

**SUPPORTING STATEMENT  
AMERICAN LOBSTER LIMITED ENTRY PROGRAM AND  
AN INDIVIDUAL TRANSFERABLE TRAP (ITT) PROGRAM  
OMB CONTROL NO. 0648-XXXX**

**INTRODUCTION**

This is a resubmission of this information collection request with the final rule. There were no comments received on the information collection requirements, and no changes made.

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) requests the approval by the Office of Management and Budget (OMB) of a new data collection. The data collection, as part of a new rulemaking action (RIN 0648-AT31), will allow NMFS to obtain data from Federal lobster permit holders to implement a system of lobster permit limited access based on historical participation, along with a lobster trap transferability program, to foster economic flexibility for the lobster industry and reduce fishing effort on the American lobster resource.

This rulemaking responds to the Atlantic States Marine Fisheries Commission's (Commission's) recommendations for Federal action and is 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).<sup>1</sup>The rule sets forth management measures concerning lobster conservation management area (LCMA/Area) eligibility and trap transferability based on several addenda to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster (ISFMP), beginning with Addendum III and culminating in Addendum XII. Prior to development of the proposed rule, a detailed analysis of the impacts of the preferred and alternative measures were conducted in a Draft Environmental Impact Statement (DEIS). The DEIS evaluated multiple options to those adopted by the Commission in the Lobster Plan and implemented by the states. This document analyzes the burdens associated with the preferred alternative which mirrors the Commission's recommendations for an area eligibility and trap transferability program. An analysis of the other options is presented in the DEIS.

The rulemaking action will assist in the American lobster stock rebuilding efforts of the ISFMP for American lobster by restricting the number of trap fishing vessels and traps in the Outer Cape Lobster Conservation Management Area (Outer Cape Area) and in Lobster Conservation Management Area 2 (Area 2). This action would accomplish the trap fishing effort reductions by limiting the number of Federal lobster permit holders who could fish with lobster traps in these areas based on the application of specific historic participation criteria, and by allocating a specific number of traps to each qualified participant, up to a limit, based on their historical fishing practices. Additionally, the action would allow qualifiers from these two areas, as well as those in Offshore Lobster Conservation Management Area 3 (Area 3) to engage in a transferable

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<sup>1</sup> 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.

trap program. NMFS implemented a limited entry program for the Area 3 trap fishery in 2003, resulting in 137 qualified trap permits, each with its own allocation based on historical fishing practices. The trap transferability program would allow all Federal lobster permit holders to opt in to the Area 2, Area 3, and Outer Cape Area lobster trap fisheries by purchasing qualified traps for these areas, and those with qualified permits for these three areas could sell and buy traps to scale their businesses to an optimal size. Each transaction includes a conservation tax of 10%. The conservation tax would deduct a number of traps equal to 10% of the total number of traps with each transfer, permanently removing them from the fishery. These traps would be debited from the overall number of fishable traps for the associated lobster trap area and removed from the water indefinitely, thereby reducing the overall number of fishable traps.

## **A. JUSTIFICATION**

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

This information collection requirement is necessary to manage the American lobster fishery in a manner that provides options for economic efficiency and maximizes resource sustainability, recognizing that Federal management occurs in consort with state management. Accordingly, NMFS is acting in response to recently approved state management measures that control effort within the fishery. These management measures seek to promote economic efficiency within the fishery while maintaining existing social and cultural features of the industry where possible, and to realize conservation benefits that will contribute to the prevention of overfishing of the American lobster.

The management measures will be consistent with the measures put forth in Addendum III and culminating in Addendum XII to Amendment 3 of the ISFMP, and will reflect the recommendations of the Commission and the majority of comments received by the public. Accordingly, this rulemaking action proposes to employ on Federal lobster permit holders, the same qualification and allocation criteria used by the states to qualify state lobster licensees. Since many of these state licensees also hold Federal lobster permits, NMFS will utilize data used by the states as it relates to the eligibility and allocation criteria to synchronize state and Federal eligibility and allocation decisions with the goal of streamlining the qualification process and facilitating trap transferability. To do otherwise would undermine the effort control and economic flexibility elements associated with the Commission's Lobster Plan for these areas by creating a potential for inconsistent qualification and trap allocation decisions for dual state and Federal permit holders. Additional details on the eligibility requirements and allocation criteria are provided here.

## **BACKGROUND**

### **Outer Cape Area**

In February 2002, the Commission established a state-level limited access program in the Outer Cape Area to control the expansion of fishing effort in that area. The Commission's limited access plan envisioned a two-step entry process: first, qualifying individuals for access into the Outer Cape Area based on their fishing history in that area and, second, allocating traps to the

qualified individuals based upon the number of traps they historically fished within the Outer Cape Area.

In December 2003, Massachusetts proposed a variation of this program that the Commission determined was the “conservation equivalent” of their own and thus allowable under the ISFMP. The Massachusetts variation focused on the allocation formula, for which it shifted the involved time period forward a year and used lobster pounds landed as the metric to determine allocation. With the approval by the Commission of Addendum XIII in May, 2008, the Massachusetts program was adopted for the overall Outer Cape Area, not simply as a conservation equivalent, but as replacing, and thus becoming, the official Commission Outer Cape Area plan itself.

## **Area 2**

From 2002-2003, scientific findings showed that a significant downturn in the American lobster stock within Area 2 was taking place. In response, the Commission began to formulate, through various addenda, effort control measures on an emergency basis. While some of these measures have already been implemented by the states, the Commission’s state-level program overall has continued to evolve through various addenda as conditions within the fishery have become more clearly understood. Further, the most recent peer-reviewed stock assessment for American lobster at that time reconfirmed that Area 2’s stock is overfished and that overfishing is occurring, as reflected in its conclusions regarding the Southern New England biological stock unit.

The most recent state-level effort control plan for Area 2 is the Commission’s second attempt at an Area 2 limited access program. The Commission’s first attempt was set forth in Addendum IV, passed in December 2003. Ultimately, Addendum IV’s program proved too difficult to implement and was thought to potentially increase effort in Area 2 and the Commission quickly withdrew the program in February 2005 before it could be implemented. During this time, conditions in Area 2 had deteriorated to the point that effort reduction was already taking place naturally whereby the recent lobster downturn had forced so many boats out of business, that fishing effort had already been naturally reduced by simple market forces. Accordingly, lobster fishers surmised that if a revised Area 2 limited access program could account for those decreases in fishing effort in the industry, then no further effort reductions will be needed. The Commission agreed and implemented such a limited access program in Addendum VII in November, 2005.

Similar to the Outer Cape Area’s limited access program, Area 2’s effort control program established a two-step entry process: first, qualifying individuals into the area according to their fishing history in Area 2; and second, allocating traps to the qualified individuals based upon the number of traps they historically fished in Area 2.

## **ITT Program**

Effort control plans approved or proposed by the Commission and implemented by various states and NMFS to date, all have one thing in common: they use documented fishing history and fishing performance to allocate the amount of traps that a permit holder can fish within a given area. As the number of these plans has increased, the need to apply uniform criteria that will

allow for the consistent assignment of fishing histories across state and Federal programs has been recognized by both state and Federal regulators; a critical need since nearly all Federal lobster permit holders also hold a state lobster license.

With Addendum XII, the Commission approved a number of unifying measures that align state practices for assigning fishing history with existing Federal practice. In so doing, a number of fundamental management principles that are key to the success of overall lobster fishery have been firmly established and are reflected in this action.

The eligibility requirements for Area 2 and the Outer Cape Area are provided here along with the guidelines for the Individual Transferable Trap Program (ITT).

### **ELIGIBILITY CRITERIA**

**Below are the eligibility requirements that will be incorporated into the rule for this action. The criteria are taken from the Commission's Lobster Management Plan.**

#### **Outer Cape Area**

(v) **Participation requirements for EEZ Outer Cape Cod Management Area.** To fish for lobster with traps in the EEZ portion of the Outer Cape Management Area, a Federal lobster permit holder must apply for access in an application to the Regional Administrator. The application process is set forth as follows:

(A) **Qualification criteria.** To initially qualify into EEZ portion of the Outer Cape Management Area, the applicant must establish with documentary proof the following:

- (1) Possession of a current Federal lobster permit;
- (2) Having landed lobster caught in traps from the Outer Cape Cod Management Area in either 1999, 2000 or 2001 (based on the length of the planning and approval process, these are still the applicable years, and the states used these years for their eligibility determinations). Whichever year used shall be considered the qualifying year for the purposes of establishing the applicant's Outer Cape Cod Area trap allocation;

(B) **Trap allocation criteria.** To receive a trap allocation into the EEZ portion of the Outer Cape Management Area in either 2000, 2001, or 2002, the qualified applicant must also establish with documentary proof the following:

- (1) The number of lobster traps fished by the qualifying vessel in the qualifying year; and
- (2) The total pounds of lobster landed during that qualifying year.

## **Area 2**

(vii) Participation requirements for EEZ Lobster Management Area 2. To fish for lobster with traps in the EEZ portion of Lobster Management Area 2, a Federal lobster permit holder must apply for access in an application to the Regional Administrator. The application process is set forth as follows:

(A) Qualification criteria. To initially qualify into the EEZ portion of Area 2, the applicant must establish with documentary proof the following:

(1) Possession of a current Federal lobster permit;

(2) Having landed lobster caught in traps from the Outer Cape Cod Management Area in either 2001, 2002 or 2003. Whichever year used shall be considered the qualifying year for the purposes of establishing the applicant's Area 2 trap allocation;

(B) Trap allocation criteria. To receive a trap allocation into the EEZ portion of Area 2 in either 2001, 2002, or 2003, the qualified applicant must also establish with documentary proof the following:

(1) The number of lobster traps fished by the qualifying vessel in the qualifying year; and

(2) The total pounds of lobster landed during that qualifying year.

## **ITT Program – Transfer of Eligible Traps Between Permit Holders**

Once all, or at least a significant percentage, of eligible Federal lobster permits have been qualified, and traps allocated to each eligible permit in accordance with the aforementioned criteria, the trap transfer process may begin. This will allow any Federal permit holder, regardless of whether they have qualified for trap fishery access to Area 2, the Outer Cape Area, or Offshore Area 3, to purchase all or part of a trap allocation from eligible permit holders. Those who have permits with allocations for these areas may sell all or part of their area allocations to any federal lobster permit holder and may buy all or part of another eligible permit holder's allocation. Each transaction of traps will result in a conservation tax whereby 10% of the traps that are transferred will be removed indefinitely from the fishery. For example, a permit holder who buys 100 traps will be eligible to fish only 90 of those traps. This concept is consistent with the Commission's plan, which includes the conservation tax as an additional means of controlling effort in the fishery.

## **Use of State Agency Data for Qualification and Allocation Decisions**

The Atlantic Coastal Act authorizes NMFS to regulate lobster in Federal waters in cooperation with the Commission through implementation of the Commission's lobster management plan.

The plan requires that states implement regulations in support of the plan and recommends that NMFS implement complementary regulations in Federal waters.

The majority of the lobster fishery occurs in state waters and most Federal lobster permit holders also hold a state lobster license. The relevant states have already met the requirements for this action under the Commission's plan by making eligibility and allocation determinations on their state licensees for state waters in Area 2 and the Outer Cape Area. Now, NMFS is proceeding with this action to complement state action and qualify Federal lobster permits for the federal waters in these same management areas. In other words, NMFS will be making decisions on the same permit holders whose fishing eligibility has already undergone review by their state.

Federal lobster permit holders are not required to report landings to NMFS in a comprehensive or consistent manner, however; state lobster licensees *are* required to report the number of traps fished and lobster landings to their state marine fisheries agencies. The relevant states used this data in making the eligibility and allocation decisions. Since NMFS will be making such determinations on the federal permits of these same individuals who were subjected to the state requirements, NMFS will use data provided by the states for use in qualifying federal permits and allocating traps. Using the state data will allow NMFS to make decisions that are consistent with those the states have made on the same individuals and will prevent, to the extent practicable, disconnects between a state and Federal decision on the same fishing entity which would complicate enforcement and would make an inter-jurisdictional trap transfer program unworkable. In the event that some permit holders were qualified by their state using criteria that are outside of the Commission's recommended guidelines, NMFS will allow states to appeal for eligibility on behalf of their lobstermen to facilitate consistency between state and federal decisions (Director's Appeal).

**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 lobster trap fishing access to the Area 2 and Outer Cape Area. The information will be used by NMFS to make determinations on a permit's eligibility for these areas 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 future access to these areas, while the trap transferability program will provide an annual opportunity for eligible permit holders to buy and sell portions of their trap allocations during a specified period.

NMFS will implement a one-time qualification program to determine eligibility for Federal lobster permits for Area 2 and the Outer Cape Area. This program will rely predominantly on information derived from state sources, used previously to make similar determinations on permit eligibility of state lobster licensees. We will rely on the state data because nearly all of the Federal lobster permit holders affected by this action also have state licenses, and their respective state fisheries agencies already made determinations on their eligibility and trap allocations in state waters for the two management areas. Accordingly, NMFS will utilize this

data to remain consistent with the Commission’s recommendations for complementary management. To do otherwise could lead to incongruent eligibility and or trap allocations for dual state and Federal permit holders, creating confusion and undermining the effective implementation of the trap transferability component of this program.

Once allocations are finalized, permit holders will have the opportunity to transfer all or some of their trap allocation to other permit holders. Under these new rules, a permit holder may transfer traps each year during a specified time period. NMFS expects that some discrepancies will occur with state and Federal allocations for some dual permit holders (those holding a federal lobster permit and a state lobster license). In such cases, which NMFS believes will be very few in number, the permit holder will be required to abide by the lower number of traps allocated before being allowed to participate in the trap transferability program. These permit holders will have the option to maintain the higher of the two allocations, but none of the permit holder’s traps will be eligible for transfer.

Prior to soliciting applications for Area 2 and Outer Cape Area eligibility, NMFS will work with the states and obtain information used to make decisions on area eligibility for those state licensees who also have Federal lobster permits. The state data is preferred because Federal lobster permit holders were not subjected to consistent effort and landings reporting requirements under Federal regulations. In contrast, these same permit holders were held to relatively consistent state reporting requirements. NMFS will solicit applications from Federal lobster permit holders to determine eligibility to fish for lobster with traps in the Outer Cape Area and Area 2. Each Federal lobster permit holder will receive a letter describing the historical participation effort reduction scheme, an application form, and instructions on how to apply. For those intending to qualify their permits, the application form must be completed and submitted to NMFS along with any necessary supporting documentation for the Outer Cape Area and/or Area 2.

There are six general groups under which permit holders may fall depending on varying scenarios as described below:

Group 1 represents a sub-set of all Federal lobster permit holders expected to pre-qualify<sup>2</sup> for access to one or both of Area 2 and the Outer Cape Area based on historical data available from the relevant state marine fisheries agencies. Pre-qualified permit holders will not need to provide qualification documentation under this data collection. We will notify them by letter, indicating the area(s) for which they have pre-qualified and the number of traps allocated in each area based on historical data available for their permit as received from the state agencies. Although they are pre-qualified, these permit holders would still need to apply to NMFS to obtain eligibility for their permit.

Pre-qualified individuals will be required to check off a box and sign the application form to indicate if they either agree or disagree with the NMFS pre-qualification decision and allocation of traps and then remit the application form to NMFS. If they agree with the NMFS assessment

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<sup>2</sup> The term “pre-qualify” is used loosely in this document to refer to those federal lobster permit holders for whom NMFS has sufficient information on hand that would suggest that the permit meets the eligibility and or allocative criteria based on data provided by state agencies. However, such permit holders will need to submit an application and be deemed qualified before they are formally eligible for the Federal trap fishery in the relevant area(s).

of their eligibility and trap allocation, then NMFS will review the application upon receipt, verify the initial findings, and then approve the permit and notify the permit holder. The burden on these permit holders is the amount of time and costs associated with checking the box on the form, signing the form, and submitting it to NMFS. Those who disagree with the NMFS assessment of their permit's eligibility fall under Group 2 (see below).

Group 1A. Since the states have already implemented a limited entry program for Area 2 and the Outer Cape Area, the majority of Federal permit holders affected by this rule will likely have already had a decision made by their state regarding their eligibility for the relevant areas and associated trap allocations in state waters. In Massachusetts, trap transfers were allowed for a short time period after the initial state license qualifications were made, and about 25 individuals took advantage of this brief opportunity to transfer traps. Shortly thereafter, the Commission voted to stop all trap transfers, with the exception of "state only" traps (transfers between individuals having only a state license and state qualification and no Federal permit), until the Federal government implements the eligibility and trap transferability program. This decision was made to maintain parity between the state and Federal allocations for permit holders with both a state and Federal lobster permit, knowing that allowing transfers could cause substantial disconnects between state and federal allocation decisions, complicating the tracking of changing allocations and undercutting the effectiveness of the longer-term trap transferability program.

Acknowledging that some transfers have taken place since the initial state allocation decisions, NMFS will honor their revised trap allocation achieved as a result of state-authorized trap transfers. The benefits are parity between the two jurisdictions to facilitate trap transferability, minimized confusion by permit holders and managers, and aid in enforcement of trap allocations. The limited number of permit holders and traps involved is minimal and thus the benefits of acknowledging the revised allocations outweigh any perceived negative benefits of increased trap allocations or unfair market advantages due to the early-stage transfers.

NMFS expects to receive data from Massachusetts and the other relevant states on the area eligibility and trap allocations for their licensees who have federal permits. It is expected that the state data will include the revised allocations of those who have made transfers at the state level.

Since NMFS expects to receive the revised allocations from the state agencies along with the rest of the area qualification and trap allocation information, there is no additional burden expected on those who have transferred traps previously under their state program. NMFS will roll these revised allocations into the pre-qualification process and allow these individuals to either agree or disagree with that determination based on information provided by the state agencies. As with other Group 1 applicants, those who disagree with the eligibility and allocation pre-qualification will need to apply under Group 2.

Group 2 includes the subset of pre-qualified permit holders from Group 1 who disagree with NMFS's assessment for area eligibility and trap allocation. NMFS expects that some pre-qualifiers who do not qualify for both Area 2 and the Outer Cape Area may contest the pre-qualification decision and/or the number of traps associated with the area(s) that they pre-qualify



for. In such cases, the permit holder must indicate on the form that he/she disagrees with the determination and provide sufficient documentation to show that the permit qualifies for one of the areas and/or qualifies at a different (likely higher) trap number than the NMFS estimate. The permit holder must then remit the application form and additional supporting documentation to NMFS for review. NMFS will review the submission and make a judgment on the eligibility of the permit based on consideration of the information on-hand as well as the documentation provided by the applicant. Group 2 applicants have the cost and time burdens associated with checking the box on the form, signing the form, locating and copying supporting documents, and remitting the application to NMFS for consideration.

Group 3 are those individuals who do not pre-qualify for Area 2 or the Outer Cape Area because the information provided by the state is insufficient to show that their fishing practices meet the qualification criteria. In other words, this group represents the subset of all Federal lobster permit holders for whom NMFS does not have evidence that their permits meet the eligibility criteria for either of the two areas because the permit holder's state has not provided such documentation to NMFS, nor has the state qualified the permit under its own process. The permit holders in Group 3 will receive a letter informing them that NMFS does not have any evidence on-hand to qualify the permit for the Area 2 or the Outer Cape Area lobster trap fishery. However, the permit holders will have the opportunity to submit an application to NMFS, but the application must include sufficient documentation to show that the permit meets the eligibility criteria as set forth in the final rule for this action.

The public burden on the Group 3 applicant is the time and cost associated with locating and preparing supporting documentation, copying the supporting documentation, completing the application and submitting the application and supporting documentation to NMFS.

Group 4 represents the subset of Federal lobster permit holders who appeal a denial decision by NMFS. The permit holders are those from Groups 2 and 3 whom, upon being found ineligible by NMFS for the Area 2 or Outer Cape Area trap fishery, or disagree with the final number of traps allocated, appeal the decision on their permit. Grounds for appeal are that the Regional Administrator made an administrative or clerical error in the ineligibility or trap allocation determination. Ineligible permit holders also may submit an appeal due to a medical or military hardship which kept them from fishing in the relevant areas during the qualifying years.

Appellants have the burden of submitting a written appeal to the Regional Administrator and locating and providing any other documentation deemed necessary to support the appeal.

Group 5 represents the non-qualifiers who appeal under a special provision called the Director's Appeal. This relates mostly to Massachusetts permit holders who were given Area 2 or Outer Cape state licenses by the Massachusetts Division of Marine Fisheries with a zero trap allocation, but it may apply to any Federal permit holder who somehow qualified under a state process but does not meet the eligibility requirements set forth in the final rule as recommended by the Commission. In some cases, albeit very few, state eligibility and allocation decisions may vary on a state by state basis due to the criteria used or circumstances involved in making the determination at the state level and some may not specifically conform to the Commission's plan. Nevertheless, a state may have made a decision based on state practices or other

considerations to qualify a state license. Given the complexities of this program due to the dual nature of the permit holders, and the need for state/Federal consistency to facilitate the transfer of traps, NMFS needs flexibility in its rule to allow for the consideration of state decisions that may not fit exactly into the mold of the Commission's qualification and allocation criteria. For this reason, NMFS introduces a Director's Appeal in this proposed rule.

The Director's Appeal would allow a state to petition NMFS for comparable trap allocations on behalf of Area 2 and Outer Cape Cod applicants denied by NMFS because they do not meet the Federal qualification and/or allocation criteria. The appeal would be available to only Area 2 and Outer Cape Cod residents for whom a state has already granted access. The Director's Appeal, by definition, would allow more effort to qualify and enter the EEZ than would otherwise occur. NMFS, however, does not believe that this potential additional effort will negatively impact the fishery. First, the number of appeals is capped insofar as it is only available to individuals who have already qualified under their state permit. These individuals, with zero trap allocations, for example, would be allowed to purchase traps from the existing pool and, therefore, would not exert any additional fishing pressure on the lobster stock. Second, DEIS analysis suggests good correlation between state qualifiers and potential Federal qualifiers. In other words, although disconnects will likely occur, the DEIS predicts that the number will be relatively low. Finally, even if NMFS encounters greater-than-predicted Director's Appeals, NMFS nevertheless believes synchronicity so crucial as to be the overriding factor in proposing the appeal. To the extent that the extra qualified effort becomes a problem, which given the scale of the fishery seems extraordinarily unlikely, this effort can be further reduced in future Commission addenda rule recommendations, and in the shorter term, will be checked by the conservation tax applied to any trap transfers.

Permit holders will have 45 days after the date of the ineligibility decision to submit, in writing, documentation in support of the appeal. Within the initial 45-day period, an additional 30-day extension beyond the initial 45-day period may be requested in writing. Those appealing through the Director's Appeal would need to contact the Director of their state's marine fisheries agency and request that he/she submit an appeal to NMFS on the appellant's behalf to request that the Federal permit be deemed eligible for the allocation and areas already approved for the appellant's state lobster license.

NMFS 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. Final eligibility determinations and trap allocations may be made available to the public, consistent with current practices relative to NMFS permit data. Additionally, results may be used in scientific, management, technical or general informational publications. Should NMFS 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 will obtain the state data used for the program by electronic means. NMFS will integrate the data into its electronic data systems for use in applying the eligibility and allocation decisions to Federal lobster permits. Applicants may apply by electronic means such as email or by accessing a state or Federal internet site that will allow them to submit an application online. Tracking and processing of applications and decisions will be electronic. Final determinations will be integrated into the relevant NMFS databases for future use in permit processing.

Applications and appeals may be submitted by U.S. mail or other postal method, in addition to fax and email, to facilitate the timely submission of the required information and to reduce the time and costs associated with the application process. NMFS will utilize its own data bases and other forms of electronic data to make initial and final eligibility determinations and to track and store the information relative to this data collection program. Copies of the permit holder letter and instructions for this information collection will be posted on the NMFS home page subsequent to mailing to permit holders to provide easy access for those who have misplaced their applications and to inform interested parties such as state agencies and industry groups.

Permit holders will be able to transfer traps using an electronic system which will save time and postage costs, although that system has yet to be created and requires collaboration between Federal and state agencies. In the meantime, transfers may be done in hard-copy format.

**4. Describe efforts to identify duplication.**

To be consistent with previous state decisions on eligibility for state licensees for Area 2 and the Outer Cape Area, NMFS will use state data as the basis for pre-qualifying those same state-licensed fishermen who also hold a federal permit. This is critical to the implementation of this effort control program, and the trap transferability component could not be effectively implemented if the states and NMFS have different eligibility and trap allocations for the same permit holders. The states have historically collected more comprehensive data on lobster trap fishing activities than has NMFS, and therefore, the eligibility criteria set forth in this action as sanctioned by the Commission, rely on state-collected data. The use of the state information is, therefore, essential to the effective implementation of this program. Accordingly, NMFS expects that the vast majority of those permit holders who qualify under this program will not need to submit any additional information at all, other than signing the application form and sending it in to NMFS for confirmation, because NMFS will be making eligibility decisions using data already submitted by these same permit holders to their state marine fisheries agency.

The use of the state data – information these same permit holders have already provided to the states – eliminates the duplicative effort that would result if NMFS, in turn, requested the same information from these fishermen. Those who disagree with the NMFS pre-qualification decision will be required to submit additional data; data that may have already been submitted to the states or NMFS for other purposes. Permit holders may provide any form of documentation identified in the final rule for this action to substantiate the specific qualification criteria, which

may include previously submitted or completed Federal fisheries data forms may help reduce the burden on permit holders. Furthermore, by obtaining eligibility data from the states at the outset of the qualification process, NMFS can pre-qualify permit holders who have already met state requirements, thereby precluding a subset of permit holders from submitting any information other than an application form consenting to the pre-qualification determination.

Finally, once a state-Federal joint trap transfer database is online, it will allow permit holders to transfer traps electronically via one system accessed by all relevant parties. This will eliminate the need to transfer traps using separate state and Federal systems.

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

All the respondents are small businesses. To reduce the burden on applicants, NMFS will use existing data provided by the states for the purposes of qualification and trap allocation. NMFS has taken advantage of the availability of routinely-collected permit data and state lobster landings data to determine eligibility and trap allocations without the need to solicit additional documentation from permit holders. This saves the permit holder the burden of locating and submitting information for proof of eligibility, and since the current Outer Cape Area and Area 2 lobster trap permit holders qualify under this program, the burden is minimal for eligible permit holders and those for whom NMFS does not have information to pre-qualify, will be able to apply by providing documentation to support the eligibility criteria.

For those who do not pre-qualify and must submit documentation under this action, NMFS recommends the provision of Federal fishery reports or documents that may have previously been submitted by permit holders in fulfillment of other requirements. This collection of information also specifies the burden for those non-qualifiers who believe an error was made in the determination by the Federal government that their permit did not qualify under the selected eligibility criteria for the relevant lobster trap fishing areas and choose to appeal.

Permit holders who do not intend to qualify for entry into the trap fishery in either Area 2 or the Outer Cape Area will not be required to provide any additional information or documentation. Those who previously designated into the Outer Cape Area and Area 2 but who do not wish to provide the additional supporting documentation will have the option to refrain from designating those areas for lobster trap fishing. Furthermore, applicants will be able to submit applications electronically to save time and postage costs. The same holds true for the annual trap transfer process. Permit holders can conduct their transactions electronically once the inter-agency trap transfer databases comes online, saving participants time and money when transferring traps.

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

In the absence of comprehensive trap fishing effort and lobster landings reporting requirements for Federal lobster permit holders, specific data is now needed to determine which permit holders are eligible to fish for lobsters with traps in Area 2 and the Outer Cape Area. With the exception of those permit holders which NMFS could pre-qualify based on previously submitted data made

available by the states, NMFS will be unable to determine who qualifies for inclusion in the fishery under a system of historical participation unless this data collection requirement is implemented. The failure to implement this data collection could undermine the cooperative state and Federal management of the lobster resource. NMFS intends to request this information only once; therefore, the concept of a less frequent collection is not applicable with respect to qualifying federal permit holders for the relevant lobster management areas. With respect to the trap transferability program, NMFS will use the data collected to make a determination on the applicant's initial trap allocation. After that, on an annual basis, the permit holder may voluntarily transfer traps to or from his or her allocation using forms, or an electronic system, sanctioned by NMFS and their home state. The annual transfer period is optimal since it provides a means for permit holders to take advantage of the economic benefits associated with trap transferability on an optional basis, while restricting the timing to minimize administrative burdens on the Federal government and affected permit holders.

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

The data collection as described is consistent with OMB guidelines.

**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.**

This submission is in conjunction with a final rule. There were no comments on the information collection requirements as set out in the proposed rule, and there are no changes to this request. In addition to comments during the proposed rule comment period, there were some letters which were considered and addressed in the final rule. They are included as supplementary documents.

NMFS initiated the public scoping process for this action following action by the Commission with the approval of Addendum I in August, 1999. Addendum I was in response to Commission actions that established the Lobster Conservation Management Teams (LCMTs<sup>3</sup>) and tasked those LCMTs to develop management programs suited to the needs of the lobster conservation management areas (LCMAs/areas) while meeting the targets in the ISFMP. Following the Commission's Lobster Technical Committee (TC<sup>4</sup>) review of the plans in Addendum I, the Lobster Management Board initiated a program directed towards controlling effort and began the process to establish historical participation and transferable trap programs that has evolved over several Commission addenda. In response to the Board action, on September 1, 1999, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) (64 FR 47756) notifying Federal

<sup>3</sup> The LCMT's are industry advisors, appointed by the Commission's Lobster Management Board who provide advice to the Board regarding management decisions for their respective lobster management areas.

<sup>4</sup> The TC is a comprised of state and federal fisheries scientists, appointed by the Board, who conduct the lobster stock assessments and provide scientific advice to the Board for use in lobster management decisions.

permit holders that regulatory actions in the lobster fishery may involve further restrictions on access to LCMAs.

In follow-up to additional Commission action in Addenda II and III, on September 5, 2002 (67 FR 56800), NMFS published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) to evaluate Commission recommendations to limit future access in several LMCAs, including offshore Area 3 and the Outer Cape Area. This and subsequent NOIs included information on the proposed regulatory action; requested public comments on the scope of the EIS; and provided information on how the public could submit comments by mail, hand delivery, facsimile, or electronic means. Following Commission revisions to several relevant LCMA eligibility/ITT provisions in Addenda IV through VI, NMFS published a ANPR/NOI on May 10, 2005 (70 FR 24495) of its' intent to move forward with regulatory actions based upon the redesigned area eligibility program/trap transferability provisions in the ISFMP. On October 31, 2005, the Commission approved Addendum VII that further refined certain LAP/ITT in Area 2; however, the follow up implementation of the LCMA eligibility/ITT measures at the state level identified additional problems that resulted in further evaluation of the plans by the Lobster Board in 2006 and 2007. Based on the delays, NMFS continued to work within the Commission process and updated Federal lobster permit holders of NMFS intention to take complementary action. Ultimately, the Board action resulted in additional refinements to the ISFMP, outlined in Addendum IX, and Addenda XII through XIV.

Six public hearings were held coast-wide during the months of May through June 2010 to seek public comment on the DEIS. In continuation of the rulemaking process responding to the Commission's recommendations relative to Addenda III and culminating in Addenda XII, NMFS has drafted a proposed rule which will also solicit public comment, followed by a final rule.

In addition to formal announcements made by NMFS, the use of historical participation as a means of limiting access was discussed at formal Commission public meetings with the intention of recommending that the authorized agencies implement such measures in both state and Federal waters.

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

Respondents will not receive any gifts or payment.

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

As stated on the forms, all data will be kept confidential as required by NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics; however, final eligibility determinations and trap allocations may be made available to the public, consistent with current practices relative to NMFS permit data.

**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 of the public burden in hours of the collection of information.**

There are 432 estimated unduplicated respondents: the 216 transactions for trap transferability, with two respondents for each transaction. This also includes the 312 LAP respondents (minus the additional group 4 and 5 responses because they are appeals submitted by the same applicants in groups 1-3). Since the 312 respondents for the LAOP program in year 1 are also those who will likely transfer traps, they are not added to the 432 transferees, So the total number of transferees covers the 312 applicants and is the year 1 total number of respondents. For Years 1 and 2 we still calculate for the same number of transfer requests from 432 respondents, so that number is the average for the three years.

Group 1 – Pre-Qualified Applicants

As explained in question 2, Group 1 (and Group 1A, see response to Question 2) permit holders are those for whom NMFS has data on-hand to show that their permit meets the eligibility criteria for one or both of the Outer Cape Area and Area 2, and who agree with the NMFS findings. These permit holders will receive an application form from NMFS that indicates the areas they pre-qualify for and the associated trap allocation determined for each eligible trap area based on the state data. These permit holders must check a box on the application form, indicating whether or not they agree or disagree with the NMFS findings. Group 1 permit holders are those whom agree with the NMFS findings. **The time associated with checking the box, signing the application and submitting it to NMFS for review is 2 minutes.**

Based on state data, NMFS estimates that approximately 207 Federal lobster permit holders will pre-qualify for Area 2 and about 26 will pre-qualify for the Outer Cape Area (a combined total of 233 pre-qualified permit holders). This is the number of permit holders in Group 1 who will receive pre-qualification letters and it also includes the Group 1A permit holders who have transferred traps under the state system soon after they were qualified by their state agency. We expect all of these pre-qualified permit holders to apply, however, we expect about 31 (see rationale explained in Group 2 below) of these pre-qualifiers will not agree with our pre-qualification decision and will submit additional information to show that they qualify for either a higher allocation, an additional trap area, or both (see more detail in Group 2 analysis below). **Therefore, we expect about 202 pre-qualifiers to agree with the pre-qualification assessment and submit the simple application form. The total combined burden for all Group 1 applicants is estimated at 6.73 hours (2 minutes X 202 applicants = 404 minutes/60 = 6.73 (7) hours, Table 1 on page 20).**

Group 2 – Pre-Qualified Applicants Who Disagree with NMFS’s Initial Assessment of Eligibility

Group 2 are those permit holders for whom NMFS has information on-hand to show that the permit meets the eligibility criteria for at least one of the lobster management areas (either Area

2 or the Outer Cape Area), but the permit holder disagrees and believes that he/she is also qualified for the second area, or disagrees with the trap allocation, or both.

Group 2 applicants will need to check off the box on the application form to indicate that they disagree with the NMFS preliminary assessment of eligibility and sign the form. Additionally, they must identify why they disagree and provide documentation to support the areas and trap allocations they believe to be correct.

**The burden on Group 2 applicants consists of 2 minutes to check the box and to sign and remit the application, plus 20 minutes to find any supporting documentation and prepare a written statement to explain the nature of the disagreement with the NMFS pre-qualification assessment, totaling 22 minutes for each applicant.**

We estimate that about 10% of the Group 1 applicants will in some way disagree with the NMFS pre-qualification decision. The disagreement would be with the trap allocation of the area that they pre-qualify for, or if they don't pre-qualify for one of the areas and believe that they should pre-qualify. This subset may also include some of the Group 1A permit holders who have state-recognized trap transfers since they were initially qualified by their state. The pre-qualification decisions will likely reflect those new allocations as a result of the transfers, but those who transferred tags to another permit holder and now have a lower allocation since their initial state allocation was determined, may dispute the lower allocation identified during the pre-qualification process as derived from state information. We estimate that as many as 8 of the Group 1A applicants may disagree with the revised lower allocation. Adding about 10% of the Group 1 applicants who may disagree with the NMFS decision on their allocation or area eligibility (about 23 applicants), we estimate that about 31 Group 1 applicants will disagree with the NMFS pre-qualification assessment.

**At 22 minutes per applicant, the burden for all 31 potential Group 2 applicants is 682 minutes/60 = 11.4 (11) hours (Table 1).**

### Group 3 – Non-Pre-Qualified Applicants

Group 3 are those applicants who are not pre-qualified for either Area 2 or the Outer Cape Area and consequently have no trap allocation for either area based on NMFS review of the state-supplied data. This also includes permit holders from Massachusetts who did not meet the eligibility criteria for access set forth by the Commission' plan, but were granted access by the state and given trap allocations of zero traps (see Group 5 – Director's Appeals for more detail). Group 3 individuals may apply for eligibility to one or both of the management areas but must provide supporting documentation to show that their permit meets the eligibility requirements. They will receive an application form and instructions on how to apply. **The Group 3 time burden to submit an application is 2 minutes to fill out and sign the application form and 20 minutes to locate and submit the necessary supporting documentation, totaling 22 minutes per Group 3 applicant (Table 1).**

Until this action is implemented, current Federal lobster regulations allow all Federal lobster permit holders to elect either one or both of Area 2 and the Outer Cape Area for trap fishing on



their annual permit. For the current Federal fishing year (May 1, 2012 to April 30, 2013), there are 3,116 Federal lobster permits, of which 2,842 renewed their Federal lobster permit during the 2012 fishing year. (The remaining 274 permits are in Confirmation of Permit History (CPH) status<sup>5</sup> and not considered active, but may still apply). Of the 3,116 total lobster permits, 2,883 are in Group 3 – this is subset of Federal lobster permit holders who will not pre-qualify for either management area (3,116 total permit holders -233 Group 1 pre-qualifiers). These 2,883 Federal permit holders will receive a letter indicating that NMFS does not have data on hand to indicate that their permit meets the eligibility criteria for either Area 2 or the Outer Cape Area.

We expect that some permit holders who currently have designated either or both Area 2 and the Outer Cape Area on their current permit may not qualify, but may apply. Of the 2,842 active Federal lobster permit holders who renewed their permits for the 2012 fishing year, 362 elected Area 2 and 132 elected the Outer Cape Area on their 2012 Federal lobster permit, totaling 494 who had either Area 2 or the Outer Cape designated on their 2012 Federal lobster permit. This figure includes the Group 1 pre-qualifiers<sup>6</sup>, assuming all pre-qualifiers designate these areas on their current permit. By subtracting the number of Group 1 pre-qualifiers from the total number of Area 2 designees, we get the number of current permit holders that have designated this area currently on their permit but won't pre-qualify. Those numbers are **155 for Area 2** (362 Area 2 current designees -207 Area 2 pre-qualifiers = 155 non-pre-qualifiers with Area 2 on their current permit) **and 106 for the Outer Cape Area** (132 Outer Cape Area current designees-26 Outer Cape Area pre-qualifiers = 106 with the Outer Cape on their current permit who won't pre-qualify). This makes a total of 261 possible respondents.

Based on experience with past area eligibility programs for Federal lobster permit holders, we expect about 30% of the 261 non-pre-qualifiers with a current permit designation for either Area 2 or the Outer Cape Area to apply. This works out to 47 permit holders for Area 2 and 32 permit holders for the Outer Cape Area, totaling **79 applications expected from Group 3**. This estimate also includes the estimated 40 permit holders who qualified under a state program but don't meet the Federal eligibility criteria and would need to exercise the Director's Appeal option after they are denied (see estimated burden for Director's Appellants under Group 5, below).

**Based on the rationale above for estimating the number of non-pre-qualifiers who may apply, the total application time for all Group 3 applicants, combined, is estimated at about 29 hours (22 minutes per application X 79 applications = 1,738 minutes, or 28.96 (29) hours, Table 1).**

#### Group 4 - Appeals by Non-Qualified Permit Holders (Military, Medical, or Clerical/Technical)

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<sup>5</sup> Federal permit holders may place a permit in CPH status when the vessel is no longer actively associated with a vessel. While in CPH, the permit history remains eligible for transfer to a vessel and retains any history (e.g. area eligibilities and landings history).

<sup>6</sup> Some pre-qualifiers may not have designated either Area 2 or the Outer Cape on their Federal permit since those permits may be in CPH or may not be actively fishing in these two areas currently. For the purposes of this analysis, we can assume that they have elected these areas, to obtain a reasonable estimate of who may have these designations on their current permit but won't qualify because they did not meet the state's criteria during the eligibility period.

Federal lobster permit holders who apply for access to Area 2 and/or the Outer Cape Area, and are subsequently found to be ineligible by NMFS, will have a one-time opportunity to appeal the denial decision in writing to the Regional Administrator. The appellant will have 45 days after the date of the denial decision to submit the appeal letter and any supporting documentation. The appellant may request in writing, during the initial 45-day appeal period, that the appeal period be extended 30 days beyond the initial 45-day period. Grounds for appeal are that the Regional Administrator erred in concluding that the vessel did not meet the criteria specified in the regulations, or appeal on proven medical or military conditions that precluded the applicant from fishing during the qualifying periods.

**The time required to send an appeal is 20 minutes to locate and prepare the documents supporting the reason for appeal and 10 minutes to prepare an appeal statement that explains the circumstances of the appeal, totaling 30 minutes per appellant.**

Based on the results of previous Federal lobster trap area eligibility programs (Area 3, 4 and 5, March 2003) we expect that approximately 30 % of all applicants who are denied will appeal. The total number of expected applications is 312, which represents the sum of those from Group 1 (202 pre-qualified), Group 2 (31 pre-qualified for at least one area but disagree), and Group 3 (79 non-pre-qualified). If we assume that non-pre-qualified applicants will be denied (Groups 2 and 3) then we expect to deny 110 applications. Subtracting the 40 denials that will appeal under the Director's Appeal leaves 70 applications (see discussion of Group 5 appellants below). Therefore, 30% of the 70 denied applicants, or 21 applicants, are expected to appeal under a military, medical or clerical reason.

**The total combined time burden for all 21 Group 4 appellants would be 10.5 hours (21 appeals X 30 minutes per appeal = 630 minutes or 10.5 (11) hours, Table 1).**

#### Group 5 - Appeals by Non-Qualified Permit Holders (Director's Appeal)

We learned that some Federal permit holders were granted access to the state waters of the Outer Cape Area by the Commonwealth of Massachusetts and given trap allocations of zero traps (about 24 permit holders). These permit holders used non-trap gear to catch lobsters and the state wanted to credit them for their lobster harvest and allow them access to the fishery even though they never used traps. It does not appear that these permit holders would meet the eligibility requirements in the Federal regulations as set forth under the Commission's plan because the Commission's intent is to qualify lobster trap fishermen and grant them a trap allocation based on their trap fishing history during the qualification period. Nevertheless, the state was compelled to include them. Excluding them from the Federal waters will cause discrepancies in the decisions made on the same permit holders by NMFS and the state that could undermine the effort control and trap transferability programs. These permit holders will be denied under the NMFS qualification program because they don't meet the criteria, but could appeal by requesting that the state director of marine fisheries appeal to NMFS on his or her behalf that the permit should qualify. NMFS would review these requests as submitted by the state director in consideration of matching up with the state's decision to facilitate consistency with eligibility decisions made for dual permit holders by the state and NMFS.

There may also be other similar situations for permit holders from Massachusetts or other states, which were qualified under a state-implemented rationale that may have varied from the Commission’s criteria, and the Director’s Appeal may be a way for them to be considered for eligibility under the Federal program. We don’t know how many such cases may surface, but do expect a few, given the inconsistent manner in which different states have interpreted and implemented the eligibility criteria in the Commission’s plan. We estimate that it could be as many as 16 permit holders – in addition to those from Massachusetts who were approved and given a zero allocation – who were granted access by their state, but would subsequently be denied under the Federal qualification program, and then choose to appeal using the Director’s Appeal. Once a permit holder is on the list of potential Director’s Appellants provided by the state, we will begin the review process under the Director’s Appeal provisions in cooperation with the relevant state.

TABLE I Eligibility Scenario <sup>7</sup>	Submit Signed Application Letter and Check Box	Locate and Prepare Supporting Documentation	Burden for Each Response	Total Responses	Total Burden All Respondents
	Time (Min.)	Time (Min.)	Time (Min.)	Number	Time (hours)
<b>Group 1 and 1A (pre-qualified)</b>	2	N/A	2	202	6.7 (7)
<b>Group 2 (pre-qualified but disagree with Area/allocation)</b>	2	20	22	31	11.4 (11)
<b>Group 3 (not pre-qualified)</b>	2	20	22	79	29
<b>Group 4 (appellants)</b>	N/A	30	30	21	10.5 (11)
<b>Group 5 (Director’s Appellants)</b>	N/A	20	20	40	13.3 (13)
<b>Annual Trap Transfer (see next page)</b>	10	N/A	10	216	36
<b>Total Burden</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>589</b>	<b>107</b>

**The time required per appellant is 20 minutes to prepare the appeal letter request to the state marine fisheries agency director. For all 40 appellants (24 + 16), the estimated burden is 13.4 (13) hours (Table 1).**

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## Trap Transfer Program

Once the area eligibility decisions have been made and a specified majority of the Area 2 and Outer Cape Area permits have been allocated traps, a trap transferability program will begin, allowing all Federal lobster permit holders, regardless of whether or not their permits qualify for the Area 2, Area 3, or Outer Cape Area lobster trap fishery, to purchase lobster traps and gain access to these exclusive areas. Permit holders whose permits qualify in these areas, may sell all or some of their trap allocation to other Federal lobster permit holders and also may buy additional traps for these areas, up to an area-specific trap limit.

Trap transfers for all interested permit holders will be restricted to a two-month period at the end of each calendar year (likely September and October) and the revised allocations for each participating lobster permit resulting from the transfers will be effective at the start of the following Federal lobster fishing year, which begins on May 1 of each year.

Both the seller of the traps and the buyer will need to sign a trap transfer form, which includes each permit holder's permit and vessel information, the number of traps transferred, and the revised trap allocation for each permit in consideration of the number of traps transferred and the transfer tax. Both parties must sign the form as an agreement to the number of traps in the transfer. The parties must date the document and clearly show that the transferring permit holder has sufficient allocation to transfer and the permit holder receiving the traps has sufficient room under any applicable trap cap.

By the time we implement the trap transfer program, a joint state/Federal database will be on line to allow state agencies and NMFS to track the transfers by their respective permit holders – this is especially critical for tracking transfers between dual permit holders (those holding both a state and Federal lobster permit) since all agencies must have current and consistent records of a permit holder's trap allocation for tracking and enforcement. It is anticipated that such a system will likely allow permit holders to transfer traps using an on-line portal which will feed into the joint state/Federal database as well as the relevant in-house state and federal permit databases to facilitate submission and tracking. Regardless of the on-line option, we may accept hard copy trap transfer forms, depending upon the operational status of the inter-agency database at the time the transfer program commences. The burdens associated with hard copy submission are outlined here. We estimate that the time needed for a permit holder to submit a transfer transaction online is the same amount of time as filling out and submitting a hard copy, but the costs of an electronic submission could be \$0.00 since those choosing that option may already have access to a computer and the Internet. Nevertheless, since this is a new program and we have no exact method for determining the percentage of permit holders who would conduct their trap transfer transactions on-line we will assume, for the purposes of public burden estimation, that all will conduct their transactions using the hard-copy submissions.

**We estimate that, for each two-party transaction, it would take 10 minutes to complete and sign the form and submit it to NMFS.**

This action will activate a program of trap transferability for Area 2, the Outer Cape Area and Offshore Area 3. All permit holders qualified to fish with traps in these areas will be given

specific trap allocations up to a limit, depending on the area or areas they qualify for. These permit holders, in turn, may sell all or part of their trap allocation to any other Federal lobster permit holders. And they also may, along with all other Federal lobster permit holders, purchase traps from other permit holders who have allocations for these three areas.

Area 3 has already undergone an eligibility and trap allocation program; there are approximately 137 Federal lobster trap permits for Area 3, each with its own allocation from 200 to about 2,000 traps. For the 2012 fishing year, approximately 101 Area 3 permits are active, representing a working total of about 124,000 traps. The remaining 39 permits remain inactive and their collective allocations add up to about 20,000 traps. Trap transferability is a tool that the Area 3 lobster fishery is very interested in utilizing. It will allow current permit holders to tailor their allocations, and in turn, their businesses, to the desired level, while opening the area up to Federal lobster permit holders who otherwise would be ineligible to fish in Area 3.

Since 2004, an average of 358 permit holders have designated Area 2 for trap fishing on their Federal lobster permit, and 196 have purchased trap tags, indicating that they are likely active trap vessels fishing in Area 2. Comparatively, we expect about 207 permits to qualify for Area 2 access based on state data, so the number of trap tag purchases over the last decade is fairly indicative of the current level of trap fishing effort in the area and shows that there is not a significant level of trap fishing effort that will change given the implementation of this action. In the Outer Cape Area, an average of 40 vessels, of the 170 which designated the Outer Cape Area on their permits, purchased tags. We expect about 26 permits to qualify for the Outer Cape Area. However, the number of vessels purchasing tags for this area has consistently dropped since 2004, with only 25 purchasing tags in 2011, which is almost exactly the number of permits that we expect will qualify in the Outer Cape Area.

It's difficult to estimate, with any certainty, how many federal lobster permit holders will take advantage of the trap transferability program. We expect that the greatest amount of transfers will take place in the first two to three years of the program, when fishermen are eager to take advantage of available traps and relatively stable prices expected when traps are most plentiful in the early stages of the program. After that, the number of available traps will diminish and the price for those that remain may increase due to a dwindling supply. Consequently, we expect the number of transactions to decrease over time as fishermen's allocations and businesses stabilize and the number of available traps is reduced.

In simple terms, we can estimate that approximately 50% of those who qualify for the Area 2, Area 3 and Outer Cape trap fisheries may decide to transfer traps, which amounts to 185 permit holders<sup>8</sup>. Permit holders from other trap areas and those with non-trap permits may also be interested in establishing a trap allocation for the trap transferability areas. Several factors will likely influence whether permit holders who are not initially qualified for the three trap transferability areas will participate in the transfer program and "buy in" to these areas. Some of these factors may be: The availability and price of traps; the location of the permit holders (the closer they are to these areas, the higher the chance they may buy traps); the gear types they use; and the other areas they may already be authorized to fish in and their allocations for those areas.

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<sup>8</sup> This figure is based on the total number of qualifiers for the three areas: Area 2 = 207; Outer Cape = 26; Area 3 = 137; Total = 370 X 0.50 = 185.

This latter factor is important since permit holders will be subject to the lowest trap limits of all the areas they fish in, or designate for trap fishing, on their Federal lobster permit.

Given these factors and other uncertainties – most of all the fact that this program is new and without precedent – it may be sufficient to estimate that about 10% of all Federal lobster permit holders who aren't qualified for Area 2, Area 3 or the Outer Cape Area, may participate in the trap transfer program in any given year. There are 2,842 active federal lobster permits in 2012. If we consider the 370 that qualify for at least one of the three trap transfer areas, the result is 2,472 which are not granted a trap allocation for these areas and would need to “buy in” to the areas. Ten percent, or 247 permits, from this subset of all lobster permits, would potentially participate in the program. Add to that the number of qualifiers from Area 2, the Outer Cape and Area 3 that are expected to participate (50% of the total of 370=185 potential participants) and the total number of potential annual participants is about 432 Federal lobster permit holders who may either buy and or sell traps during any given year.

Each transfer transaction requires two permit holders, a buyer and a seller. Therefore, the number of expected participants is twice the expected number of transactions. If 432 permit holders either buy or sell traps in a given year, **then the number of transfer transactions is half that number, or 216 transactions.**

**If each transaction takes 10 minutes, the total time for 432 permit holders to transfer traps in 216 transactions during the annual trap transfer window is 36 hours (216 transactions X 10 minutes per transaction = 2,160 minutes = 36 hours, Table 1).**

**Overall, the burden on respondents for the area eligibility process is 71 hours. When we account for the estimated 36 hours for the annual trap transfer process, the total respondent burden is 107 hours for Year 1 (Table 1). For Years 2 and 3, there would be burden only for the trap transfers: 216 responses and 36 hours. Thus, the annualized responses would be  $589 + 216 + 216 = 1,021/3$  or 340, and burden would be  $107 + 36 + 36 = 179/3$  or 60.**

**13. Provide an estimate of the total annualized cost burden to the respondents or record-keepers resulting from the collection of information.**

Group 1 – Pre-Qualified Applicants

**The cost associated with remitting the application for Group 1 applicants is \$0.95, which accounts for postage (\$0.45) if they choose to mail it, the cost to copy or fax both sides of the form which is estimated at about \$0.20 per page for a total of \$0.40, and the cost of a letter-sized envelope which is about \$0.10. Total cost for Group 1 applicants is \$0.95. The combined costs for all 202 Group 1 applicants is \$191.90 (Table 2).**

Group 2 – Pre-Qualified Applicants Who Disagree With NMFS's Initial Assessment of Eligibility

**The economic costs associated with this group are those for postage (\$0.45) and an envelope (\$0.10), or about \$0.55, plus the costs of copying or faxing an average of approximately 6**

pages of supporting documents at \$0.20 per page, totaling \$1.20, with a grand total of \$1.75 per applicant (see Table 1). When applied to all potential Group 2 applicants (31) the estimated total burden for these applicants is \$54.25 (Table 2).

#### Group 3 – Non-Pre-Qualified Applicants

**The economic costs for each Group 3 applicant are the costs of postage (\$0.45), an envelope (\$0.10), and the cost to make copies of, or fax, the supporting documents, expected to be about 6 pages, to NMFS at about \$0.20 per page, totaling about \$1.75. Therefore, we estimate the total cost for all Group 3 applicants for Area 2 and the Outer Cape Area, totaling 79 applicants, at \$1.75 per applicant, to be \$138.25 (Table 2).**

#### Group 4 - Appeals by Non-Qualifying Permit Holders (Military, Medical, or Clerical)

Group 4 applicants are those whose permits are ineligible for access to the Area 2 or the Outer Cape Area lobster trap fishery in a decision by NMFS. Once they have been informed of the denial by NMFS, they will have a one-time opportunity to appeal the decision.

The documentation needed to support an appeal is not likely to exceed 6 pages of documentation including the letter of appeal. The cost of copying or faxing five one-page documents and the appeal letter would be approximately \$1.20 (6 X \$0.20 per page). 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 \$4.42. The cost burden for all 21 Group 4 appellants is estimated at \$92.82 (Table 2).**

#### Group 5 – Director’s Appellants

The cost to a permit holder to file a Director’s Appeal consists of the costs of copying or faxing the letter to the state marine fisheries director (estimated to be no more than two pages), plus faxing and or copying the letter for NMFS review (4 pages X \$0.20 per page), which is approximately \$0.80. Additionally, the costs would include two envelopes and postage to mail the letter to the state director and mail a copy to NMFS, amounting to about \$1.10 (2 envelopes at \$0.10 each, and postage for two letters at \$0.45 each). Therefore, **a typical Director’s Appeal package would cost a respondent approximately \$1.90 (Table 2). We expect about 40 applicants who are denied will choose a Director’s Appeal. We estimate the total costs to these 40 appellants to be \$76.00 (Table 2).**

**Table 2. Estimate of the Total Annualized Cost on All Respondents**

<b>Group</b>	<b>Number of Respondents</b>	<b>Cost per Application (\$)</b>	<b>Total Cost All Respondents (\$)</b>
<b>Group 1</b>	202	0.95	191.90
<b>Group 2</b>	31	1.75	54.25
<b>Group 3</b>	79	1.75	138.25
<b>Group 4</b>	21	4.42	92.82
<b>Group 5</b>	40	1.90	76.00
<b>Annual Trap Transfer<sup>9</sup></b>	216	5.62	1,213.92
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>1,767.14</b>

Annual Trap Transferability Program

The cost to submit a transaction is the cost of a stamp and envelope (large letter sized envelope at \$2.00 and postage of \$1.22, totaling \$3.22), and the cost to copy or fax each page of the two-sided trap transfer form (2 copies, one for each permit holder = \$0.20 per page X 4 pages, estimated at \$0.80). Each applicant may also need to provide two additional pages of documents such as a letter to show their current trap allocation or permit information. That adds up to 4 more pages for copying or faxing, at \$0.20 per page and a copy for each permit holder, totaling 8 pages and costing about \$1.60. **Therefore, the total for each joint transfer transaction is approximately \$5.62. The total cost for all 216 trap transfer transactions at \$5.62 per transaction is \$1,213.92 (Table 2).**

Overall, the total cost to respondents for all groups combined for the area eligibility program is estimated at \$553.22. When the costs of the first year of trap transfers is added, **the grand total for qualifying the permits and one year of trap transfers is \$1,767.14 (Table 2).**

**Annualized costs are \$1,398. Adding the total burden for the LAP and ITT for the first year (\$1,767.14) to the trap transfer costs for years 2 and 3 (\$1,213.92 per year) = \$4,104.98/3 = \$1,398.33 (rounded down to \$1,397 in ROCIS).**

**14. Provide estimates of annualized costs to the Federal government.**

We calculated the total estimated burden on the government from this action based upon the estimated 312 permit holders who may apply to this program and the 216 annual trap transfer transactions we expect to take place. The burden on the qualification program is associated with the pre-qualification process, mailing out letters and application materials to all lobster permit holders, preparing and mailing responses to all applicants, and reviewing applications materials. Additionally, we analyzed the government burden from appeals by permit holders whose

<sup>9</sup> While the area eligibility process is a one-time burden, the trap transfer program is an annual burden. The trap transfer burden is based on the number of transactions expected. We estimate that about 432 permit holders will opt to transfer traps. Since a seller and a buyer are required, the number of estimated participants is divided by two to get the total number of transfer transactions (432 permit holders/2 = 216 transactions).



applications are initially denied. We estimated the trap transfer program burden based on the number of expected transactions and the time and costs associated with their review and approval.

NMFS will establish an internal review process for handling applications submitted for this lobster limited entry program. NMFS will receive about 202 applications from those who are pre-qualified for one or both areas (Group 1). In addition to the 202, an estimated 31 pre-qualifiers will disagree with the initial determination of prequalification, so they will submit a more detailed application including supporting documentation (Group 2). Seventy-nine permit holders who don't pre-qualify (Group 3) will apply, with supporting documentation, similar to the burden associated with Group 2. Twenty-one permit holders who apply and are denied will subsequently appeal (Group 4) and 40 will appeal based on a Director's Appeal (Group 5). Once we implement the trap transfer program, an average of 432 permit holders will participate by either buying or selling part of their trap allocation on a one-time basis each year, totaling 216 transactions. We expect the number of participants to decrease over time as fishermen stabilized their businesses and available traps become scarce, but this estimate may stand to mark the burden on an annual basis since we don't know how trap availability and market forces may impact the amount of transactions over time.

#### Group 1 Processing, Review and Determination

The simplicity of the applications, limited nature of the potential types of supporting documentation, electronic log-in and tracking of the applications, and high experience level of the reviewers is expected to keep the administrative costs of this program relatively low. One employee, equivalent to a GS-12 level, with a salary of approximately \$85,251<sup>10</sup> (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 2 minutes per application. All the Group 1 applications are known qualifiers – the only action needed is that the permit holder requests eligibility via the application. Therefore, once the Group 1 applications are received and documented, a letter will be generated to inform the applicants that their permits are eligible for the area(s) and allocations indicated. We expect the generation of each letter to take 5 minutes, totaling **7 minutes** for the review and response per application, and costing **\$ 4.78 per application**. For the total number of **Group 1 applications, the total time burden for the 201 applications is 23.45 hours at a cost of \$960.78 (Table 3)**.

#### Group 2 and 3 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 Group 2 application, it will take the GS-12 employee approximately 15 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

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<sup>10</sup> Pay estimates for GS-12 and GS-14 employees obtained from Federal Government Pay Schedule for January 2012 for the Boston, MA locality pay rate (frozen at 2010 level), obtained from Office of Management and Budget, [www.opm.gov](http://www.opm.gov).

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<sup>11</sup>, 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 15 minutes at \$40.98 per hour (\$10.25), 10 minutes at \$50.80 per hour (\$8.47), 10 minutes at \$57.60 per hour (\$9.60), and 10 minutes at \$71.94 per hour (\$11.99). Overall, **each Group 2 application** will take **45 minutes** for review and disposition, estimated at **\$40.31 per application**. Thus, **the overall burden to review the 31 Group 2 applications is 23.25 hours, costing \$1,249.61.**

**Group 3 applications will have the same burden per application as Group 2 applications. Consequently, the total burden on the Federal government to process the Group 3 applications is 59.25 hours and \$3,184.49 (79 applications X 45 minutes and \$40.31 per application, Table 3).**

#### Group 4 – Medical, Military, and Clerical/Technical Appeals

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

NMFS estimates that it would take approximately 1 hour for the GS-12 employee (\$40.98 per hour) 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, submit the package to the Appeals Officer, provide a written recommendation to the Regional Administrator based on the Appeal's Officer's review, and to draft and mail to the appellant the final decision on the permit's eligibility. The labor costs of each appeal associated with the GS-12 review is approximately \$ 40.98. 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<sup>12</sup>, or about \$71.94 per hour) who, in turn would require 10 minutes to review the package and make a final determination on the permit's eligibility.

Consequently, the total labor costs involve the one hour of processing and review by the GS-12 employee (\$40.98), 30 minutes of review by the Appeals Officer (\$28.80), and 30 minutes combined review time for the Supervisory Policy Analyst (\$8.47), Regional Attorney (\$9.60), and Regional Administrator (\$11.99).

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<sup>11</sup> Based on average salary of SES range for Federal agencies with a certified SES performance appraisal system, effective January 2012 (rates frozen at 2010 levels), [www.opm.gov](http://www.opm.gov).

<sup>12</sup> Based on average salary of SES range for Federal agencies with a certified SES performance appraisal system, effective January 2012 (rates frozen at 2010 levels), [www.opm.gov](http://www.opm.gov).

**Total time to review each appeal is 2 hours at a labor cost of \$99.84. The total burden for all 21 appeals is 42 hours and \$2,096.64.**

#### Group 5 – Director’s Appeals

The Federal process for Director’s Appeals is similar to that set forth for the Group 4 appeals. The difference is that the information on the appeal will come from the permit holder’s state marine fisheries agency director. Consequently, **the time estimated to review 40 Group 5 appeals at two hours each is 80 hours at a cost of \$99.84 per appeal, totaling \$3,993.60.**

#### Trap Transfers

Permit holders will submit trap transfer applications either electronically or in hard copy to the Northeast Region Permit Office and reviewed and processed by a Legal Instruments Examiner (GS-10, Step 8, hourly rate of \$33.76). For the purposes of this estimate, we will assume that all transactions come in hard copy form, to ensure that the full burden is accounted for. The examiner will take about 10 minutes (\$5.63) per application to enact the transfers which includes checking the permits and trap allocations, returning incomplete applications and auditing the information to be sure that the appropriate ending trap allocations are correct in the internal and regional trap transfer databases. A letter or email will also be sent to the affected permit holders to verify the transaction, or to deny the submission if insufficient traps are available in the seller’s permit.

A Supervisory Permit Specialist (GS-14 Step 1, \$105,702 per year and \$50.80 hourly) will conduct a summary review of the decisions prior to approval, taking 2 minutes (\$1.78) per transaction. Therefore, **each transaction is estimated at 12 minutes for a total cost of \$7.41. Total for all 216 transactions is 43.20 hours at a labor cost of \$1,600.56 (Table 3).**

#### Material Costs

The material (non-labor) costs to the Federal government for soliciting, processing and responding to applications are the costs of paper, envelopes and postage for an initial mailing to all 3,116 Federal lobster permit holders (2,842 active permits + 274 in CPH). Group 1 and Group 2 permit holders will receive a second reminder letter prior to the application deadline if they have yet to submit an application. All applicants will receive a final determination on the permit eligibility after the application review is complete.

The items needed 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 3,116 permit holders, about 115 reminder letters to Group 1 and 2 permit holders (assuming 50% have yet to submit an application at that time), and the final determination mailings to all 327 applicants and appellants, totaling 3,558 mailings at \$0.55 per mailing **is \$1,956.90**. Additionally, we will likely send up to two letters to each appellant. For

61 appeals, that amounts to 122 responses at \$0.55 per response, or \$67.10. **Thus, the total when added to the previous mailing total is \$2,024.00 for the area eligibility program.**

For the annual trap transfer program: approximately 10% of the applications may be incomplete or need some sort of interim correspondence totaling \$0.55 per response (see above costs associated with a response) as well as the costs to submit a transfer confirmation to the affected permit holders at the same cost of \$0.55 per response. For the 432 applications and additional correspondence to 10% of those applicants, or 43 applications (**totaling 475 correspondences**), **the total material costs to the Federal government per year for trap transfers is \$261.25.**

**Total cost of materials for both the area eligibility and trap transfer programs is \$2,285.25.**

Total Labor and Materials Costs for Eligibility Program and Trap Transfer Program

**Total costs for labor, paper and envelopes, and postage is \$13.509 for the area eligibility application process, and \$1,861.81 for the annual trap transfer program, for a grand total of \$15,370.93 to the Federal government for the first year. Adding trap transfer costs for the next two years, \$1,861.81 each, totals  $19,094.55/3 = \$6,364.85$  for the annualized cost.**

**Table 3. Estimated Time and Cost Burdens of Applications on the Federal Government**

Group	Burden Per Application			Burden All Applications	
	Number	Time (Min)	Economic (Dollars)	Time (Hours)	Economic (Dollars)
<b>Group 1</b>	201	7	4.78	23.45	960.78
<b>Group 2</b>	31	45	40.31	23.25	1,249.61
<b>Group 3</b>	79	45	40.31	59.25	3,184.49
<b>Group 4</b>	21	120	99.84	42	2,096.64
<b>Group 5</b>	40	120	99.84	80	3,993.60
<b>Material Costs (applications)</b>	N/A	N/A	N/A	N/A	2,024.00
<b>Trap Transfers</b>	216	12	7.41	43.20	1,600.56
<b>Material Costs (transfers)</b>	475 <sup>13</sup>	N/A	0.55	N/A	261.25
<b>Total</b>	N/A	N/A	N/A	<b>271.15</b>	<b>15,370.93</b>

**15. Explain the reason for any program changes or adjustments.**

This is a new program.

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

There are no plans to use any of the information provided to the Federal government through this data collection for publication. The information and eligibility decision results will be used for inter-jurisdictional fishery management purposes with respect to the number of permits authorized in each lobster management area and the corresponding trap allocations. The information also may be made available to state agencies, other cooperation entities, and to the public to track and facilitate trap transfers for economic and conservation purposes.

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

Not Applicable.

**18. Explain each exception to the certification requirement.**

Not Applicable.

<sup>13</sup> This figure assumes that 432 applicants will receive a written confirmation of their transaction, while 43 or 10% of the applicants will need additional correspondence regarding their application, totaling 475 responses.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

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