifies its OMB control numbers for information collection at 50 CFR 204.1.

This action has been determined to be not significant for purposes of E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

[FR Doc. 95-10929 Filed 4-28-95; 4:36 pm]

BILLING CODE 3510-22-F

**50 CFR Part 649**

[Docket No. 950224059-5114-02; I.D. 011195C]

RIN 0648-AH36

**American Lobster Fishery; Framework Adjustments 2 and 3**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS implements measures contained in Framework Adjustments 2 and 3 to the American Lobster Fishery Management Plan (FMP). These framework adjustments change the eligibility requirements for lobster limited access permits to address potentially unequal standards for lobster harvesters who reside in different states. Framework Adjustment 3 also authorizes NMFS to issue a letter of authorization to the owners of some vessels, in order to allow them to continue to fish for lobster while pursuing an appeal of the denial of a Federal limited access permit.

**EFFECTIVE DATE:** May 1, 1995.

**ADDRESSES:** Copies of Framework Adjustments 2 and 3, Amendment 5 to the FMP, its regulatory impact review, initial regulatory flexibility analysis, and final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

**SUPPLEMENTARY INFORMATION:**

### Background

Eligibility for a Federal American lobster limited access permit can be established with a vessel's or a person's state permit history (59 FR 31938, June 21, 1994). Because the various states have not had uniform permitting systems, potentially unequal eligibility criteria were inadvertently created for lobster harvesters who reside in different states. These framework actions are implemented to remedy that inequity. This rule also implements a measure contained in Framework Adjustment 3 to prevent harm to active fishery participants by allowing them to continue fishing while they are appealing the denial of a limited access permit.

### Framework Adjustment 2

Prior to this action, to qualify for a limited access American lobster permit, which may be issued only to a vessel, the vessel or vessel owner must have been issued a Federal American lobster permit, or a federally endorsed state lobster permit, and must have landed American lobster prior to March 25, 1991. This requirement resulted in potentially unequal eligibility criteria for lobster harvesters residing or fishing

in different states. Framework Adjustment 2 remedies this by requiring all permit applicants who base their eligibility on a federally endorsed state license to demonstrate that they owned a boat and used it to land lobsters during the qualification period. These applicants will be required to show proof of ownership of a fishing vessel and of having landed lobsters from that vessel prior to March 25, 1991.

Sections of the current regulations dealing with transferability of permit eligibility were previously written from the perspective of Federal permits issued to vessels. As a result, the regulations were not directly applicable to the transfer of eligibility based on federally endorsed state lobster permits that are issued to individuals. To be consistent with the transferability of eligibility associated with federally permitted vessels, this rule includes regulatory language at § 649.4(b)(1)(i)(B)(2) and (b)(3)(ii) to clarify that eligibility based on a federally endorsed state lobster permit can be transferred with the sale of a vessel after March 25, 1991, if the intent to transfer such rights is verified by credible written evidence.

Because this rule changes the qualification criteria for obtaining a limited access American lobster permit for 1995, it also changes the dates by which vessel owners are required to obtain permits. This rule also makes several minor modifications to § 649.4 (p) and (q) to ease the public's administrative burden and to conform the requirement to the Council's recommendation.

The New England Fishery Management Council (Council) followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by developing and analyzing the actions at two Council meetings, on September 21-22 and October 28-29, 1994. In accordance with the regulations, public comments on the framework adjustment were solicited during these Council meetings. No comments were received. However, because this action was initiated at the first of these meetings without adequate notice to the public, the Council recommended that NMFS publish the measures contained in Framework Adjustment 2 as a proposed rule to ensure that the public was afforded sufficient prior notice and an opportunity for comment. The proposed rule was published on March 16, 1995 (60 FR 14261) and the comment period ended on March 30, 1995. No comments were received.

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 2 (see ADDRESSES).

### Changes From the Proposed Rule

After the development of Framework Adjustment 2, additional concerns were raised to the attention of the Council concerning inequities resulting from differences among the states in the handling of federally endorsed state permits. Framework Adjustment 3 was developed to address these and other issues. Both Framework Adjustments 2 and 3 deal with aspects of applicant eligibility for limited access permits. These Frameworks are published together in order to present the revisions to the regulations in the clearest manner possible. In the interests of clarity, this presentation has resulted in some changes in the final text when compared to the text published in the proposed rule for Framework Adjustment 2. The changes are listed below.

Paragraph (b)(1)(i)(B)(3) is added to implement the action adopted by the Council in Measure 2 of Framework Adjustment 3.

Paragraph (b)(1)(i)(B)(4) is added to implement the action adopted by the Council in Measure 1 of Framework Adjustment 3.

Paragraph (b)(1)(i)(C) is revised to clarify the relation of the permit eligibility criteria for vessels that were under construction or re-rigging to the measures contained in Framework Adjustment 3.

Paragraph (b)(1)(iii) is deleted, because NMFS is reexamining the scheduling of permit renewals.

A new paragraph (b)(2)(iii) was proposed to clarify the application deadline for permit renewal in 1996. This paragraph was not included in this final rule, because the issue of permit renewal is under reexamination by NMFS.

Paragraph (b)(5)(vi) is added to implement Measure 4 of Framework Adjustment 3.

### Framework Adjustment 3

#### Approved Measures

Framework Adjustment 3 revises the permit qualification criteria to clarify eligibility criteria for: (1) Applicants who leased federally endorsed state permits, (2) applicants who owned vessels that fished for lobster under a federally endorsed state permit issued to

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

would potentially result in significantly more limited access lobster permits being issued than the number of vessels participating in the Federal lobster fishery at the time of the control date.

*Comment—Measure 4:* This provision discriminates between applicants with a recent history in the fishery and those who participated further in the past.

*Response:* The opportunity to fish while appealing a permit denial is restricted to 1994 permit holders to avoid allowing a potentially unlimited group of non-bona fide applicants from using the appeals process to gain temporary access to the fishery. Based on the determination that vessels with a current economic dependence upon the EEZ lobster fishery would have obtained permits in 1994 and are more likely to be disadvantaged if not allowed to fish, this provision applies only to vessels that were issued a 1994 Federal or federally endorsed state lobster permit.

*Comment—Disapproved Measure:* Several commenters supported this measure. They either thought they had federally endorsed state permits and were fishing illegally in the EEZ or were unaware of the requirement. Without this measure, these commenters would be ineligible for the limited access permit.

*Response:* Though sympathetic with the commenter's dilemma, NMFS has disapproved this measure for the reasons stated above.

*Comment—Disapproved Measure:* This provision unfairly qualifies people who should not qualify for a limited access permit. The permit applicant should have obtained a Federal lobster permit for a vessel that fished in the EEZ and therefore should not be granted a limited access permit.

*Response:* NMFS agrees that persons who did not have a Federal lobster permit at the time of the control date should not be eligible for a limited access permit and has disapproved the measure.

*Comment—Disapproved Measure:* This provision would let too many additional entrants into the EEZ lobster fishery and undermine the stock rebuilding program.

*Response:* If the measure had been found to address inequities in the application of the criteria used to determine limited access permit eligibility, it would not have mattered how many additional entrants would result because the issue would have been one of equity. However, NMFS has disapproved the measure, because it is inconsistent with other similar fishery regulations, and it undermines the perceived importance and effective

enforcement of Federal permitting requirements.

#### Classification

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive the requirements to provide prior notice and an opportunity for public comment concerning Framework Adjustment 3 under 5 U.S.C. 553(b)(B). Two public meetings held by the Council to discuss the management measures implemented by this framework measure provided adequate prior notice and an opportunity for public comment to be considered. Furthermore, NMFS has responded to comments received from the public during those meetings on this rule. Thus, additional opportunity for public comment is unnecessary.

The 30-day delay in effectiveness of these measures required by the APA is waived under 5 U.S.C. 553(d)(1), because this rule relieves restrictions on the eligibility for a lobster permit.

#### List of Subjects in 50 CFR Part 649

Fisheries.

Dated: April 28, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

#### PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 649.4, the first sentence of paragraph (a)(1), the first sentence of paragraph (b) introductory text, and paragraphs (b)(1)(i), (b)(2)(i), (b)(3), (p), and (q) are revised; and paragraph (b)(5)(vi) is added to read as follows:

##### § 649.4 Vessel permits.

(a) \* \* \*

(1) Through April 30, 1995, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry on board a valid permit required by or issued under this part. \* \* \*

(b) \* \* \* From May 1, 1995, through December 31, 1999, any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access American lobster permit. \* \* \*

(1) \* \* \*

(i) To be eligible for a limited access permit for 1995, a vessel or the permit

applicant must meet one of the following criteria:

(A) The vessel was issued a Federal American lobster permit and landed American lobster prior to March 25, 1991, while in possession of the lobster permit.

(B) To qualify for the limited access permit based on a federally endorsed state permit history, one of the following criteria must be met:

(1) The permit applicant was issued a federally endorsed state American lobster permit, and landed American lobster prior to March 25, 1991, and owned a vessel that landed American lobster prior to March 25, 1991, while in possession of the lobster permit; or

(2) The vessel was owned by a person who landed lobster prior to March 25, 1991, while in possession of a valid federally endorsed state American lobster permit, and the vessel was transferred to the current vessel owner in accordance with the exception to the presumption specified in paragraph (b)(3)(ii) of this section; or

(3) The permit applicant owned a vessel that landed American lobster prior to March 25, 1991, while under the operation of an individual with a valid federally endorsed state lobster permit; or

(4) The permit applicant owned a vessel that landed American lobster prior to March 25, 1991, while the applicant held a valid signed written lease, recognized and authorized by the issuing state, granting the rights to a federally endorsed state lobster permit.

(C) The permit applicant owned a vessel that was under written agreement for construction or for rigging for directed American lobster fishing as of March 25, 1991, and the applicant meets one of the eligibility criteria set forth in paragraphs (b)(1)(i)(A) or (B) of this section. For the purposes of paragraph (b)(1)(i)(C) all references to March 25, 1991, in paragraph (b)(1)(i)(A) or (B) of this section should be March 25, 1992.

(D) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(i)(A), (B), or (C) of this section.

\* \* \* \* \*

(2) \* \* \*

(i) To be eligible to renew or apply for a limited access lobster permit after 1995, a vessel or permit applicant must have been issued either a limited access lobster permit or a confirmation of permit history for the preceding year, or a vessel must be replacing a valid limited access American lobster permit or permit history confirmation from the preceding year. If more than one applicant claims eligibility to apply for

a limited access American lobster permit based on one fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

\* \* \* \* \*

(3) *Change in ownership.* (i) The fishing and permit history of a vessel that qualifies based on issuance of a Federal lobster permit under paragraphs (b)(1)(i)(A) and (C) of this section is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(ii) The fishing and permit history of a vessel owner and a vessel that qualifies based on issuance of a federally endorsed state lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with such owner for any transfers of the vessel before and including March 25,

1991; and for any transfers of ownership of the vessel after March 25, 1991, the fishing and permit history necessary to qualify for a limited access lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with the last owner of the vessel as of or prior to March 25, 1991, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring the fishing and permit history of a vessel necessary to qualify for a limited access lobster permit under paragraph (b)(1)(i)(B) or (C) of this section to the transferee/buyer.

\* \* \* \* \*

(5) \* \* \*

(vi) *Fishing during appeal.* A vessel for which an appeal has been initiated and that was issued a 1994 Federal or federally endorsed state lobster permit, may fish for American lobster in the EEZ if the appeal is pending and the vessel has on board an authorizing letter from the Regional Director. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the

vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

\* \* \* \* \*

(p) *Limited access American lobster permit renewal.* To renew a limited access permit in 1996 and thereafter, a completed application must be received by the Regional Director by December 31 of the year in which the permit is required. Failure to renew a limited access American lobster permit or confirmation of permit history in any year prevents the renewal of such in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit or confirmation of permit history is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit or confirmation of permit history may be reissued or renewed based on that vessel's history.

[FR Doc. 95-10942 Filed 5-1-95; 10:53 am]

BILLING CODE 3510-22-F