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

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

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

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

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

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

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

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

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

enforcement of Federal permitting requirements.

Classification

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

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

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: April 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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

PART 649—AMERICAN LOBSTER **FISHERY**

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

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

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

§ 649.4 Vessel permits.

(a) * * *

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

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

(1) ** * *

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

applicant must meet one of the following criteria:

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

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

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

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

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

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

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

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

(2) * * *

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