

# Atlantic States Marine Fisheries Commission

## American Lobster Management Board

October 28, 2014

8:00 – 10:00 a.m.

Mystic, Connecticut

### Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1. Welcome/Call to Order (*D. McKiernan*) 8:00 a.m.
2. Board Consent 8:00 a.m.
  - Approval of Agenda
  - Approval of Proceedings from August 2014
3. Public Comment 8:05 a.m.
4. Review of Cancer Crab Public Information Document 8:15 a.m.
  - Review of PID (*K. Taylor*)
  - Public Comment Summary (*K. Taylor*)
5. Draft Cancer Crab Fishery Management Plan (*D. McKiernan*) **Potential Action** 8:35 a.m.
  - Provide Guidance to Plan Development Team for Cancer Crab FMP
6. Review of consistency with state and federal regulations **Potential Action** 9:00 a.m.
  - Review of recommendations on trap transfer regulations (*D. McKiernan*)
  - Review of changes to federal Large Whale Take Reduction Plan and impacts to Outer Cape Cod haul-out (*D. McKiernan*)
  - Review of vertical line gear markings (*D. McKiernan*)
7. Update on Southern New England 10% reduction evaluation (*K. Taylor*) **Action** 9:25 a.m.
8. Update on LobsTAH Database (*K. Taylor*) 9:35 a.m.
9. Update on Trap Tag Vendor for 2015-2016 (*K. Taylor*) 9:40 a.m.
10. Consider 2013 FMP Review and State Compliance (*K. Taylor*) **Action** 9:50 a.m.
11. Other Business/Adjourn 10:00 a.m.

The meeting will be held at:  
The Mystic Hilton, 20 Coogan Boulevard, Mystic, Connecticut (860) 572.0731

# MEETING OVERVIEW

**American Lobster Management Board Meeting**  
**Tuesday, October 28, 2014**  
**8:00 – 10:00 p.m.**  
**Mystic, Connecticut**

Chair: Dan McKiernan (MA) Assumed Chairmanship: 08/14	Technical Committee Chair: Bob Glenn (MA)	Law Enforcement Committee Representative: Joe Fessenden (ME)
Vice Chair: David V.D. Borden	Advisory Panel Chair: Vacant	Previous Board Meeting: August 5, 2014
Voting Members: ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA, NC, NMFS (12 votes)		

## 2. Board Consent

- Approval of Agenda
- Approval of Proceedings from August 2014

**3. Public Comment** – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

## 4. Review of Cancer Crab Public Information Document (8:15 – 8:35 a.m.)

### Background

- In May the Policy Board passed a motion for the American Lobster Board to develop a FMP for Cancer Crab based on the recommendations provided by the Jonah Crab Fishery Improvement Project (FIP). A FIP is a multistakeholder effort to improve a fisheries performance to a level that is consistent with the Marine Stewardship Council's (MSC) sustainable seafood certification.
- As the first step in FMP development, a Public Information Document (PID) was drafted to gather information concerning the Cancer Crab fisheries and to provide an opportunity for the public to identify major issues and alternatives relative to the management of this species. The Board approved a PID for Public Comment at the August Board meeting (**Briefing Material**). The public comment period ran from August 20<sup>th</sup> to October 3<sup>rd</sup> and public hearings were held in Maine, Massachusetts, Rhode Island, Connecticut, and Maryland (**Briefing Material**).

### Presentations

- Review of Cancer Crab PID by K. Taylor
- Review of Public Comment by K. Taylor

### Action for consideration

- None

## 5. Draft Cancer Crab Fishery Management Plan (10:05 – 10:45 a.m.) Action

### Background

- In May the Policy Board passed a motion for the American Lobster Board to develop a FMP for Cancer Crab. As the second step in FMP development, the Board could task

the Plan Development Team with the development of an FMP based on the public input received during the PID public comment period. ( <b>Supplemental Material</b> )
<b>Action for consideration</b>
<ul style="list-style-type: none"> <li>• Provide guidance to Plan Development Team</li> </ul>

<b>6. Review of consistency with state and federal regulations (9:00 – 9:25 a.m.) Potential Action</b>
<b>Background</b>
<ul style="list-style-type: none"> <li>• In August the Board review inconsistencies between state and federal regulations pertaining to the trap transfer program, such as the conservation tax of full business transfers and conservation tax increments. The Board assigned a working group to review the inconsistencies and develop recommendations. (<b>Briefing Material</b>).</li> <li>• Review of changes to federal Large Whale Take Reduction Plan and impacts to Outer Cape Cod haul-out (<b>Briefing Material</b>).</li> <li>• There are currently no consistency in the vertical line gear markings between Massachusetts, New Hampshire, Maine, and federal fishing vessels in the Gulf of Maine.</li> </ul>
<b>Presentations</b>
<ul style="list-style-type: none"> <li>• Review of recommendations on trap transfer regulations (<i>D. McKiernan</i>)</li> <li>• Review of changes to federal Large Whale Take Reduction Plan and impacts to Outer Cape Cod haul-out (<i>D. McKiernan</i>)</li> <li>• Review of vertical line gear markings (<i>D. McKiernan</i>)</li> </ul>
<b>Action for consideration</b>
<ul style="list-style-type: none"> <li>• Consider management measures to provide consistency between state and federal waters regulations.</li> </ul>

<b>7. Update in Southern New England 10% reduction evaluation (9:25 – 9:35 a.m.) Action</b>
<b>Background</b>
<ul style="list-style-type: none"> <li>• Under Addendum XVII all Lobster Conservation Management Areas (Areas) within Southern New England (SNE) were required to reduce exploitation by 10% in order to address rebuilding. The Technical Committee (TC) met to evaluate if the LCMA approved measures have met the 10% reduction requirement. The TC found that Areas 4 and 5 did not meet the required reduction.</li> <li>• In response, the states and jurisdictions in within Areas 4 and 5 should develop regulations, in conjunction with the LCMT, to meet the required reduction in 2015. (<b>Briefing Material</b>).</li> </ul>
<b>Presentations</b>
<ul style="list-style-type: none"> <li>• Review of updated state proposals</li> </ul>
<b>Action for consideration</b>
<ul style="list-style-type: none"> <li>• None</li> </ul>

<b>8. Update on LobsTAH Database (9:35 – 9:45 a.m.)</b>
<b>Background</b>
<ul style="list-style-type: none"> <li>• In August the LobsTAH Working Group met via conference call to address the goals of the final database, discuss ways to ensure the allocation and permit information are properly maintained at the state, federal, and ACCSP level and reviewing timing of trap allocations and trap cuts (<b>Briefing Material</b>).</li> </ul>

<p><b>Presentations</b></p> <ul style="list-style-type: none"> <li>• Review Working Group Recommendations</li> </ul>
<p><b>Action for consideration</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul>

<p><b>9. Update on Trap Tag Vendor for 2015-2016 (9:40 – 9:50 a.m.)</b></p>
<p>Background</p> <ul style="list-style-type: none"> <li>• Due to staffing changes with the trap tag vendor, there were considerable problems with the ordering, processing, manufacturing, and delivery of lobster trap tags for the 2014-2015 fishing year. As a result, the Commission issued a Request for Proposals (RFQ) to seek bids for a new trap tag vendor (<b>Briefing Material</b>).</li> </ul>
<p><b>Presentations</b></p> <ul style="list-style-type: none"> <li>• Review of Trap Tag RFQ</li> </ul>
<p><b>Action for consideration</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul>

<p><b>10. Consider 2013 FMP Review and State Compliance (9:50 – 10:00 a.m.) Action</b></p>
<p>Background</p> <ul style="list-style-type: none"> <li>• American Lobster Compliance Reports are due June 1<sup>st</sup> (<b>Briefing Material</b>).</li> </ul>
<p><b>Presentations</b></p> <ul style="list-style-type: none"> <li>• Overview of the FMP Review Report by K. Taylor</li> </ul>
<p><b>Action for consideration</b></p> <ul style="list-style-type: none"> <li>• Approve <i>de minimis</i> requests</li> </ul>

**11. Other Business/Adjourn**

**DRAFT PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
AMERICAN LOBSTER MANAGEMENT BOARD**

**Crowne Plaza - Old Town  
Alexandria, Virginia  
August 5, 2014**

These minutes are draft and subject to approval by the American Lobster Management Board.  
The Board will review the minutes during its next meeting.

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## INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of February, 2014** by Consent (Page 1).
3. **Move to approve Addendum XXIII to the American Lobster Fishery Management Plan** (Page 2). Motion by Bill Adler; second by Jim Gilmore. Motion carried (Page 2).
4. **Move to approve the Cancer Crab PID with the additional language as modified today** (Page 7). Motion by David Borden; second by Bill Adler. Motion carried (Page 9).
5. **Move to initiate a technical addendum to remove the wording in Addendum XXI that was inadvertently added** (Page 25). Motion by Doug Grout; second by Mark Gibson. Motion carried (Page 25).
6. **Adjournment** by Consent (Page 31).

## **ATTENDANCE**

### **Board Members**

Terry Stockwell, ME, proxy for P. Keliher (AA)	David Simpson, CT (AA)
Steve Train, MD (GA)	Lance Stewart, CT (GA)
Rep. Walter Kumiega, ME (LA)	James Gilmore, NY (AA)
Doug Grout, NH (AA)	Emerson Hasbrouck, NY (GA)
Sen. David Watters, NH (LA)	Sen. Phil Boyle, NY (LA)
G. Ritchie White, NH (GA)	Adam Nowalsky, NJ, proxy for Asm. Sgt. Andrzejczak (LA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Tom Baum, NJ, proxy for D. Chanda (AA)
William Adler, MA (GA)	Tom Fote, NJ (GA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Roy Miller, DE (GA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Rick Bellavance, RI, proxy for Sen. Sosnowski (LA)	Thomas O'Connell, MD (AA)
David Borden, RI (GA)	Peter Burns, NMFS
Rep. Craig Miner, CT (LA)	

**(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)**

### **Ex-Officio Members**

Joe Fessenden, Law Enforcement Committee Rep.	Bob Glenn, Technical Committee Chair
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### **Staff**

Robert Beal	Kate Taylor
Toni Kerns	

### **Guests**

Wilson Laney, USFWS	Dave Sikorsky, CCA
Topher Holmes, NOAA OLE	Janice Plante, Commercial Fisheries News
Megan Strachen, NOAA	Donald Lajavic, USCG
Sandy Aylesworth, NOAA Leg. Affairs	Mike Sauders, USCG
Craig Wolcott, NOAA Leg. Affairs	Arnold Leo, E. Hampton Baymens Assn
Tom Cornish, ME DMR	Joseph Gordon, Pew Trusts
David Pierce, MA DMF	Aaron Kornbluth, Pew Trusts
David Spencer, AOLA	Richard Allen, Little Bay Lobster Co.



The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 5, 2014, and was called to order at 9:20 o'clock a.m. by Chairman Daniel McKiernan.

#### **CALL TO ORDER**

CHAIRMAN DANIEL McKIERNAN: This is the American Lobster Management Board Meeting, August 5, 2014. My name is Daniel McKiernan from the Massachusetts Division of Marine Fisheries.

#### **APPROVAL OF AGENDA**

CHAIRMAN McKIERNAN: Our first item on the agenda is the approval of the agenda. Can I get any feedback on the agenda? No feedback; so we'll assume it's approved as prepared.

#### **APPROVAL OF PROCEEDINGS**

CHAIRMAN McKIERNAN: The proceedings from the October 2013 meeting; can I get some feedback on that? Having heard none; it's accepted.

#### **PUBLIC COMMENT**

CHAIRMAN McKIERNAN: We will now take public comment from the audience on any items that is not on the agenda today. Is there anyone in the audience that would like to come to the microphone and speak on items not on the agenda?

#### **DRAFT ADDENDUM XXIII FOR FINAL APPROVAL**

CHAIRMAN McKIERNAN: Our fourth item on the agenda is Addendum XXIII for final approval. I'm going to let Kate Taylor cover this one.

MS. KATE TAYLOR: Draft Addendum XXIII contains information on the habitat needs for American lobster and does not include any proposed management changes. It was developed at the recommendation of the commission's habitat committee in order to update the Amendment 3 Habitat Section to

include information on the habitat requirements and tolerances of American lobster by life stage.

The draft addendum focuses on habitat components, and these are those elements that play a vital role in the reproduction, growth and sustainability of commercial and recreational fisheries by providing shelter, feeding, spawning and nursery grounds for lobsters to survive. This includes temperature, salinity, dissolved oxygen and other factors.

For each habitat component identified, a description of the summary of habitat requirements, tolerances and potential effects on lobsters was described in the addendum for early life stages, juveniles and adults. The draft addendum also addresses impacts to the habitat components, including anthropogenic and ecological impacts and climate change.

It also includes information on habitat bottlenecks, habitat enhancements, recommendations for further research and recommendations for monitoring and managing lobster habitats. The public comment period ran from October 30 to December 30, 2013; and no public comments were received. Thank you, Mr. Chairman.

CHAIRMAN McKIERNAN: Are there any questions on the presentation? Are there any questions or comments on the document itself? Bill Adler.

MR. WILLIAM A. ADLER: I think it was very well done. I read through it and it covered about everything I could possibly think of and more. This is what apparently is just going to be added as a section of Amendment 3; and I thought it covered an awful lot of things. I thought it was very good.

CHAIRMAN McKIERNAN: Thank you, Bill; I'm sure the staff appreciates that and the authors of the document. All right, can I get a motion to approve the addendum?

MR. ADLER: So moved.

CHAIRMAN McKIERNAN: Motion by Bill Adler and seconded by Jim Gilmore. Any

discussion on the motion? Bill, the complete motion, if you would read –

**MR. ADLER: Okay, I'll make a motion that the Lobster Board accept and approve Addendum XXIII to the American Lobster Management Plan habitat considerations.**

**CHAIRMAN McKIERNAN: And the second from Jim Gilmore. Is there any opposition to the motion? Having seen none; the motion is approved.**

### **CANCER CRAB PUBLIC INFORMATION DOCUMENT FOR PUBLIC COMMENT**

The next item on the agenda is Number 5, Cancer Crab Public Information Document for public comment; and Kate Taylor will handle that.

**MS. TAYLOR:** The public information document for the Cancer Crab FMP was included in the supplemental materials. It includes sections on the management issues, the purpose, the statement of the problem, the description of the resource and issues for public comment. In May, as you remember, the policy board initiated the development of an FMP for Cancer Crabs.

Due to the similarities and appearance between Jonah crab and rock crab, both species could be managed through the commission's process throughout their range. The initiation of the FMP was based on recommendations from the Jonah Crab FIP, which is a multi-stakeholder effort to improved fisheries performance to a level that is consistent with the Marine Stewardship Council's Sustainable Seafood Certification.

The Jonah Crab FIP was initiated by a grocery retailer when the company found that the Jonah crab did not meet the criteria for sustainable harvest in order to continue the sale of Jonah crab in its stores. The FIP conducted a pre-assessment benchmark against the MSC's sustainable seafood criteria and also organized a working group to prioritize threats to Jonah crab

and develop potential management measures to address these threats.

The purpose of this PID, as you know, is to gather information and provide the public an opportunity to answer the question how would you like the fishery and population to look in the future? While Jonah crab has long been considered a bycatch in the lobster fishery, in recent years there has been increasing targeted fishing pressure and growing market demands.

The status of the Jonah Crab Fishery in federal or state waters is relatively unknown; and in the absence of a comprehensive management plan and stock assessment, the harvest of Jonah crab may compromise sustainability of the resource.

Moving into the status of the stock, there is no range-wide stock assessment for Jonah crab. There was an assessment conducted in state waters in Rhode Island, which found that the fishing mortality exceeded Fmsy; but the biomass was above the Bmsy level, so therefore the population was not considered overfished at this time. However, the fishery primarily occurs in federal waters; and as I mentioned, this assessment focused on state waters.

There are a few inshore state water trawl surveys that only infrequently encounter cancer Crab species. Additionally, there is one trawl survey conducted through NOAA Fisheries that does collect data on abundance and distribution; but this data has not yet been analyzed. Management for the fishery varies from state to state.

For the commercial side, there are no maximum landing size restrictions; and all states do require some form of commercial catch reporting. In some states the commercial licensing is linked to the lobster fishery; and in federal waters the commercial harvest of Jonah crab is unregulated. For the recreational side, harvest is allowed in all states.

Some states have varying harvest limits while the remaining states do not have any. There are some limits on traps and licensing and this again varies by state and in federal waters is

unregulated. Table 1 in the PID contains information on the regulations by state. The value of the Jonah crab fishery, as was mentioned previously, has increased recently, resulting in higher landings. In 2012 the fishery was estimated to be worth over \$8 million.

Landings for rock crab have fluctuated between approximately one and five million pounds. In 2012 it was estimated to be about \$830,000. Moving into the issues for public comment, if approved, public comment will be collected on a series of issues that I will go through. These are intended to focus the public and provide the board with the necessary input to develop an FMP.

Issue Number 1 is should there be consistent coast-wide management? The management questions under consideration include is consistent coast-wide management needed; should management of cancer crab be coordinated through the commission; are there regional differences in the fishery or the stock that need to be considered when implementing these management measures; and should the commission include the management of rock crab with the management of Jonah crab?

Issue Number 2 deals with the objectives of the FMP. The draft PID documents contained in your material includes language on potential objectives for the PID and asks further what should the objectives be? Issue Number 3 deals with the management measures; specifically, should the commission consider minimum size restrictions; protection of female Jonah crabs; and recreational measures?

Management questions that are asked are what is the level of management that is appropriate; should the management be concurrent with monitoring requirements; should the FMP require a five-inch minimum carapace width for commercially caught Jonah crab with a tolerance; should there be a minimum carapace width for rock crab with a tolerance; should we prohibit commercial harvest of female cancer crab or prohibit the possession of egg-bearing females; and how should the recreational fishery be managed?

Issue Number 4 addresses licensing. The FIP examined the Jonah crab and lobster fisheries in offshore federal waters and found that about 98.3 percent of the licensed lobstermen harvest Jonah crab from federal waters. The management questions here address should the FMP require a commercial license; should it be licensed separately from lobster; should trip limits be established; should a recreational license be required; and how should harvest for bait purposes be addressed?

Issue Number 5 deals with monitoring. Currently data collection for cancer crab varies from state to state and survey to survey. The management questions include what types of data collection programs should be initiated to monitor the fisheries; what type of fisheries-independent data should be collected to help increase understanding of stock status and biology; and should fishermen be required to report harvest if used for bait purposes?

Issue Number 6 addresses emergency action. The FIP recommended that the commission take emergency action to implement management measures for Jonah crab based on the increasing concern of the current and growing market for smaller female Jonah crabs. The management questions asked include should emergency action be taken prior to the finalization of an FMP; if emergency actions are implemented, what should they be and when should they begin?

Issue Number 7 deals with federal waters. Currently there are no regulations in federal waters for cancer crab fisheries. The management questions include should management in federal waters be consistent with state waters fisheries; and what recommendation should the FMP make for federal waters harvest of cancer crabs.

The last issue asks if there are any other items that the FMP should address. The timeline for completion, as you see here the board is reviewing the draft PID and will consider it for public comment today. If approved today, the public comment period would run September through October.

The management board could review the public comments received on the PID at the annual meeting and provide the PDT with input on the development of the FMP. Potentially the management board could review a draft of the FMP for public comment at the February board meeting with public comment following and potential review of the final document for final action in May 2015. Thank you, Mr. Chairman.

CHAIRMAN McKIERNAN: Are there any questions on Kate's presentation? Ritchie.

MR. G. RITCHIE WHITE: Mr. Chairman, I was out at the very beginning of the presentations; so forgive me if this is answered. I guess I'm perplexed as to how do we go forward with any management measures without a stock assessment? How do we know that measures are needed if there isn't a stock assessment done showing that there is overfishing?

CHAIRMAN McKIERNAN: Toni wants to comment on that.

MS. TONI KERNS: We did talk about this at the policy board when we initiated the PID. Like black drum, the policy board had directed staff to move forward with the intention of doing a stock assessment once the management plan had been approved; and that the FMP would be general in the sense it would be developed so that we could easily craft management measures.

Once an assessment was put forward, it may have some basic management measures or monitoring requirements or data collection requirements that would help us inform information for an assessment or to allow some basic things to be done so that there would be some consistency. Otherwise, we would have to rely on anecdotal information that is being collected – not necessarily anecdotal, but information that's being collected by the states, to use more stock indicators than an actual assessment.

MR. WHITE: Has the staff looked at, as we start to go down this road, the financial implications of this; and if we get into have to

develop a stock assessment, are we ready to be able to do that financially? It seems to me like this is mostly a federal issue; and I guess I can't get my arms around how we will do a stock assessment, how we can afford it and how we will carry it out.

MR. JAMES J. GILMORE, JR.: I had to things. First to follow up on Ritchie's point; I kind of agree that we're looking at the financial aspects of trying to manage another species. If we go back to last year, we were looking at, well, we all decided we'd go back and not have an ASMFC plan and we would just do individual state plans, which we're struggling with right now on how we're going to do that.

And now I looked at this and said, well, we're getting into priorities and it's like I don't know if we're going to have the resources both at the commission and even at the state level to do this. There are a lot of questions about that and I don't know if this is the biggest issue we need to be doing and maybe the feds should looking into this more than us.

Secondly, a couple of corrections on the table; Table 1 listed New York as having a commercial minimum size. We don't have one so that should be changed. Secondly, there was a commercial harvest limit of 50 crabs per day. That is the recreational limit; we don't have a commercial limit; so if you will make those changes. Thank you.

MR. DAVID V. BORDEN: Going back to Ritchie's first point of why we should do this; Steve Train and I both participated in the GMRI process. I think the logic for the commission to take action at this point is to do something precautionary. This is an extraordinarily valuable fishery; and it's becoming more valuable. Landings are escalating fairly rapidly.

The whole point in doing this is to put some really basic regulatory requirements on the fishery; namely, some sort of minimum size and some type of egg-bearing female protection on the fishery and enhance the data collection aspects of it while both the National Marine Fisheries Service and the states work together

over some extended timeline to do a stock assessment.

It is going to take a while to do that stock assessment. In fact, Bob Glenn can speak to this; but he put in a pretty extensive, well-researched proposal to look at the sexual maturity aspects of Jonah crabs, and it wasn't funded by the S/K solicitation. That type of research is going to take time to develop; and the whole point is to be precautionary and try to get ahead of this and put a set of regulations that kind of ensure the long-term viability of the resource.

In terms of the economic consequences for the commission, I think that the discussion there is focused on if we just do a basic plan with a few measures, it shouldn't cost us a lot of money. We only get into the more expensive aspects of Jonah crab management like a full-blown stock assessment if the resource is developed. Otherwise, you just have these core management measures that stay in place and hopefully ensure the viability of the fishery and the resource. Thank you.

MR. MARK GIBSON: Mr. Chairman, as to the rationale for why we want to act before we have a detailed, comprehensive stock assessment, I think Figure 1 tells me I should be concerned as a fishery manager. Landings have increased by a factor of six since 1990. I think in our past experience is when landings explode on an unregulated species, it is not because abundance has increased by a factor of six.

It is usually that effort has increased greatly for whatever reasons, displacement on a lobster fishery and poor performance there, and we probably have an exploitation rate that is mounting rapidly and could very well have already exceeded sustainable rates. I don't know what the abundance is doing in the primary areas of the fishery; but the long-term trawl survey of the Graduate School of Oceanography in Narragansett Bay has been declining over the same time period this great increase in landings has taken place. I don't know what the other states' inshore surveys, if they even count cancer crabs, I don't know; but

with little information we do have, I think it is alarming for an unregulated species and begs some basic management measures.

MR. THOMAS O'CONNELL: In Table 1 on the summary of regulations, it appears that the Maryland regulations are for blue crabs rather than Jonah crabs as we don't have any. We do require a commercial license to land; but that if that section could be updated; thanks.

MR. BORDEN: Mr. Chairman, I'm glad Ritchie actually brought this up because it leads into a point that I think is important. I suggested to Kate that the document include the problem statement out of the GMRI document. For those of you that can't recall that, problem statement gets into about five different issues; problems that are created by an unregulated fishery; and I think it's important to just include those.

Then when this goes out for public discussion, we can have a discussion with the constituents about – there are going to be people that are going to stand up at public information hearings and basically say they want to oppose us moving forward with crab management. I think all of us should be prepared to deal that; and that's what the problem statement gets into. In other words, it is more explicit than what Kate put in here. There is a whole list of like whale entanglements, circumvention of the trap cut regulations in the lobster plan. If we include that, then I think it is a lot easier for all of us to defend this action. Thank you.

CHAIRMAN McKIERNAN: Kate, do you want to respond?

MS. TAYLOR: I just want to make sure that the board is aware of what the statement of the problem would read and what that would add. There are a number of bullet points in the FIP's report; and so this would add:

The crab resource is unregulated in federal waters with most of the landings coming from Area 3. Landings and effort are increasing rapidly in an unregulated manner. There are no minimum size protections for Jonah crab; nor are there regulations to project spawning

biomass, including restrictions on the harvest of females.

If left unregulated, the expanding crab fishery threatens the effectiveness of the lobster industry's conservation measures to reduce traps in the water and avoid interactions with right whales. Supermarkets and other major buyers are petitioning to discontinue selling processed in whole Jonah crab unless it is managed sustainably. With the loss of market access, the ex-vessel price of Jonah crab is likely to decline; and with the continued unregulated harvest of Jonah crab, the long-term availability of this resource for harvest is compromised.

CHAIRMAN McKIERNAN: Kate, can we bring all five of those points into the PID?

MS. TAYLOR: Yes, we can add to the document.

MR. STEPHEN R. TRAIN: Mr. Chair, to speak to some of the things Ritchie spoke about earlier, if we wait to regulate a species until we have more information – having harvested a lot of these different species, it seems like by the time we start regulating them we're already in trouble. This is a healthy resource that means a lot to the coastal economies in these states. If we wait much longer, the effort escalation without regulation is going to do serious harm to it.

CHAIRMAN McKIERNAN: Walter.

REPRESENTATIVE WALTER A. KUMIEGA, III: What he said.

CHAIRMAN McKIERNAN: Doug Grout, did you want to speak to this issue?

MR. DOUGLAS E. GROUT: Kate, I noticed the NMFS Survey had collected the information, but it said the data had not been analyzed. If we were to put together a PID or an amendment, is there a possibility that the commission or the technical committee could get access to that data and just do basic catch-per-tow information; the same thing with the Massachusetts Survey; and then the Maine/New Hampshire Survey.

That might give us some fisheries-independent information which might – even though it's not a formal stock assessment, it would give us an idea of what relative abundance is doing over the years; and it would help inform the public as to what is happening here.

CHAIRMAN McKIERNAN: Bob Glenn, do you want to speak to that?

MR. ROBERT GLENN: To answer your question, Doug, the answer is, yes, we can and we already have to some degree. Myself and another member of my staff, as well as individuals from Northeast Fisheries Science Center, Burton Shank, and a few other scientists have worked with the GMRI Group. Part of that process is we've been putting together all the fisheries-dependent and fisheries-independent data for Jonah crabs that are available. This includes all the NMFS trawl survey indices. We do have them and we are in the process of reviewing them; so we have some idea.

MR. ADLER: Since I think we should move ahead for all the reasons that have already been mentioned and remembering that the PID is only one step in it seems a very long format where we can maybe get some more information like stock analyses or whatever; but I think it would behoove us to move ahead with this particular thing.

I think it would be very helpful if we could put a picture of a Jonah crab versus a rock crab in; because people go I've got crab all over the place; which one is this one? That would be probably a helpful thing to put in the document. I think we should move ahead with this. It is going to take a while, anyway.

My other question was we need to talk to the federal people; because if we put something forward like this, I know we have some control, but does mean it will be three years, four years from now before the federal rule is in? I still think we should move ahead with this.

MR. BORDEN: I don't have an answer for Bill, but I was going to ask you whether or not you want a motion? Are you ready?

CHAIRMAN McKIERNAN: Bob Beal wanted speak first.

EXECUTIVE DIRECTOR ROBERT E. BEAL: I just had a quick follow-up for the technical committee chair. Bob, what is the timeline in pulling together some of that basic information? Is it quick enough to get it in this PID if the board wants to move forward with this for hearings between this meeting and the annual meeting or is that product more something that could be included in the draft amendment should the board choose to go that route?

MR. GLENN: We have in hand the basic fisheries-dependent like catch information by state as well as trawl survey indices for different states as well as Northeast Fisheries Science Center data. We could get it together. We have it in hand and we could get it together pretty quickly.

EXECUTIVE DIRECTOR BEAL: For this document?

MR. GLENN: For this document, yes.

CHAIRMAN McKIERNAN: All right, with no other discussion, **I'd accept a motion to approve the PID.** David Borden.

MR. BORDEN: **I'll make that motion, Mr. Chairman, with the additional language that Kate suggested; so move.**

CHAIRMAN McKIERNAN: Second from Bill Adler. Comments from the audience? Dick Allen.

MR. DICK ALLEN: My name is Dick Allen. I'm here representing the Little Bay Lobster Company. You shouldn't really take my comments as any kind of a position on the issues; but I would like to make some suggestions that might improve the public information document. I wanted to comment on the document specifically.

We appreciate the willingness of the commission to respond to the initiative of people in the fishery and the industry and look forward

to you following up on this. We do think there is a need for management. The first thing is I noticed there doesn't seem to be a conservation or a sustainability objective in the list of possible objectives, which seemed odd to me that it didn't list conservation of the resource as one of the objectives. I think it would be improved by doing that.

The second thing is the emphasis on the prohibition on taking female crabs, I was surprised – I know the FIP Working Group had that emphasis, but I would expect the commission to take a little more objective and scientifically based approach. As far as I know, there is no biological basis for complete prohibition on taking females. I think both in that suggestion and in the emergency action; that could be a little more explanation as to whether that's a fundamental biological issue or not. As far as I know, there is no biological reason or evidence that some take of female crabs wouldn't be acceptable as it is in just about every other fishery we have.

I'm wondering if you could include a shell height minimum size in addition to the carapace width and thinking about how people are going to sort crabs and just reducing the cost of any potential regulation. I know that Connecticut, for example, in their hard clam fishery has both a diameter regulation and a shell height regulation.

It seems to me that having that option and getting comments on that might be a good idea that you could either/or or a carapace width or a shell height. The tolerance on either the minimum size or females, it seems to me we learned about tolerances and the enforcement issues that they create. They seem like a great idea when you say, well, this is a big-volume fishery and we don't want to hold anybody to a real tight compliance, everybody makes a mistake, things like that, so we'll put a tolerance in.

What we learned in sea scallop management is that the tolerance sometimes becomes the standard; and when you are dealing with volumes, the only way to enforce a tolerance is

to take samples. One sample doesn't give you confidence that you actually know what the entire catch is, so then you have to get into statistics and how many samples you need and what your confidence limits are and all of those things that go with tolerances.

I wanted to suggest that at least you include an option in the document that might have an absolute measure than as a tolerance. The red crab fishery management plan – the federal FMP for red crab allows one standard tote of females in a trip; and so you don't get into sampling. If you're watching a trip unload and you pick out the crabs, you fill a tote, and you've got a violation there.

You don't get into all the statistical issues that go with a tolerance. I think including that for public comment might be a good idea. I don't see anything about escape vents in the document; and it seems like that might be something that people would want to consider along with the idea of having a minimum size; that one way to help with that might be an escape vent. I think it would be good to include or ask for comments on escape vent requirements.

Again, the emergency action request creates the impression and in my mind this is with kind of the weight of the commission behind it that there is something inherently wrong with taking female crabs. I don't think you should be giving that impression; that there ought to be some way to ask those questions in a more objective fashion. I also had the same question about whether that federal trawl survey data would be analyzed; and that question has been answered, and we'd look forward to that.

CHAIRMAN McKIERNAN: Dick, can I ask you question about the shell height? Your reputation precedes you as being a very creative guy who can solve problems. Do you actually know of a gauge or a measuring technique that height on a crab could be measured?

MR. ALLEN: I don't see why not. The whole idea behind escape vents is that there is some size that animals can go through. In thinking

about the difficulties of measuring carapace width on high volumes of crab; it just seemed to me that one option, whether it's workable, whether people would think it was a good idea or not; I think in the quahog fishery one of reasons that people went to that was that it increased the ability for people to sort quahogs quickly.

Whether it would work with Jonah crabs, I don't know, but I think it's worth consideration. I think it's going to be very costly to ask people to measure carapace width; and I think it's going to be difficult for enforcement people to do a lot of measuring of carapace width on crab. If there is an easier way to do it, I think we ought to at least consider it.

CHAIRMAN McKIERNAN: Okay, Dick, you have asked for three changes to the document; incorporation of shell height, a tolerance on the undersized non-conforming crabs and a reference to escape vents. Can I get any feedback from the board whether to include those?

MR. ALLEN: The tolerance that I suggested was specifically – there is already a tolerance included in the document. I'd suggest that we might get comments on whether an absolute number would be preferable to a percentage tolerance because of all the statistical issues that you get into with sampling for percentages.

CHAIRMAN McKIERNAN: Thank you, Dick. All right, I'm going to turn back to the board and get comments. Doug Grout.

MR. GROUT: Yes; I would support at least including these in the PID to get comments on.

MR. BORDEN: Mr. Chairman, I think Dick brought up a number of good points; and unless there is objection by Mr. Adler, I'd suggest we just include that.

CHAIRMAN McKIERNAN: Any objections to doing that? Hearing none; thank you. We do have a motion on the board. Joe Fessenden wants to speak to the issues.



COLONEL JOE FESSENDEN: I just wanted to mention that in Maine crab is a bycatch fishery in the lobster fishery. A few years ago we had several fishermen who came to the department and wanted to go crab fishing in addition to the lobster traps. We've actually got an approved crab trap design in Maine; and it's something you may want to consider in the document to actually have an approved crab trap that would allow fishers to have more than just the lobster traps. It's just an idea.

CHAIRMAN McKIERNAN: All right, we can include that in the document. Tom Fote.

MR. THOMAS FOTE: I'm just curious does that crab trap also catch lobsters or is the lobster excluded from the trap just because of the design?

COLONEL FESSENDEN: Well, in theory they exclude catching lobsters. They don't always work, but the bycatch certainly of lobster is diminished significantly with that current design. We've basically got them on four-foot traps. They're not small crab traps and stuff. They're fairly large traps and they seem to work for Jonah crabs.

MR. DAVID SIMPSON: I think that's an important point because I think one of the central questions we're going to have to answer is are we going to manage Jonah crabs as part of the lobster fishery or are there going to be options for a parallel fishery. I think this is an important thing to ask early on

CHAIRMAN McKIERNAN: Thank you; that's a good point. **All right, we have a motion on the board: motion to approve the Cancer Crab PID with the additional language as modified today. Motion by David Borden; seconded by Mr. Adler. Let's raise our hands, all in favor of the motion; any objections to the motion; any null votes. It's unanimous; thank you.**

## **REVIEW SOUTHERN NEW ENGLAND 10 PERCENT REDUCTION EVALUATION**

CHAIRMAN McKIERNAN: All right, the next item on the agenda is a review of the Addendum XVII effect on the Southern New England 10 percent reduction. The evaluation will be done by the Chair of the technical committee, Bob Glenn.

M. GLENN: Okay, a little background on the information; per Addendum XVII all lobster conservation management areas within Southern New England were required to reduce exploitation by 10 percent in order to address rebuilding. The reference base years for evaluating the reduction was the 2007 to 2009 period.

The regulations that each LCMT decided to put forward were provided in the briefing materials in detail. Just to summarize those quickly; for Area 2, the highlight of that program was a mandatory v-notching program. Area 3 enacted a 3-17/32 inch minimum size increase. Area 4 enacted a mandatory v-notching program in addition to a February 1 through March 31 seasonal closure. Area 5 also conducted a mandatory v-notching program as well as a seasonal closure from February 1 to March 31. Finally, Area 6 adopted a seasonal closure from September 8 through November 28; and that was for the 2013 year.

Just a little bit of background information; because calculating relative exploitation requires you to conduct a full assessment model, the technical committee can't evaluate the actual exploitation rate to see if the management measures enacted were successful at reducing exploitation. We used nominal landings as a proxy; and was discussed with the board prior to when these regulations were being passed.

We discussed this with the board that this would be an issue; so what was used as a measuring stick essentially was the reduction in catch from that baseline 2007 to 2009 period. We're going to through north to south for each of the states that had regulations that they had to put into effect.

For Massachusetts, in comparison to the reference years, landings declined by 12.4 percent. There has been a dramatic decline in fishing effort and active permits since the late 1990's. Although the current active fishers are reporting higher catches overall, there are fewer people in the fishery. The consensus was that Massachusetts did meet the 10 percent reduction based on landings.

However, it was very likely that this was not due to implementation of the v-notching program but rather due to substantial declines in fishing effort. The v-notching program in LCMT 2 is likely not the best management tool for this area because it relies on fairly high fishing levels. Just a little context there; unlike the Gulf of Maine where it is – in Area 1, rather, where it's a very successful conservation tool, it relies on fairly high fishing mortality rates or encounter rates.

So in order to v-notch egg-bearing female lobsters you actually have to catch a substantial portion; and they have to come across the rail for the fishermen and then they're v-notched and put back. In LMA 2 – and specifically I'm speaking of Massachusetts here, but I think you will see a similar case in Rhode Island – because fishing effort has declined so much, the catch rates aren't high enough to actually observe enough egg-bearing females to v-notch a substantial portion and put them back. It is kind of one of the limitations of that technique in an area where there is low abundance and also low exploitation rates.

Moving on to Rhode Island, relative to the reference years of 2007 to 2009, landings have declined by 25 percent. The consensus from the technical committee was that Rhode Island met the 10 percent reduction requirement based on landings. The technical committee finds that the reduction was not due to the implementation of the v-notch program in LCMA 2 but due to a decline in effort as well.

The technical committee was unable to evaluate the effect of the gauge increase in LCMA 3 in Rhode Island; and that goes for Massachusetts as well. We don't get very much in the way of

biological sampling in LCMA 3; and as a result of that we didn't have any updated length frequency distributions of the commercial catch from that area to be able to evaluate to see if a gauge increase was successful at reducing their catch or not.

Moving to Connecticut; landings in 2013 were 68 percent lower than they were in 2009. The seasonal closure did reduce landings but overall landings continued to drop as well. The consensus from the technical committee was that Connecticut achieved a greater than 10 percent reduction in landings, most of which can be attributed to the implementation of a seasonal closure but also due to decreased market demand, decreased abundance and less effort.

At the time this was put together, we did not have – there was an issue with the New York landings data. Those have since been resolved, but the technical committee did not have an opportunity to review the New York plan prior to this meeting. We can give an update on that. I do believe New York's representative on the technical committee, Kim McKown, just sent out late this week, after the landings issues have been fixed, a review for the technical committee to look at. I'm assuming that we will look at that via e-mail quickly and we can send updated information on that.

Moving on to New Jersey; we will break it down by the three LCMA's for New Jersey. In LCMA 3 for New Jersey boats; there was a 42 percent reduction in catch, but this was likely due to loss of one of the three main boats in that fishery. The technical committee representative from New Jersey described that one of the major players in that fishery had moved to another area so the landings drop in that case was not likely not due to implementation of any of the management measures but likely because that large player left.

In LCMA 4 landings increased by 3.26 percent in comparison to the reference base years. However, in LCMA 5 there was a 33 percent reduction in catch. The consensus was that the required reduction was achieved in LCMA 3 and LCMA 5 but was not achieved in LCMA 4. The

technical committee felt that implementation of the seasonal closure and v-notch program had mixed success.

For LCMA 4 and 5 the technical committee recommends that the LCMT should review the seasonal closure timing and to possibly look at dates that are more effective. We also reiterated the same that we did for LCMA 2; that a mandatory v-notch program might not be the best method to regulate catch in any of the Southern New England stocks because the exploitation rates are fairly low and making the encounter rates low.

Finally, for Maryland – and Maryland would have fisheries in LMA 5 – overall their landings have increased since the reference period. The consensus was that Maryland did not achieve the 10 percent reduction. Landings have actually increased since the reference period. However, we did note that Maryland has less than 1 percent of the coast-wide landings and this increase had very limited impact on the Southern New England stock.

We take that state-by-state breakdown and then just give kind a status update for each of the management areas; and it looks as follows. For Area 2 and 3 the required reduction was met, but the technical committee felt it was likely not due to the implemented management measures. Areas 4 and 5; the required reductions were not achieved; and overall we saw increases in landings in those management areas. In Area 6 the required reduction was met; and much of the reduction could be attributed to the management measures. That's it for the presentation.

CHAIRMAN McKIERNAN: Are there any questions? David Simpson.

MR. SIMPSON: Thanks for the presentation. When we adopted Addendum XVII and approved v-notching or closed seasons, one of the things I thought we would look at carefully was evidence that the mandatory v-notching was actually happening. One of the advantages of a closed season is we can for certain and very effectively monitor and enforce that.

Gear had to be removed from the water even; but with the v-notching there is no certainty that compliance with mandatory v-notching was being achieved; so there was discussion of monitoring through sea sampling the proportion of egg-bearing females that were v-notched and from ventless traps. Did the technical committee look at any of that? Have the states that have significant Area 2 fisheries provided any of that information?

MR. GLENN: Yes; they have. What we did was each state was required to construct a memo looking at the effectiveness of the plan that their LCMA's had put into place. For part of that, for example, all the states, including Massachusetts, Rhode Island and New Jersey, who chose v-notching programs included within the report on the effectiveness of the plan; observed rates of v-notching in commercial sea sampling as well as the ventless trap survey.

What we found was that say, for example, in Massachusetts we did see an increasing v-notching but a very small increase; certainly not as much as we would have anticipated had there been a large amount of v-notching occurring. Similar things were observed in both Rhode Island and New Jersey where there was a detectable increase in v-notching, but it was overall extremely small.

MR. SIMPSON: So then in terms of compliance, it doesn't sound like we have a great deal of confidence that within Area 2, for example, there is much compliance with Addendum XVII. Landings is a very simple proxy; and I understand until we have an assessment, we don't know what exploitation rate reduction we have achieved.

You know, certainly in Area 6 I believe we got some conservation benefit out of a three-month closed season. I would probably not agree with the statement that much of the 68 percent reduction was attributable to our closed season. We closed a season that we expected to achieve a 10 percent reduction, and I don't think we got much more than that.

I do think we may have had some benefit, which I have been hoping for, once the gear is out and people are out of the habit of fishing at nearly no profit level or maybe no profit level, maybe they decide not to put the gear back in the spring. I think we've had some of that; so maybe some additional benefit; but we probably would have achieved a 58 percent reduction without any closed season at all. I'm concerned in terms of what do I tell my people who are living through a three-month closure is there conservation equivalency going on. At this point I don't feel like there is in Area 2 or 3.

MR. GLENN: I think your point is well taken, David, that it's much easier to gauge the success of a closed season. One thing that makes it difficult for us tease out what is going on in v-notching is that, for example, in the Massachusetts portion of Area 2 we've had in excess of an additional 40 percent attrition in the industry; and so the effort rates have declined dramatically.

I can't tease out whether there has been poor compliance with the regulation or if it's that overall fishing effort is so low they're simply just not catching enough egg-bearing – the combined industry that's left working on that stock isn't catching enough egg-bearing lobsters to v-notch them and for it to show up as a sizable increase. It's a little bit of a semantic point, but I have a feeling that overall the compliance was okay. It's just so few doing it.

MR. SIMPSON: This was the concern I had with v-notching from the outset; and I know when Connecticut and New York had used v-notching as a conversation equivalency tool, we were held to a very high bar. We had to demonstrate through direct observation a certain number of lobsters being v-notched; and we didn't have that here.

Has there been any law enforcement activity trying to observe fishermen to see whether they're using notching tools, whether they have them on the board, any kind of, you know, call it surveillance of their behavior out there to get a sense of whether there was adequate compliance?

MR. GLENN: Not that I am aware of.

MR. TRAIN: This is a great slide. It makes things pretty clear, red, we haven't met it; but the yellow, Area 2 and 3; so we got lucky. Does this mean that we didn't do enough and for other reasons we got lucky and so there still needs to be something done or do we just back and say we met it so we can put that one behind us even though it wasn't something we did? The red and green seem pretty clear, but the yellow one leaves me wondering so what do we do?

MR. GLENN: What the yellow indicates for Area 2 and 3 was that the reductions that occurred in fishing effort and participation in general far outweighed any signal that we could detect by the regulation. When you have such dramatic declines in fishing effort, you're going to see tremendous reductions in catch; and that is what was observed in Area 2 and Area 3. We saw dramatic declines in catch. As far as how to address it going forward, I think that's something that the board collectively would need to discuss what a good strategy would be moving forward for Southern New England.

MR. GIBSON: I just wanted to respond a bit to Dave's concerns about compliance. I don't think it's so much a matter of compliance. It's that the resource and fishing effort has essentially evaporated at least in state waters of Area 2. Our spring trawl survey this year caught four lobsters in 44 tows. We used to catch in the double digits per tow.

Our fall survey last year I think caught twelve, and that's the definitive total. We used to catch twenty per tow. That's a definitive one for at least our contribution to the stock assessment. The ventless trap survey is at its historic low point since 2006. The settlement has been basically four bust years in a row even notwithstanding a slight uptick we had this year. The bottom has just fallen completely out of the resource. Our measures of effort are low points; the number of traps being fished; trap tags being ordered.

We have trouble finding anybody to go sea sampling with except for the handful of people

who still know where there are a couple of pockets of lobsters; and, hence, the catch-per-trap haul remains hyperstable because we're down to a handful of guys that still know where there are a few left. That's inherently a very dangerous situation, by the way, when we're still inflicting mortality on a contracted and reduced stock.

Witness the Gulf of Maine Cod News; we discussed this last week. I don't it's a matter of compliance. It's just there is nothing left to v-notch and there is hardly anybody out there to do it. We're looking for a needle in a haystack now of trying to find a v-notched lobster amongst everything that we're catching.

MR. BORDEN: To go back to Steve Train's question, though, to me I look at the results. The results are mixed. Some areas didn't achieve their results. I think what Steve is asking is, is how do we react to that? My answer to that is you're going to have a full-blown peer-reviewed stock assessment going forward in the next six to nine months. At that point, when you get the most up-to-date information on the stock assessment, then I think we have to reflect back on the analysis that has been done and decide whether or not we need to do more and how much more we need to do. That's my response to that.

MR. SIMPSON: Assuming we've sort of gotten beyond the question and answer with Bob and are talking about the now-what portion of this; my problem is we do have a closed season for three months. We require fishermen to pull their gear out of the water and go do something else for three months; and then if they want to fish again, they have to put all that gear back in the water, which is an inconvenience, to say the least, for them.

Some of them are asking us – you know, they've made the same comments and they've made them in the newspaper that we've achieved way more than the 10 percent reduction; we've achieved a 68 percent reduction; you should relieve us of this burden of having a closed season. I'm not sure what to say to them differently.

We do have the ability to implement as an alternative a mandatory v-notch program; and we could do that and do away with the closed season. I wouldn't feel very good about it; but this is the problem that I foresaw when we approved v-notching as an alternative to a closed season. I can statistic for statistic match what Mark is saying about how dismal the fishery is in Long Island Sound.

It is horrendous, the lowest trawl survey index we've had in 30 years and the lowest landings we've had in more 30 years and so forth. I just don't know what to tell people at home if we just kind of, oh, well, you know, it looks like they've v-notched some lobsters in Area 2 and 2; they're okay. I'm not sure what I'll tell people if they really push for v-notching instead of a closed season back in Long Island Sound.

CHAIRMAN McKIERNAN: David, to that point, if you did adopt a v-notching program, I think experience has shown over in Massachusetts and Rhode Island you may not encounter enough animals to accomplish the goal.

MR. SIMPSON: We absolutely won't; and that's the problem. You won't really know again how you did on exploitation until we have another stock assessment. I don't want it to sound like sour grapes, but I think for good reason the board, when we used v-notching several years ago, required that we document 30,000 v-notched lobsters; so it was independent of the population size.

If you don't v-notch 30,000 lobsters or more, then you have failed to achieve the conservation objective and you have to go to Plan B, which was a gauge increase for us. We fell short by several thousand lobsters and we had to a gauge increase. There is nothing here in this Addendum XVII to say, well, you fell short, the stock has fallen, you've fallen short, you need to go to a closed season or a gauge increase or something else that is more enforceable and more verifiable.

MR. GIBSON: The other point I forgot to make when I last spoke is our ability to detect a 10

percent reduction in exploitation is nil. Even with a fully updated stock assessment, we won't be able to detect that. The coefficients of variation on the model parameters using the terminal estimates or any estimate of exploitation is going to have a wider confidence bound than that; so we won't be able to detect it anyway. We've set ourselves up for failure on this one.

It was very clear in the North Cape Program when millions of lobsters were being v-notched, you could see the effect on the extension of the size composition of the females, the reductions in mortality rate that occurred. We just didn't anticipate that the bottom was going to fall out of this thing and we wouldn't have the animals to v-notch or the fishing power to do it.

In hindsight the ability for us to on paper specify a 10 percent reduction; but then where the rubber hits the road actually estimate it, we don't have the ability to do it and we won't when the full Maine Size-Based Model is updated; at least not in my opinion, anyway.

MR. WHITE: I think the situation that we found ourselves in is exactly what the technical committee told us. The technical committee recommended a moratorium and we did a 10 percent; and the population has followed exactly what the technical committee said would happen. It has collapsed and getting worse. It probably doesn't make any difference to limit mortality because it is probably going to end up not being any eventually, anyway. I think this follows what was predicted.

CHAIRMAN McKIERNAN: I would like to just comment on maybe David Simpson's point that it is a fair point about the issue of the closures. I believe there was some talk of a contingency like in Area 2 for a closure if the objectives weren't met. We are about to embark on some very serious trap allocation reductions down that way.

It is my experience in the Outer Cape that if you do have a seasonal haul-out period, it certainly enhances the enforceability of the permit-specific trap limits; so maybe that's something

that we ought to be thinking about going forward. Any other comments? Bob, I know you're going to get into this shortly; the assessment is going to be out by December or the next meeting, November; what is your forecast on that?

MR. GLENN: The assessment will be completed probably and ready for review at the February meeting – sorry, May meeting.

CHAIRMAN McKIERNAN: Kate, is it the commission's view that the LCMTs need to be reconvened in those areas where the reductions appear not to be met?

MS. TAYLOR: In those areas where the reduction was not met, the states will have to convene the LCMTs and develop regulations to meet the 10 percent reduction. However, as it was noted, the New York Report was not included in the evaluation; so that could help out the LCMA 4 landings if those reductions have decreased. We will have to factor that in; so that LCMA may come into compliance. For LCMA 5; they will have to likely to go back and reevaluate those measures in order to meet the 10 percent reduction.

CHAIRMAN McKIERNAN: So can this issue be brought up again at the November meeting after the New York data is incorporated?

MS. TAYLOR: Yes; the New York Report, as Bob mentioned, was sent to staff late on Friday; and that is going to be distributed to the technical committee so we can actually let the board know hopefully after some technical committee review over e-mail what the results of that were.

CHAIRMAN McKIERNAN: So is this an issue that we can move to the November meeting in terms of a holistic view of the exploitation rates in the Southern New England stock and then task the LCMTs after November to get together?

MS. TAYLOR: It was the discussion at the technical committee meeting that staff would work with the states to convene the LCMTs to develop recommendations so at the November

meeting we would know what the regulations would be for the coming year.

CHAIRMAN McKIERNAN: That would mean what the LCMTs would propose and not necessarily regulations, right? Okay, is there any objection to that plan and that schedule? David.

MR. BORDEN: Mr. Chairman, not an objection, but I think it would help if the staff sent out a memo to all the states basically outlining what Kate just said. Thank you.

#### **UPDATE ON UPCOMING FEDERAL ACTIONS**

CHAIRMAN McKIERNAN: All right, we can move on to the next issue, number seven, update on upcoming federal actions; and Peter Burns is going to present on that.

MR. PETER BURNS: I just want to give you a quick update on where we are at with our various rules and regulations on the federal side. In April we published a final rule and that implemented regulations to do a limited access program for Area 2 and the Outer Cape Area. Those are the last two areas in federal waters that don't have a cap on effort.

We began soliciting applications in May; and we will be taking applications from federal lobster permit holders through November 3, 2014. We will be reviewing those for their eligibility; and those that are eligible will get a trap allocation based on their historical fishing practices. To date, we've got about 130 applications in. Most of those were preapproved in looking at data with the states; so most of those folks really could be ready to be approved at any time. We have about 190 or 200 applicants in that same situation. We will be trying to reach out to those folks again, those extra 70 or so federal permit holders, to try to get the applications in and complete this process as soon as we can.

That new regulation, the rule that we published, also implemented the trap transfer rules; so we have those in place, but we're waiting for the trap tag database come into play so that we can

get transferability started. Since then, we published just last Friday a proposed rule seeking public comment on the Southern New England stock rebuilding measures, those same measures we were just discussing previously.

We'll be accepting comments on this through August 25; and so we're happy that the comment period falls during this lobster meeting to give you folks a chance to give us some comments. These measures are consistent with the commission's recommendations in Addendum XVII and XVIII to reduce fishing exploitation by 10 percent – that was Addendum XVII – and reduce latent effort and scale the fishery to the diminished size of the Southern New England resource – that was in Addendum XVIII – both in 2012.

You can see these are the measures. These are consistent with what the commission has asked us to implement. There is a mandatory v-notching requirement for Area 2, Area 4 and Area 5 and a gauge increase in Area 3 up to 3-17/32 inches and a seasonal closure from February 1 to March 31 in both Areas 4 and 5.

We also are proposing the grace periods on either end on the closed season to allow fishermen to get their gear out and put gear back in so it doesn't completely disrupt their business practices. Here is another issue that is being proposed vis-a-vie Addendum XVIII trap cuts. This is a 25 percent cut in Year 1 for Area 2; and then in five subsequent years a 5 percent cut each year for just under a 50 percent overall cut.

For Area 3, another suite of trap cuts, totaling just under 25 percent; and that's 5 percent for five years in a row. We proposed that the trap cuts take place starting at the next fishing year as well as the other brood stock measures, effective May 1, 2015. In the meantime, when we wrote this proposed rule, it was contingent upon the database being completed.

We've got a timing issue here that we would really like to get the board's comments on because we've got trap transferability and we've got trap cuts. The trap tag database isn't ready to go yet; so we can't allow fishermen to start

transferring traps. If we implement the trap cuts first without the opportunity for fishermen to transfer traps, it could cause some economic problems for them because they won't be able to mitigate the trap cut issues.

One of the things we did – you know, without wanting to slow the process down, we're proposing that the trap cuts be implemented at the start of the 2015 fishing year; but even if the trap transferability becomes an option with a completed database in the near future, the window of opportunity for fishermen to get together to make deals to be able to transfer traps during a reasonable part of the 2014 fishing year, where we're at right now, is closing rapidly.

It is going to complicate the ability for us to be able to qualify and allocate these fishermen, number one, and then implement the trap cuts and tell them what their cut allocation is going to be, number two, and then, number three, allow them the process and the time to be able to effectively buy up enough traps so that they can get back up and mitigate from the trap cuts.

For Area 2, of course, that's a significant cut. In Year 1 it is 25 percent. One of the things we've specifically asked for comment is even though we're proposing implementing these cuts in the start of the 2015 fishing year, asking specifically for comments from the board about the timing of this with respect to trap transferability and even the option of potentially moving the cuts up one year to allow the trap transfer database to come up to speed; for us to be able to outreach to the public and let everybody know what they need to do to transfer traps; allow the trap transfers to become effective and then permit holders would be able to transfer traps based on that cut amount; so they would be essentially cut and be able to mitigate during the same fishing year, which is in our interpretation really what the commission had in mind when it crafted Addendum XVIII, to put trap cuts in place contemporaneously with trap reductions. Thanks for your time; and if you have any questions, let me know, but we're really interested in your comments specifically on the timing of the trap cuts.

CHAIRMAN McKIERNAN: Any questions for Peter on his presentation? Bill Adler.

MR. ADLER: Mr. Chairman, a couple of things. First of all, I would like to ask Peter what the difference is in the federal proposal that is out now versus what our addendum came up with. I know we did this already in one of addendums and the federal people have to put their word in. My first question is, is there anything different in the federal proposal from what we already sort of approved in our state addendum? That's my first question and then maybe if I could have a follow-up and another question.

MR. BURNS: We tried to follow the recommendations of the commission throughout this whole process; and we're really actually talking about two different rules here. The first instance is the final rule that we're implementing now. That is the limited access program in Area 2 and the Outer Cape and the trap transferability program.

We had a proposed rule a year ago, and we really didn't deviate substantially from that proposed rule. We looked at the public comments and we really kept things the same. The only thing that we tweaked on that was the issue with allowing multiple histories in the trap transfer situation. Initially when we wrote our proposed rule, the commission's plan in Addendum XII called for only allowing a trap had history in a multiple area, for the buyer of that trap to maintain only one specific area.

Since then in our work with the Trap Tag Database Working Group, we got some confidence that the trap tag database would be able to track those multi-area trap histories. Subsequently, the commission adopted Addendum XXI that allowed for a multi-area history; and so that was a very convenient thing for us because we then we were able to spin that into our proposed rule to be even that much more consistent with what the commission had done for this.

Then we've got our rule. It is a proposed rule right now; so this is trying to keep on track with



what is happening. All the brood stock measures in Addendum XVII are exactly the same as those that were adopted by the commission and recommended for federal implementation in the commission's plan.

I think one thing we've tried to do in staying consistent with the plan is really just wrap in a lot more detail into what we've done with these rules. I think anyone who has read through these can see that; that we tried to take all the pieces, tried to read the public comments, tried to really glean what the intent of the board was in putting together two separate programs that really overlap; one of those programs being an economically based trap transfer program that is geared toward allowing fishermen to be able to have more flexibility in their businesses, number one.

Then number two, a very different process, which is an effort control trap reduction process which is really geared toward improving the stock and scaling the fishery to the stock; but ultimately what we found is that the fishermen couldn't have one with the other. They understand the need for the reductions, but they also need the trap transferability to be able to mitigate through that, the ones that are going to stay in the fishery.

We tried to build a lot of that detail into our plan and kind of see through this and now we've sort of tied it up for the board to be able to give us some guidance on how we're going to do these two things in a way that is reasonable and effective.

MR. ADLER: Mr. Chairman, if I could ask Peter, on one of these plans – and I was trying to follow it – it says if you sell a trap allocation from 2, 3 or Outer Cape you lose Area 1 eligibility; but if you buy from 2, 3 or whatever, you can keep your Area 1 eligibility. I get very confused there as to an example of how that would work. I didn't know if somebody could explain it to me.

CHAIRMAN McKIERNAN: Bill, I think the reason you're confused is in your state the agency only allows one LMA for the inshore

fishery; and so maybe Peter can explain how that works for the offshore fishery.

MR. BURNS: Again, getting back to your last question, Bill, this is exactly what the commission had asked us to do. This is something that came about in Addendum XII, which is really one of the foundational documents for trap transferability and sort of laid down the ground rules for how transferability was going to work.

We did a limited access program for Area 1; but it is not individual permit-based trap allocation, the same way all the other areas are. In Area 2 and all the other areas we have qualified and allocated trap based on a permit-specific fishing history as it relates to the eligibility requirements that have been laid down by the commission.

That is separate from Area 1, which is really a trap cap; and we capped the number of federal permits at current permit holders and gave everybody – you know, you bought one trap tag and you get 800 traps. Now we don't have an administrative way to deduct somebody's allocation. If they had an Area 1 allocation and maybe a seasonal allocation of 300 Area 3 traps, if they sell those Area 3 traps, we don't have any way to deduct their Area 1 allocation consistent with how this plan works.

What we're saying consistent with what the commission has asked us to do is those people can buy traps, they can buy transferable traps from Area 3, Area 2 or the Outer Cape; but if they sell them, then they're going to lose their Area 1 eligibility. In some cases that may be a good economic option for somebody who is trying to get out of the business or is retooling their business somehow; but certainly then can still buy traps.

MR. BORDEN: Mr. Chairman, I have a number of comments on Peter's proposal; but I think the way to expedite the discussion here is to focus on the database. Is the database ready; and if it's not ready, when is it going to be ready? We've been talking about this for years. It's totally impossible, I think, either for the National Marine Fisheries Service or the commission to

get on with implementing these proposals unless we have the database. That's a key issue; so can somebody tell me exactly what the status of that is?

CHAIRMAN McKIERNAN: Kate, would you like to take a first crack at that and I'll help you.

MS. TAYLOR: Some of the state data has been uploaded into the database and is ready to go. We're waiting for verification and the finalization of the remainder of the states. Once we have that, we'll work with NMFS to enter their data. It is very close to being ready and hopefully can be turned on very soon, within the next few months.

MR. BORDEN: I appreciate Kate's response, but we've got to know is this going to be ready for prime time, for instance, May 1, 2015? If it is, the board can have a discussion about structuring all these dates around that particular action. If it's not going to be ready, then it's a superfluous discussion to have; and we really ought to be talking about a 2016 date or something like that.

CHAIRMAN McKIERNAN: Let me weigh in here from Massachusetts perspective and someone who has already kind of been at the forefront of the development of this database and were the first to contribute to it. The very difficult part of this database has to do with the tracking of an entity's identify relative to these allocations. What I mean by that is this is this bridging where the states who permit individuals are trying to match up information with the federal government that permits so-called vessels.

It has occurred to us in these numerous conference calls that what is really critical is that the staff at NMFS and the staff in each state pay such attention to the contents of this database so that if some individual who owns a state permit and a state allocation changes boats or changes identity, goes into a corporation; or, alternatively, when a NMFS permit changes its status or changes a registration; that all kinds of things that have to be accounted for.

This means that the permit staff in Massachusetts and the permit staff in Rhode Island and the permit staff at NMFS have to be – and any other states that gets involved with this have to actually take an extra step and make sure that this common database that is out there is intact; because if you don't, you're going to create the so-called pregnant boat syndrome that we've talked about in the last ten years as being the one thing we wanted to avoid.

Where this database is right now is it is in testing and the data is there; and I guess we're ready to maybe attempt a few transfers in a beta version of this. The real reality is we have to make sure that the NMFS staff and the state staff actually understand the criticality of tracking the allocations to these entities and prevent the entities from drifting in the database or from the database not capturing any changes that were made.

We've really struggled with what is the common field that you can track this vessel? Is it registration number, is it documentation number, is it some other combination? That is where it is at; so my view from Massachusetts is this database is really close, but I think it has to be tested through the fall to make sure that we can use it in our permitting offices and not necessarily at the ACCSP where we're just transferring traps.

One of the crazy things that happens – I'll give you an example – if a permit holder re-registers his boat, sells the boat to a corporation that he is the president of, we get a new registration number; and if all of a sudden if that's what you're using to track the allocation, the documentation number or the registration number, it has been lost.

This data base has to bring it back. Some has to pay attention to that. To your question, I'm nervous about this fall; because if NMFS is still taking applications for the allocations as late as November 4 and my industry wants to start moving traps in advance of the ordering of the trap tags, which we allow as early as January 1, I think we're going to be squeezed significantly.

Peter, what kind of feedback would you like from the board today about the timing issues?

MR. BURNS: I think everything you said was spot-on, Dan, but I also want to point out that this is complicated. It is more than just developing a database and deducting 200 traps from one fisherman and adding 200 to another one. It's just like Dan said; it's about all the agencies being able to communicate on this.

It's about having business rules and everything else working fully so that we can assure this is going to work right. This is a pyramid we've been building for ten years. We're getting ready to put the top on it; and it would be great if we can really roll this out in a way that the commission and the board intended to do, which is to balance biological conservation on the stock as well as provide some economic flexibility to the fishing fleet.

I think we have to realize that there is a lot to this; and I think in developing this database, people realized that there was a lot more to it than meets the eye. One recent issue that just came up is the ability or how to account for multi-area transfers. I think the more and more we start talking about these database issues, the more issues come up and the more complexities come up.

I'm very confident that those things can be resolved; but as Dan mentioned, we're reaching the window of opportunity for trap transferability in Calendar Year 2014 is getting very small to be able to do that in a way that we have appropriate outreach to the fishing fleet to allow them to understand what transferability is.

We're trying to wrestle with it internally here about what some of the issues are with it. I would like to have a situation where the public well advised before they start spending good money for lobster traps to know what they're getting into and what the implications of that are. The timing becomes a critical thing and a lot of moving parts here. That's why we would really like to get some good comments from the board on how to implement this thing in a way that's going to meet the goals as intended.

CHAIRMAN McKIERNAN: Peter, do you think if we tried to stay on this schedule for transfers to begin in this next fishing year; that we would face kind of a breakdown or create problems for individual fishermen? Are you forecasting chaos? What do you see?

MR. BURNS: Are you asking if we did transferability in this current fishing year, 2014?

CHAIRMAN McKIERNAN: Well, I think the schedule is expected to have you accept applications through November; and if all goes well, then you would be qualifying and allocating almost instantaneously and transfers would begin for next year. In our state we would like to have those allocations already squared away by December 1, which is our renewal period. I guess I'm trying to anticipate what that would mean if people's allocations aren't established yet because of transfers that might be going on,

MR. BURNS: Yes; I think that would be complicated. I think administratively for the states and for NMFS it would be complicated to be able to get everyone qualified and allocated – those that are qualified and allocated, to be able to tell them what their trap cut out allocation would be and then allow them to transfer that way.

We know that the states really work on a calendar year schedule, that they start taking orders for trap tags and start to issue licenses I believe at the beginning of the calendar year; and early in the calendar year is when NMFS begins to go through that same process. Like I said before, we're getting into a very compressed timeframe right now.

CHAIRMAN McKIERNAN: Can we get feedback from members of the board as to the wisdom of postponing the trap cuts until the following year? David.

MR. BORDEN: Mr. Chairman, I don't support postponing the trap cuts. The whole reason we got in this scenario was the technical committee came forward with a suggestion to close the fishery. Ritchie White brought this up before

that they made a serious recommendation based on scientific advice and the board started to take actions – I know I'm repeating history here – and the industry basically dug in its heels and said let us go find a different path.

We started down this path of trap cuts and I actually think that the proposal that the industry has put forth has a lot of value in it. I mean a 25 percent trap cut in Area 2 is a significant trap cut. All you have to do is look at Bob Glenn's report, which is part of the lobster material and not in the supplemental period, but if you look at Figure 3 what you've got is you've got a situation here where the catch per unit of effort is actually going up.

The overall effort is falling like a stone because abundance is either declining or whatever; but catch per unit of effort is actually starting to increase; and the last the resource needs is to have a bunch latent effort come back into the fishery. That's not going to do the resource any good. I think it's critical to get on with this whole process.

I do not want to be perceived as minimizing the difficulties. I think Peter and all the states are confronting a really difficult chore in doing this; but we set out with a course of action and I think we've got to follow up on it. To me the timeline that makes sense is Peter has already prequalified most of the federal participants, as I understand it.

We all know that there are going to be people that are going to undergo director's appeals and that type of thing; but hopefully that's going to be the 5 percent. I think we should go forward under the assumption that we're going to cut the traps on April 30, 2015, and do the transfers May 1, 2015, and let the industry know and basically let them have an application window of about 30 days where they can submit letters on the transfers.

The only reason I suggest 30 days is most of the people that want to transfer traps either own the traps or already have an agreement with somebody to purchase traps from them. It's the first year of the transfer program. We have an

expedited review process that's shortened. I don't think it's going to do a lot of harm; and you could have a longer review process in the second or third year. I think we've got to get on with this is what I'm suggesting.

Given Kate's advice about the status of the database, I think that we should develop a timeline around those dates, basically circulate it to the industry, get comments and so forth; but by the November meeting I think we have to decide definitely we're either going to do this on that schedule or we're going to postpone it to the following year; and that ought to be based on the facts at the time.

CHAIRMAN McKIERNAN: I think it's critical for state personnel, Massachusetts, Rhode Island, Connecticut, New York, any of the states that have members that are in the fleets that are going to be affected by this are going to have to make this priority over the next few months. I think that's one of the things that slows us all down at times is we all have a lot of other assignments to do; but I think if we're going to try to pull this off in time for this fall and next year, this is going to have to become really important back in our offices in the state, especially. Steve Train.

MR. TRAIN: I can't speak to you guys trying to meet timelines in the offices; but I agree with David, we should move forward with this as quickly as possible. If we can't – I was just doing the quick math – if this takes another year, then I would suggest the first year cut be 28.75 percent to get us back on schedule. That would be the 25 plus 5 right there; and that would still get us right back into the five-year schedule.

CHAIRMAN McKIERNAN: Maybe that's a comment you want to put on the record to NMFS, but that's one of the issues I think NMFS is looking for comments on. All right, any other comments? Peter, do you want to follow up?

MR. BURNS: I appreciate the comments by Mr. Train and Mr. Borden. I was interested to find that a lot of Area 3 participants were ready for transferability; but I was also wondering with

some of the other states, whether they thought that was the case, where folks would be ready to go right away to begin transferring traps in the short term?

MS. TAYLOR: I would just like to point out to the board that, as Peter mentioned, Area 3 already has taken the cut; so they can turn on transferability now; but with Area 2, that 25 percent reduction would need to be implemented first before the transferability to occur. That is the way the board has discussed it previously and we'd be looking for comment to ensure that is the same message the board would like to submit to NOAA Fisheries.

### **REVIEW OF CONSISTENCY WITH FEDERAL TRAP TRANSFER REGULATIONS**

CHAIRMAN McKIERNAN: Okay, let's move on to the next item, review of consistency with federal trap transfer regulations. Kate. Just to follow up; do we have a position as a board. I'm not sure we do. I think it's critical for each of the states involved in this transfer addendum to weigh in. Mark, you and I can talk; but I don't think we're going to create a board position necessarily today, but I think it's important that we comment officially on the record. All right, Kate, consistency with federal trap transfer regulations.

MS. TAYLOR: As Peter mentioned, NMFS has published a federal rule on implementation of the limited entry program in Area 2 and OCC, as well as their trap transfer program. While the majority of the measures implemented in the final rule are based on the commission's recommendations and are consistent with the commission's plan, there are a few measures which are either not consistent with the commission's plan or the commission's plan does not address the issue.

Issue Number 1 is the conservation tax of full business transfers. Under the final federal rule, a 10 percent transfer tax will be assessed on all partial allocation transfers while the full business transfers, the sale of the entire permit, will not have a transfer tax. Under the

commission's plan, both the partial and the full business transfers are subject to the 10 percent transfer tax.

Issue Number 2 is conservation tax increments. Under the final federal rule, trap transfers may be processed in ten-trap increments; and while the commission's plan does specify that an increment will be included, it does not specify what that increment is.

Issue Number 3 is the dual permit transfers. Under the trap transfer program, NOAA Fisheries will allow dual state and federal permit holders to purchase federal trap allocations from any other dual federal permit holder. Under the commission's plan, a dual permit holder is restricted to transferring traps only to another dual permit holder from the same state. However, the commission was supportive of this allowance in the proposed rule.

Issue Number 4 doesn't actually with the NOAA Fisheries Final Rule. It is an issue that was brought to the staff's attention under Addendum XXI. The addendum specified that an entity may not own more than 1,600 traps. However, those individuals who had more than two permits in December 2003 may retain the number that they have at that time, but may not own or share ownership of any additional permits.

That last sentence, the one that specifies those individuals who had more than two permits in December 2003; this was not included in the draft that the board reviewed nor the document that went out for public comment. This was mistakenly included in the final text of this section. This language could be removed through a technical addendum or the normal addendum process. Thank you, Mr. Chairman.

CHAIRMAN McKIERNAN: Any questions for Kate on this presentation? All right, hearing none, do we have any interest in creating a new addendum to resolve these discrepancies? David.

MR. BORDEN: I don't have an answer for your question, Mr. Chairman, but I'd to talk on just a

couple of these points. On the conservation tax, the full business transfer, my understanding of both the commission plan and the federal rules require the most restrictive rules to go in place. Under the 10 percent partial transfer, the commission plan requires that both full and partial transfers be taxed; so that's the most restrictive.

The fact that the National Marine Fisheries Service doesn't adopt that, as long as both management agencies agree to adhere to the most restrictive allocation is you're going to end up with a lower number of traps; is that correct?

CHAIRMAN McKIERNAN: I guess that would be true, but I think it defeats one of the goals of this effort control plan that we've been working on with NMFS where NMFS made every effort to sync with the state allocations; so going forward in the database, we certainly didn't want to see a proliferation of different allocation totals per entity as a result of this disparate rule. I take your point that was one of the objectives of the original plan to sort of be more conservative and reduce trap allocations; but we have to ask ourselves whether it is worth it to have more confounded records in the database and whether the trap cuts that are scheduled especially for Area 2 would suffice relative to the conservation goals.

MR. BORDEN: I'd offer the opinion that if you don't tax the full transfers, then people will use full transfers to avoid the tax; and the trap reductions will be that much less effective. I think it's critical – if you want consistency between the two sets of rules, I think we need to figure out a way to get the National Marine Fisheries Service to adopt the tax on full transfers and not vice versa.

CHAIRMAN McKIERNAN: Peter, do you want to comment on that?

MR. BURNS: Keep in mind that we've got about 3,000 federal lobster permit holders and almost 1,700, more than 50 percent, are in Area 1. In Area 1 there is no way to deduct somebody's trap allocation for a full business transfer. I'm speaking off the cuff right now;

but I think that federal permit holders from Maine probably switch their permits more than anywhere else, their lobster permits, so this could be a considerable issue for an area that doesn't even have trap transferability and yet they're going to be subject to a tax whenever they make a business decision to switch boats or sell a permit.

That's over half of our permits, every single time we'd have to struggle with that. Unless Maine has a way to deduct somebody's state allocation consistent with a federal action, which we don't have right now, we're going to be in a real mess. All we've tried with this whole trap transferability process is to try to match up with the states, knowing that 90 percent of the federal lobster permit holders also have a state lobster license.

Trap transferability is really an economic tool to allow somebody to buy partial transfers. This is something new; because under our regulations before that, the only way you could get access to a lobster area was to buy a permit that qualified for that area and get those traps and all of the traps. Here we're allowing people to pick part of someone's allocation or someone to give away part of their allocation. Full business transfers is really kind of selling a whole business where a trap transferability is an exchange for an economic fine tuning of somebody's lobster business.

CHAIRMAN McKIERNAN: Peter, wouldn't it also entail sort of the policing or the monitoring of the membership of a corporation; that if a permit is held in a corporate name – one of the problems that we've encountered is trying to figure out, well, who is embedded in that corporation.

MR. BURNS: It would be one more riddle to solve in the trap transfer database, for sure.

CHAIRMAN McKIERNAN: Is there any interest in doing an addendum with these disparate items to bring them in line with the federal regulations? Are people not interested in creating that addendum? Can I get some discussion to not do that? Personally I'd be in

favor of seeing this addendum because I'm trying to deal with my – in Massachusetts my allocation holders; and I want a clean rule. I've got ASMFC rules that aren't consistent with the way we're going to go forward with in this federal plan. Steve, help me.

MR. TRAIN: Well, I understand the problem we've got because we want to be consistent; but if I were to buy a new boat, that's a permit transfer and then I'd be cut 10 percent. I understand this, so I think we need to – I want to keep this 10 percent, but I think we need to wait a while and work on how we get to apply. If you sell your whole business, I think it's a problem if you cut 10 percent and then the guy has to go find some other tags and build back up the limit; but if it's not going to match up because of the way you read permit transfer, whether it could be a new vessel or divorce or something and the name on the permit changes and now it's a transfer, you shouldn't be hit with the 10 percent. I do think we need to work on that. The intent of what we were doing I don't think was to have that happen.

CHAIRMAN McKIERNAN: Peter Burns, if someone like Steve replaces his vessel, that is not considered a transfer, is it, if the permit remains in that entity's name?

MR. BURNS: I think if there's a vessel replacement or if there is the sale of a business to somebody else, it would be considered a full business transfer.

CHAIRMAN McKIERNAN: Even in the case of a vessel sinking, if the vessel was gone, and someone bought a new vessel, that's considered a permit transfer?

MR. BURNS: I believe so. Yes; I think so; I that is what we defined a full business transfer as, any type of transfer of a vessel permit to another – take a federal permit and put it from one boat to another, whether it's your boat or someone else's boat.

CHAIRMAN McKIERNAN: Yes; and, Steve, and that sort of speaks to the problem is that in the states we issue permits to people; and when

that permit comes in says, "Hey, I want to replace my vessel," we don't consider that permit transfer. That's why we need to have more consistent language.

MR. TRAIN: Yes; I'd like to see the 10 percent stay, but maybe we need to work with NMFS to get them to come up with what we consider a transfer and what they consider a transfer before we bring them in line to our way of thinking. In the meantime, we have to wait a little bit.

CHAIRMAN McKIERNAN: Well, I think this a core issue with this database because NMFS is going to make all these efforts to sync up; and then if we have a state standard that if someone changes their – or if they transfer the permit or change the vessel, that allocation does not get debited but at the state level it does, I think that constitutes a problem for us. Peter, go ahead.

MR. BURNS: Yes; I agree, Dan. Like I said before, we're trying to address two issues with one tool. This particular thing deals with trap transferability; and we only have trap transferability in three areas, Area 2, the Outer Cape and Area 3. There is only a trap cap in Area 1 so there is no way to deduct anyone's allocation.

If the idea is to really reduce traps more in Maine, maybe this isn't the way to do that. Maybe that's another addendum with a different reason for trying to get trap reductions; and maybe this isn't really the way to do that. I think that the Area 1 issue is going to come into play in this.

MR. TERRY STOCKWELL: Mr. Chairman, I just want to follow up on Peter saying that this would be a very big deal in Area 1. Applying this measure to all lobster management areas at this time would introduce a currency into Area 1 that we've not discussed in the past. I would be reluctant – actually, I wouldn't be reluctant; I would be adamantly not supporting initiation of an addendum at this time.

CHAIRMAN McKIERNAN: Terry, I think the addendum would alter the ASMFC trap transfer standards to make it more like NMFS; so it

would meet your expectations. The addendum would not result in a situation where the traps were debited. We want to eliminate that – I'm sorry, the idea is to eliminate that language from the ASMFC plan to make it more consistent with the federal rules.

MR. STOCKWELL: My expectations, if I could follow up, would be to certainly consult with our industry before I'd be at all prepared to discuss this issue at the table.

CHAIRMAN McKIERNAN: Okay, thank you. Well, this is an issue that has been hanging out there for a bit. It doesn't have to be resolved today; so if you could have those conversations with your industry, we will pick this up in November, if you don't mind. David.

MR. BORDEN: Sorry to talk so much, Mr. Chairman, but this actually is a very important point. This is a question for Peter – and Chip Lynch I think is also here – if we did an addendum that exempted Area 1 from this provision or any area, Area 6 if need be from this provision; would the problem go away? In other words, could they then adopt a 10 percent transfer tax on the other areas?

MR. TRAIN: If I understand Peter, though, if anyone in Area 2 or 3 bought a new boat and took on a partner in any way and had to change their permit, they would have to take a 10 percent cut. I think that's where we're not matching things up.

CHAIRMAN McKIERNAN: Well, again, this is the crux of the matter and this why the database is so challenging. NMFS is permitting vessels or the owners of vessels where we, the states, are permitting individuals; so it is very easy when we deal with the permitting issues in the states to say to someone like Steve Train you have now sold your permit or you've transferred your permit and the new holder is going to be debited.

The problem is the use of a corporate shield, so to speak, it is possible for that corporate makeup to simply shift with a new partner and that's very difficult for the states and NMFS to sort of

the chasing down. I think that's part of NMFS' challenge as well in terms of administrative burden; is it not, Peter?

MR. BURNS: It is definitely a challenge. And really getting more toward David Borden's point is that you could try to isolate this on an area-by-area basis, but what it comes down to is that most of the federal lobster permits have more than one lobster management area; so you just keep drilling down more and more when you try to compartmentalize something that really isn't constructed to handle that.

MR. BORDEN: Mr. Chairman, this obviously is a very complicated issue. Can I suggest that unless somebody has objection, that the Chair appoint a subcommittee to focus in on this with the staff and try to bring a recommendation forward at the next board meeting.

CHAIRMAN McKIERNAN: I'd be happy to do that; and can I construct the subcommittee of a representative from Rhode Island, Massachusetts, NMFS – and other state want to be involved – Terry. Anyone else? All right, that's the plan. Thank you, David, good solution. The next item is a stock assessment update, Bob Glenn. Doug Grout.

MR. GROUT: Just a thought here; Issue 4 here was a mistake in wording that was included in Addendum XXI; and I'm wondering if we would be willing to just let the staff move forward with a technical addendum that would essentially remove those words that were put in there that were never put out for public comment or commission consideration or whether you want to try and wrap this into a formal addendum. It seems like this would be a quick and easy thing to do between now and the next commission meeting.

MS. TAYLOR: And that is something that the staff could either draft up and send around to the management board for their review since it is a very addendum; and there could be a public comment period before the annual meeting; or if the board would like to review it at the annual meeting, we can do that as well.



MR. GROUT: Do you need a motion to try and do this or can we do this by consensus? I'll be glad to make the motion if you want me to move forward with that direction, Mr. Chair.

CHAIRMAN McKIERNAN: Sure, Doug, we'll take the motion.

**MR. GROUT: All right, I would move that the board initiate a technical addendum that would remove the wording in Addendum XXI that was inadvertently put in there.** If you want me to be more specific, I'd need to get that slide up again.

CHAIRMAN McKIERNAN: Kate tells me that's sufficient. Seconded by Mark Gibson. Discussion. **Any objection to the motion? If not, by consensus we will move forward with that.**

#### STOCK ASSESSMENT UPDATE

CHAIRMAN McKIERNAN: All right, the next item is the stock assessment update from Bob Glenn.

MR. GLENN: I'm going to provide you with an update of where we are with the stock assessment and then also put together a presentation giving you kind of a thumbnail sketch of each stock right now based on the model-free indicators. So far for the stock assessment we finally have finalized all the landings' data.

We had a few issues with Massachusetts, Rhode Island and New York landings that have been identified; and those problems have been corrected. As such, right now staff is going to start to work and finalize the catch-at-length matrix, which is a primary piece of information that we needed to get the model runs going.

This assessment will include data through 2013. We've updated catch and survey indices to include data through 2013. The Lobster Stock Assessment Committee meets in September; and at this September meeting is when we will commence model runs and start to look at those for each of the stocks. Right now the

assessment completion is due to be late winter/early spring of 2015, to be presented at the board at the May 2015 meeting.

I'm going to move right into a preview of the stock assessment using some stock indicators. These are model-free indicators of abundance and exploitation as well as fishery indicators. I'm not going to comprehensively show all of those because we have dozens of them for each stock that we look at.

What I chose is just a handful of probably the ones that convey the most meaning and provide a decent thumbnail sketch of the condition for each of the three stocks. I'm going to start with the Gulf of Maine first. Looking at abundance indicators for the Gulf of Maine, the two primary ones that we look at are the spawning stock biomass. That would be the figure on the left. We have three indices for that.

We have that generated from the Maine/New Hampshire Survey, the one generated from the Northeast Fisheries Science Center Survey and one that we generate from the Massachusetts Division of Marine Fisheries Inshore Survey. In general what those three indices show is that spawning stock biomass is extremely high in the Gulf of Maine, above the 75<sup>th</sup> percentile in all cases, with the exception the recent index from the Maine/New Hampshire Survey notes a decline in the terminal year to 2013.

We look at the full recruit abundance. Those are those animals that currently are or will recruit to the fishery in the current fishing year. We look at those survey indices over time; and all three of the indices indicate that the overall abundance of the adult stock is extremely high at this point. It is within some of the highest levels that we've observed.

We look at recruitment factors for the Gulf of Maine. Specifically, we look at the young-of-the-year settlement survey that's conducted in Maine, New Hampshire and Massachusetts. I've broken it down into four basic regions, starting with Area 511, which is Eastern Maine moving down to 512, which is mid-coast, 513 east and west, which is Southern Maine as well

as New Hampshire, and then finally Area 514, which is the Gulf of Maine.

What you'll notice about these indices is they're fairly noisy; and that's fairly typical of young-of-the-year indices because there is a lot of inter-annual variability in both settlement strength as well as environmental conditions that dictate what happens. The technical committee is somewhat concerned. If you look, they do follow a similar trend in terminal years where you see in 2013 all those indices drop pretty dramatically.

It is something that we're watching. Two years of lower settlement indices doesn't necessarily spell disaster, but it is certainly something for the technical committee and for the management board just to continue to monitor to see what prevails. That is something that we'll provide more insight on in the upcoming stock assessment.

What we can use as a mortality indicator is a relative exploitation rate, which is simply just the ratio of the survey to the commercial catch and to give us a relative idea of what fishing mortality may look like. If you look, we have some varying trends. The green line up there is in the southern portion of the Gulf of Maine and Massachusetts Area 514.

What you can see is that we've had a fairly dramatic decline in the relative exploitation rate; and what that just simply means in this case is that the survey index has increased at a faster rate than the commercial catch has and gives us an idea that exploitation rates may be declining in that area. If you look at the blue line, which is from the Northeast Fisheries Science Center; that would be all the Gulf of Maine, but offshore waters and not state waters.

Overall for the last 25 years or so, it has kind of varied without trend; and there are some ups and downs, but it has been fairly stable if you were to draw a trend line through that. The Maine/New Hampshire Survey, the red line is a smaller time series. That was fairly stable from its inception around 2000 through about 2011;

and that has bumped up in the last couple of years.

That is just another thing occurring in the Gulf of Maine stock and specifically off the coast of Maine. It is something to watch. It is not a full alarm at this point, but we are seeing indicators of possibly exploitation rates are increasing there despite their being record abundance. Commercial catch is no surprise. The figure on the left is the total commercial catch for the Gulf of Maine.

The one on the right is those data broken down into statistical reporting areas. The graph speaks for itself. There has been a dramatic increase in catch over the course of the time series. In the last few years that increase doesn't seem to have any limits. It continues to increase pretty rapidly. If you look at the graph on the right, it can give you some insight as to where those increases are coming from.

While we do see increases in all of the statistical areas, the largest increases have been specifically in both mid-coast Maine Area 512 as Eastern Maine in Area 511, with more modest increases in the southern portion of the Gulf of Maine, 513 and 514. Finally, the line on the very bottom, Area 515, it is somewhat swamped.

Any trends there are somewhat swamped by the magnitude of the catch in other areas; but that's the offshore Gulf of Maine and landings have kind of varied but have kind of stayed fairly consistent over time there. We summarized this to kind of give you a report card for the Gulf of Maine as an early indicator. The stock appears to be in good condition. Abundance is at or near time series high.

We want to give a little bit of caution with the exploitation rate because we've seen a relatively large increase in the Maine Index for relative exploitation in recent years; so it's something to watch. Recruitment is cautionary as well. There are two consecutive years of poor YOY settlement; and this could lead to future declines in catch and should be monitored closely. Finally, looking at catch trends, there have been

dramatic increases in catch; and the fishery appears to be strong.

Moving to Georges Bank; similar to the situation that we saw in the Gulf of Maine is that we've seen both strong increases in the spawning stock biomass on Georges Bank as well as strong increases in the full recruit abundance on Georges Bank. We only have one survey index that covers this area; that's the Northeast Fisheries Science Center Survey.

All indications are that both of these indicators were consistent for the earlier part of the time series through to about 2000 when we've seen dramatic increases in both. Looking at relative exploitation for that area; there is some inter-annual variation. However, overall the relative exploitation rate has remained fairly stable over time or varied without trend.

Then, finally, if you look at the fisheries indicator, in this case commercial catch, you see the figure on the left is the total commercial catch on Georges Bank. This follows much like the abundance trends that we see in the survey index. Since about 2000, we've seen a fairly dramatic increase in commercial catch on the Georges Bank stock.

The very noisy figure to the right is the breakdown down by statistical area. If you look at that, what you can see is there is a fair amount of inter-annual variability in catch in that area, which is kind of different than what you see in the Gulf of Maine where you tend to see more stable patterns. Some of this can be possibly attributed to how catch is reported; because out on Georges Bank a lot of the boats fish in multiple statistical areas on a given trip; so there tends to be a little bit of variability in reporting as to how many pounds came from Area 561 or Area 562 when they possibly fished both on the same trip. Overall the total trend in catches is pretty telltale of what is happening there. Summarizing Georges Bank, the stock appears to be in good condition. The abundance is at or near time series high.

Exploitation rates have remained consistent and seem to be stable. A little bit of a cautionary

note on recruitment is that we don't have a young of the year, a larval survey or a ventless trap survey for Georges Bank to provide a good indicator of recruitment; so managers should use caution because we do not have a good forecast of any incoming recruitment for the stock. Then, finally catch on Georges Bank has increased dramatically in recent years; and the fishery appears to be strong.

Moving to Southern New England, some of the punchlines for Southern New England were already covered by Mark Gibson and Dave Simpson; but I'll continue to go over it regardless. If we look at overall abundance indicators, looking at spawning stock biomass – and we're using the Connecticut, the Northeast Fisheries Science Center and Rhode Island Survey for spawning stock biomass – what you see is that both the inshore surveys, Connecticut and Rhode Island, the spawning stock biomass indices in 2013 were at the all-time time series low.

The Northeast Fisheries Science Center, which would be the blue line, is that it has declined from the highest observed in the late 1990's; and it's off the axis. There is some spawning stock biomass being seen in that survey, but overall it's fairly low. When we look at the similar trends for full recruit abundance in Southern New England, based on those same three surveys you see basically the same trend in the inshore survey indices in both Connecticut and Rhode Island.

We haven't historically used the Massachusetts Survey as one of the stock indicators; but if I were to throw those trends up there, you would see a similar trend in that the full recruit abundance for the Southern New England portion of the Massachusetts Survey is at or at all-time lows as well. There seems to be a pretty consistent regional trend in stock abundance for Southern New England and that is at near all-time lows.

We have a couple of different recruitment indicators for Southern New England. Two of the states, Rhode Island and Massachusetts, use the Young-of-the-Year Suction Sampling

Survey. That would be the figure on the left. Rhode Island is the green line and Massachusetts is the blue line. Overall the Young-of-the-Year Settlement Indices are very low.

You note that in 2013 they've come up from the low of zero; but in context to the time series, they're still well below the 25<sup>th</sup> percentile in density of young of the year. The condition overall is a very poor settlement. On the right we're looking at Long Island Sound, which the Long Island Sound Larval Indices.

The red line is from Western Long Island Sound and was traditionally conducted by Connecticut DEP, their larval survey, and that's looking at the index of the four-stage lobster larvae per thousand cubic meters. Overall, looking at that, the index is extremely low for the last ten years and dramatically lower than what was observed in the mid to late 1990's.

Similarly, the blue line is conducted by the Dominion Power Plan. That includes all larval stages; so it is on a different axis because it would relate to the left Y-axis in this case; because when use all larval stages, the overall magnitude of the catch is much higher than just the four stage. Nonetheless, it shows a very similar trend in that overall the lobster larval densities observed in Eastern Long Island Sound are at or near time series low as well.

Looking at some of the mortality indicators, we have the relative exploitation rate based on the Rhode Island Survey as well as the Connecticut Survey. You see a fair amount of inter-annual variability; a very stable period of relative exploitation throughout the 1980's into late 1990's. Then you see larger increases in the early 2000's followed by decline.

In both cases in the recent years, 2012 and 2011, you see some increases in the relative exploitation rate, which indicates in this case that the abundance of the stock is declining at a faster rate than the commercial catches despite the attrition that we're seeing. Overall this is an indicator it is possible that despite reductions in catch and despite the management efforts that have been made to protect what is left of the

Southern New England stock; the stock still appears to be declining at a faster rate than the commercial catches.

This is looking at the commercial catch for Southern New England. The line on the left is the entire catch combined. 2011 and 2012 will mark the two lowest points in the time series for commercial catch in Southern New England. The entire catch is hovering just slightly below 4 million pounds; and that's the lowest in the time series.

When you break that down by statistical area, you can see it has varied. Some areas have stayed fairly consistent over time; others have declined. The largest notable declines that have been observed were in Area 611, which is Long Island Sound, as well as Statistical Area 539, which is coast of Rhode Island Sound and Narragansett Bay.

You also see declines but more modest declines in Offshore Area 537, which is both LMA 2 and LMA 3, as well as the inshore portion of Massachusetts Area 538 has declined but not nearly to the same degree. Overall, we summarized the condition of the Southern New England stock is that it appears to be in poor condition; abundance is at or near time series low.

The exploitation rates have increased in recent years. The stock size declines faster than commercial catch. Young-of-the-Year settlement continues to be extremely low; and the technical committee feels that the recruitment failure still appears to be occurring. Finally, a slight warning about commercial catch.

We've seen large declines in commercial catch; however we're having reports throughout all the various jurisdictions, Massachusetts, LMA 2, LMA 3; LMA 5 in New Jersey. We're having reports that catch-per-unit effort has increased or remained stable for those fishing. That is not a surprise; and with the dramatic attrition in the fishery, it has allowed the remaining fishermen to benefit.

Essentially you're taking a piece of pie and cutting up amongst fewer fishermen and the remaining pieces are larger. The technical committee cautions the board that with the interpretation of CPUE indices and just warns that they're very poor indicators of abundance. That's it.

CHAIRMAN McKIERNAN: Thank you, Bob. Kate, it might be useful to share this PowerPoint presentation with the whole board electronically, because some of the colors might be difficult to have read. David.

SENATOR DAVID H. WATTERS: I had a question about the Gulf of Maine recruitment numbers over the last couple of years. Is there any aspect of your survey work that would let you understand whether or not the rising water temperature or ocean acidification is beginning to have an effect in that area?

MR. GLENN: Yes; at least with temperature, one of the things that the assessment committee is doing in this assessment is looking at temperature time series trends in the all the stock units to see how those may affect overall stock productivity, natural mortality and things like recruitment. In the Gulf of Maine temperature effects are possible. It is hard to speculate at this point; but we anticipate hopefully to provide some insight on that.

SENATOR WATTERS: I wonder if there is anything in the literature or what you've seen about acidification particularly related to fertility.

MR. GLENN: There has been a lot in the literature about ocean acidification. Most of that I've seen so far has been mostly focusing on bivalve shellfish and ability for the spat to survive. There has been some work currently being conducted and looking to see if there is any relationship with that in the increased incidents of shell disease. Definitive work on that hasn't been published, but it is being considered at this time.

MR. GIBSON: I noticed they didn't mention anything about the ventless trap surveys. Is that

just because of the volume of information? Are they being brought to bear on the stock assessment?

MR. GLENN: The answer is yes, Mark. Just because of the volume of information, I only took a select handful of indicators that I could show similar indicators for all three stocks. This assessment will mark the first time that the ventless trap index will be included in the base model runs for each stock.

Overall, specifically in Southern New England, the ventless trap surveys for Southern New England states kind of mirror what is going on in the trawl surveys in that the indexes in the most recent years are at time series lows.

MR. EMERSON C. HASBROUCK, JR.: One of the slides I think that you have there showed that the assessment committee was going to meet in September or October?

MR. GLENN: September.

MR. HASBROUCK: And where are they going to meet?

MR. GLENN: That meeting is going to be held at the Massachusetts Division of Marine Fisheries Offices in New Bedford.

MR. BORDEN: Bob, is the assessment going to deal with describing connectivity issues between the inshore and offshore stocks at all?

MR. GLENN: Yes, we're looking into that. Is that specific to Southern New England?

MR. BORDEN: Actually, I was asking the question based on the Georges Bank/Gulf of Maine connection.

MR. GLENN: Yes, we're specifically going to address that issue. In addition to the base models with all three stock units separated as they have traditionally been done, we plan on doing an alternate run that includes – it's a combined Gulf of Maine and Georges Bank run together. This is based on some preliminary work that we've done trying to resolve some of

the issues on Georges Bank specifically that the model has a hard time dealing with; namely, trying to figure out where the recruitment comes from in that stock.

We're seeing large increases in abundance there, large increase especially – large changes in the sex ratio towards females and some other trends going on at Georges Bank that the Georges Bank Model itself – and Genny Nesslage can certainly jump in at any point if she wants to on this, because she is one of our primary modelers.

Anyway, we're trying to address some of the dynamics' issues that we're seeing in the Georges Bank; and we think some of that can be reconciled when we look at it as Georges Bank and Gulf of Maine combined because there are a lot of similar trends as well as there is a lot of historical literature that would support a migration between those two stock units.

MR. GIBSON: I was going to ask the same question that David did about Southern New England. When we receive the stock assessment and draw conclusions about area-specific dynamics, it is clear that the inshore trawl surveys have collapsed nearly to zero, but the federal trawl hasn't collapsed to that lower level; and you have probably have NEAMAP information as well.

Some of the landing streams are showing a similar pattern. CPUE, as pointed out – and I think it was an important point – the catch-per-trap haul has remained high in some areas where there were still some people fishing and finding remaining pockets of lobsters. I'm hoping we're going to be nuance some of the area-specific information and perhaps react to that.

MR. GLENN: Yes; the stock assessment committee will try to provide some insight into those inshore/offshore dynamics. It's somewhat difficult to do on, say, the lobster management area level because none of the surveys or catch information is collected on that type of spatial resolution. That said, we'll try to provide insight on that.

The other thing that we'll try to tackle is the – what we're unsure about is if the inshore stock has declined to such a low level and we're seeing recruitment failure, the traditional thinking on it was that the strong inshore/offshore link between that and settlement occurred inshore, those animals would grow up; and as they get larger, they migrate offshore.

Certainly historical tagging studies as well as looking at larval drift studies have supported that. What the technical committee will have a difficult time trying to resolve is what the Southern New England stock will continue to look like in the absence of any contribution from inshore or in the absence of a strong contribution from the inshore component. We're hopeful to try to provide some insight on that.

MR. ADLER: The only thing that sort of confuses me a little bit is a lot of times the abundance and the good report for the Gulf of Maine has been deemed as being partly due to the increase in water temperature. On the other hand, down in Southern New England, when we had the disaster, it was the water got too warm so they left or whatever. I go, well, up here it's doing good things and down there it's making things worse. This is just a comment. I don't know what the answer is; but I just want to say this is getting confusing in that respect.

MR. GLENN: That's a good point, Bill. The interesting thing between the difference in the Southern New England and Georges Bank and the Gulf of Maine is that Southern New England is at the southern extent of where lobsters live; and so the water temperatures there historically were supportive of all the life history processes for lobster.

What we've found is that as sea temperature has increased, 20 degrees Celsius or 67 degrees Fahrenheit, roughly, appears to be kind of the threshold for many different processes as well as increased physiological stress. As temperature has increased, the waters in Southern New England, the number of days where that exceeds that thermal threshold of 67 degrees has gone up substantially in the last decade.

When you go north of Cape Cod, it never really approaches those thermal thresholds very little, if at all. In fact, what we've seen is in the case of a lot of the reproductive biology; namely, things like larval maturation and larval duration and other things like that, settlement, the slight increases in temperature that we've seen in the Gulf of Maine have likely been a positive factor. It is not approaching those threshold levels, but they're actually providing enhanced larval survival.

CHAIRMAN McKIERNAN: Okay, thank you, Bob, that's a great report and we look forward to the final product when it comes out next year.

### **ELECTION OF VICE-CHAIR**

CHAIRMAN McKIERNAN: All right, I think we're on to Item Number 10. We're seeking a vice-chair and I'd be looking for nominations. David.

MR. SIMPSON: I would like to nominate Dave Borden as vice-chair.

CHAIRMAN McKIERNAN: Seconded by Ritchie White; thank you. Any other nominations from the floor? I don't see any. All in favor of David as vice-chair of the American Lobster Board raise your hand; any in opposition. Seeing none; it passes unanimously.

### **OTHER BUSINESS**

All right, is there any other business to come before this board today? Peter Burns.

MR. BURNS: I just wanted to let folks know I believe that our proposed rule for the trap cuts was supplied with the supplemental materials for the board members. If you didn't get it there, let me know, but I've got about ten copies that I'm going to put out on the back table here for the public or anyone else who may be interested. If anyone has any questions, please let me know.

CHAIRMAN McKIERNAN: Peter, I'll make sure that the affected states do comment on your proposed rule. I didn't ask for a board position today because I still think things need to be

worked out that are complex. I'll make sure you get comments on that.

### **ADJOURNMENT**

CHAIRMAN McKIERNAN: All right, motion to adjourn. Thank you; this meeting is adjourned.

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*Atlantic States Marine Fisheries Commission*

**PUBLIC INFORMATION DOCUMENT  
FOR THE DRAFT FISHERY MANAGEMENT PLAN  
FOR CANCER CRAB**



*ASMFC Vision Statement:  
Sustainably Managing Atlantic Coastal Fisheries*

**August 2014**



**The Atlantic States Marine Fisheries Commission Seeks your Comment  
on the Management of Cancer Crab**

The public is encouraged to submit comments regarding this document during the public comment period. Comments will be accepted until 5:00 PM (EST) on October 3, 2014. Regardless of when they were sent, comments received after that time will not be included in the official record. The American Lobster Board will consider public comment on this document when developing the first draft of a Cancer Crab Fishery Management Plan.

You may submit public comment in one or more of the following ways:

1. Attend public hearings held in your state or jurisdiction.
2. Refer comments to your state’s members on the American Lobster Advisory Panel, if applicable.
3. Mail, fax, or email written comments to the following address:

Kate Taylor  
 1050 North Highland St., Suite 200 A-N  
 Arlington, VA 22201  
 Fax: (703) 842-0741  
[ktaylor@asmfc.org](mailto:ktaylor@asmfc.org) (subject line: Cancer Crab PID)

If you have any questions please call Kate Taylor at (703) 842-0740.

**Timeline for Completion of Proposed Cancer Crab FMP**

	May 2014	Board tasks the Plan Development Team to develop Public Information Document
	August 2014	Board receives the PID and considers approval for public comment
<b>Current Step →</b>	<b>September - October 2014</b>	<b>Public Comment on the PID</b>
	November 2014	Management Board reviews PID for public comment, considers initiation of Draft FMP. PDT will develop FMP with input from TC and AP.
	February 2015	Management Board reviews Draft FMP for public comment
	March -April 2015	Public comment on Draft FMP
	May 2015	Management Board reviews and considers recommendation of approval of the FMP  Full Commission considers approval of the FMP

**Atlantic States Marine Fisheries Commission  
Draft Public Information Document for the Cancer Crab FMP**

**Introduction**

The Atlantic States Marine Fisheries Commission (Commission) is developing an Interstate Fishery Management Plan (FMP) for Cancer Crab, under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Management authority for this species from zero to three nautical miles offshore, including internal state waters, lies with the Commission, and is promulgated by the coastal states. Responsibility for compatible management action in the exclusive economic zone (EEZ) from 3-200 miles from shore lies with the Secretary of Commerce through ACFCMA in the absence of a federal FMP.

**Management Issues**

In May 2014, the American Lobster Management Board initiated the development of a FMP for Cancer Crab, to address management of Jonah crab (*Cancer borealis*) and rock crab (*Cancer irroratus*) throughout the species range within United States waters. While Jonah crab are typically the preferred catch over rock crab, due to the similarities in appearance between the two species and the continued problem of misidentification, both species could be managed together through the Commission's process (Figure 1).

The development of this FMP was based on recommendations from the Jonah Crab Fishery Improvement Project (FIP). A FIP is a multi-stakeholder effort to improve a fishery's performance to a level that is consistent with the Marine Stewardship Council's (MSC) sustainable seafood certification. The Jonah Crab FIP was initiated by Delhaize America (a grocery retailer) when the company found Jonah crab did not meet the criteria for sustainable harvest in order to continue the sale of Jonah crab in its stores.

The FIP conducted a pre-assessment benchmark against the MSC sustainable seafood criteria and organized a working group to prioritize threats to Jonah crab and develop potential management measures to address these threats. The working group was comprised of members of various lobster industry associations, state agencies, academia, fishermen, and seafood retailers. Specific concerns of the FIP include increasing targeted fishing pressure on Jonah crab, likely due to a fast growing market demand, and the long term health of the fishery. The FIP made several recommendations to the Commission including a minimum size, prohibiting female crab harvest, and reporting requirements.

**Purpose of the Public Information Document**

The purpose of this document is to inform the public of the Commission's intent to gather information concerning the cancer crab fisheries and to provide an opportunity for the public to identify major issues and alternatives relative to the management of these species. Input received at the start of the FMP development process can have a major influence in the final outcome of the FMP. This document is intended to draw out observations and suggestions from fishermen, the

public, and other interested parties, as well as any supporting documentation and additional data sources.

To facilitate public input, this document provides a broad overview of the four issues identified for consideration in the FMP, as well as background information on the cancer crab stocks, fisheries, and management. The underlying questions for public comment are: **“How would you like the Cancer crab fishery and population to look in the future?”** The Commission is looking for both general comments on the Cancer crab management in state waters and/or any comments specific to the issues listed in this document.



Figure 1. Rock Crab (*Cancer irroratus*), left, and Jonah Crab (*Cancer borealis*), right. The two species can be distinguished in a few ways. First, rock crab have purplish-brown spots on the carapace of while Jonah crab have yellow spots. Second, rock crab have smooth edges to the teeth on the edge of the carapace. Jonah crabs can be slightly larger than rock crabs a typically have black-tipped claws. (Source: MA Division of Marine Fisheries)

### **ASMFC’s FMP Process and Timeline**

The publication of this document and announcement of the Commission’s intent to develop a FMP for Cancer Crab is the first step of the FMP development process. Following the initial phase of information gathering and public comment, the Commission will evaluate potential management alternatives and the impacts of those alternatives. The Commission will then develop a draft FMP, incorporating the identified management alternatives, for public review. Following the review and public comment, the Commission will specify the management measures to be included in the FMP, as well as a timeline for implementation.

This is the public’s opportunity to inform the Commission about changes observed in the fishery, things the public feels should or should not be done in terms of management, regulation, enforcement, research, development, enhancement, and any other concerns the public has about the resource or the fishery. In addition, this is the public’s chance to present reasons for the changes and concerns for the fishery.

A tentative schedule for the completion of the FMP is included at the beginning of this document. Please note these dates are subject to change.

## **Statement of the Problem**

While Jonah crab has long been considered a bycatch of the lobster industry, in recent years there has been increasing targeted fishing pressure and growing market demand. The status of the Jonah crab fishery in federal or state waters is relatively unknown. In the absence of a comprehensive management plan and stock assessment, harvest of Jonah crab may compromise the sustainability of the resource.

## **Description of Management**

Management for the Jonah crab fishery varies from state-to-state (Table 1). There is currently no maximum landing size restriction in any state and all states require some form of commercial catch reporting. Commercial licensing in some states is linked to the lobster fishery. While commercial harvest reporting is required by all states, misidentification of Jonah crab with rock crab is a known problem. In federal waters, commercial harvest of Jonah crab is unregulated.

Recreational harvest is allowed in all states. Massachusetts, New York, New Jersey, and Maryland have put in place varying recreational harvest limits, while the remaining states do not have any recreational harvest limits. Limits on recreational traps and recreational licensing requirements also varies by state. In federal waters, recreational harvest of Jonah crab is unregulated.

## **Description of the Cancer Crab Resource**

### ***Status of the Stocks***

The status of the Jonah crab fishery in federal or state waters is relatively unknown. There is no range wide stock assessment for Jonah crab. A stock assessment conducted by the Rhode Island Department of Environmental Management found fishing mortality for Cancer crabs in state waters has recently exceeded the  $F_{msy}$  level, but biomass was above the  $B_{msy}$  level, so was not considered overfished at this time (RIDEM 2012). However, the Rhode Island fishery primarily occurs in federal waters.

Massachusetts, Maine, and New Hampshire conduct inshore state water trawl surveys which are primarily focused on finfish and encounter Cancer crab species infrequently, therefore providing only minimal data. NOAA Fisheries conducts a trawl survey in federal waters which collects data on Cancer crab abundance and distribution, distinguished by species; however, this data has not yet been fully analyzed.

### ***Description of the Fishery***

Jonah crabs are taken in pots and traps and have long been taken as bycatch in the lobster fishery. The value of Jonah crab has increased recently, resulting in higher landings. Landings fluctuated between approximately 2 and 3 million pounds throughout the 1990's. By 2005, landings increased to over 6 million pounds and then nearly doubled again to 11.5 million pounds in 2012. Landings in 2012 predominately came from Massachusetts (65%), followed by Rhode Island (28%) and Maine (5%). Connecticut, New York, New Jersey, and Maryland accounted for a combined 1% of landings. In 2012 the fishery was estimated to be worth over \$8 million.

Landings of rock crabs have fluctuated between approximately 1 and 5 million pounds since 1990. Landings peaked at 4.8 million pounds in 2008, but have continued to decline since then. Landings in 2012 were 1.7 million pounds and estimated to be worth approximately \$830,000.

Since 2002, the Cancer crab fishery has increased from an ex-vessel value of \$2 million to just under \$9 million (Figure 2). Jonah crab claws are relatively large and can be an inexpensive substitute for stone crab claws. With only a handful of processors specializing in this fishery, the quality of Jonah and rock crabmeat is very consistent. While the ex-vessel prices for other popular crabs such as Dungeness have soared, fishermen have seen their boat prices for Jonah crab rise only modestly from about \$0.50 per pound to \$0.70 per pound from 2009 to 2012 and rock crab prices has remained close to \$0.45 per pound since 2006 (*ACCSP Data Warehouse, September 2013*). That’s largely because there is only a small live market for Jonah crab and only a handful of plants process Jonah crabmeat and claws, limiting price competition for the catch. Prices of Jonah crab products, on the other hand have increased as more buyers look for an alternative to much higher priced blue and Dungeness crabmeat. With Dungeness meat now selling for \$18 per pound, the price of Jonah crabmeat has settled in at about \$13-\$15 per pound.

### Issues for Public Comment

Public comment is sought on a series of issues being considered for inclusion in the FMP. The issues are intended to focus the public comment and provide the Board with the necessary input to develop a FMP. The public is encouraged to submit comments on the issues listed below as well as other issues that may need to be addressed in the FMP.

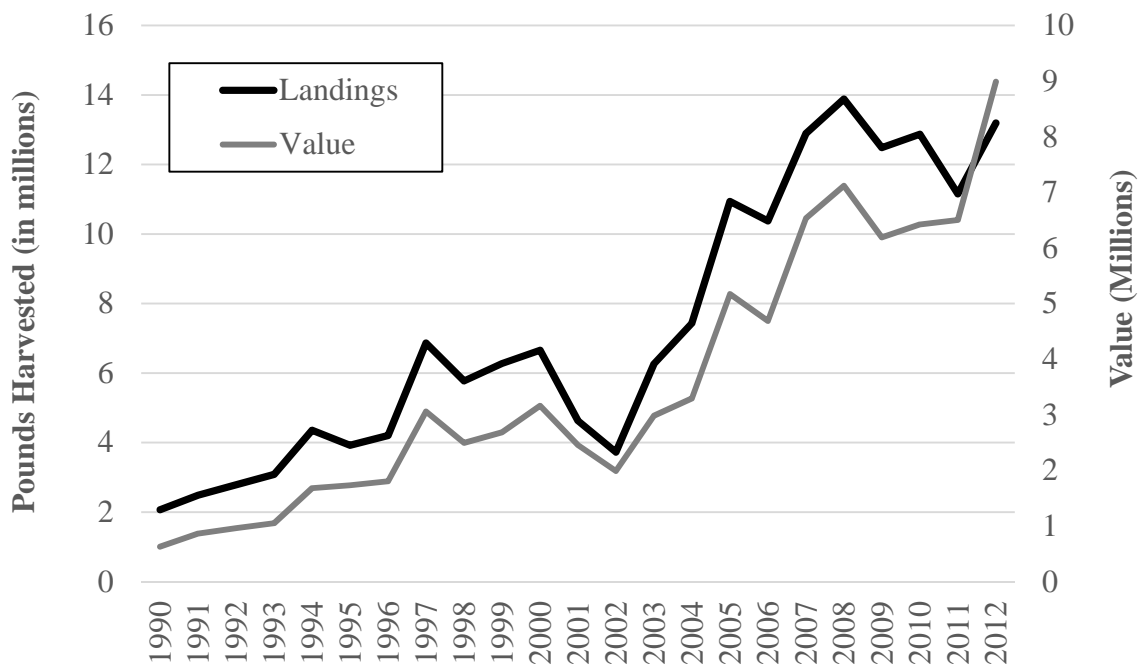


Figure 2. Cancer crab (Jonah and rock crab, combined) landings and value for the Atlantic coast, 1990 – 2012. Source: personal communication NMFS Fisheries Statistics Division, 2014

**Table 1. Commercial and Recreational Regulations**

	<b>Comm Trap Limit</b>	<b>Comm Trap Restrictions</b>	<b>Comm License Required</b>	<b>Comm Min Size</b>	<b>Comm Sex Restrictions</b>	<b>Comm Closed Seasons</b>	<b>Comm Harvest Limit</b>	<b>Rec License</b>	<b>Rec Harvest Limit</b>	<b>Rec Trap Limit</b>
<b>ME</b>	Lobster Limit	Lobster Traps	Yes	None	None	Dec 30 - Apr 1 in specific rivers	200 pounds/day or 500 pounds/trip	No - hand harvest; Yes - traps	No	5 traps
<b>NH</b>	Lobster Limit	Lobster Traps	Yes	None	None	No	No	Yes (if more than 12 taken)	No	No
<b>MA*</b>	Lobster Limit	Lobster Traps	Yes	None	No egg bearers	Jan 1 - Apr 30 in state waters	No	No - hand harvest; Yes - traps/SCUBA	50/day	10 traps
<b>RI</b>	No	No	Yes	None	No	No	No	Yes	No	No
<b>CT</b>	No	Lobster Traps	Yes	No	No	No	No	yes	No	10 traps per day
<b>NY*</b>	No	Escape panel required	No	No	No egg bearers	No	No	No	50/day	No
<b>NJ</b>	No	Bio-degradable panel required	Yes	3" - 4.5" (varies by hardness)	No egg bearers	Yes	No	Yes	One bushel/day	yes
<b>MD*</b>	No	Turtle BRD and escape panel required	No	3.5" to 5" (varies by hardness)	No female harvest at certain times	Open Apr 1 - Dec 15	25 bushels per vessel/day	No	3 bushels hard crabs; 2 dozen soft crabs	No
<b>VA</b>	No	No	No	None	No	No	No	No	No	No

*\*Regulated through blue crab fishery*

***ISSUE 1:  
CONSISTENT  
COASTWIDE  
MANAGEMENT OF  
A MIGRATORY  
STOCK***

**Background**

Currently, states independently manage their Cancer crab fisheries. The Commission is considering coordinating the management of the Cancer crab resource. The Commission will determine if the management of Cancer crab will be a part of the American Lobster Board or its own species board.

**Management Questions**

- Is consistent coastwide management needed for the Cancer crab fishery?
- Should management of Cancer crab be coordinated through the Commission?
- Are there regional differences in the fishery and/or in the Cancer crab stock that need to be considered when implementing management measures?
- Should the Commission include management of rock crab with the management of Jonah crab?

***ISSUE 2:  
WHAT ARE THE  
APPROPRIATE  
MANAGEMENT  
OBJECTIVES FOR  
THE CANCER CRAB  
FMP?***

**Background**

The Commission could considering the following management objectives for the FMP for Cancer crab and is seeking input on these or any others that may be raised.

- A. Provide a management plan that achieves the long-term sustainability of the resource and strives, to the extent practicable, to implement and maintain consistent coastwide measures, while allowing the states limited flexibility to implement alternative strategies to accomplish the objectives of the FMP
- B. Provide for sustainable recreational and commercial fisheries.
- C. Maximize cost effectiveness of current information gathering and prioritize state obligations in order to minimize costs of monitoring and management.
- D. Adopt a long-term management regime which minimizes or eliminates the need to make annual changes or modifications to management measures.

**Management Questions**

- What should be the objectives in managing Cancer crab fisheries through the Commission?

**ISSUE 3:  
WHAT ARE THE  
APPROPRIATE  
COMMERCIAL AND  
RECREATIONAL  
MANAGEMENT  
MEASURES FOR  
THE CANCER CRAB  
FISHERY?**

**Background**

The Commission could consider different management approaches for the commercial Cancer crab fishery. They could include: minimum size restrictions and restrictions to protect female Jonah crabs. Additionally, the Commission could consider action on the recreational fishery. Currently, commercial and recreational management measures vary by state.

In the absence of a minimum size restriction for Jonah crab and regulations to preserve the brood stock, the population is at risk of long-term unsustainability. A 5-inch minimum carapace width (CW) could maintain reproductive capacity in the fishery. From a market perspective the FIP found processors are less likely to purchase crabs that are smaller than 5.25" CW, while dealers of live crab have indicated a minimum size of 5" is a marketable size. However, there are potential emerging markets for smaller crab, including for use as bait.

A 5" CW size restriction would protect most female crabs from harvest, as very few females exceed this size. The protection of female crab was considered to be of utmost importance to the FIP Work Group, and recommends a zero tolerance protection for egg-bearing crab.

**Management Questions**

- What level of management is appropriate for Cancer crab (e.g. basic, moderate, intense, etc...)?
- Should required management measures be implemented concurrently with monitoring requirements?
- Should the FMP require a 5" minimum carapace width (CW) for commercially caught Jonah crab? Should there be a tolerance on the possession for enforcement? Should there be a minimum CW for rock crab, if so what size range? Should there be a tolerance on the possession for enforcement (e.g. 5%)?
- Should the FMP prohibit commercial harvest of female Cancer crab? Should there be a tolerance on the possession for enforcement?
- Should there be a prohibition on the possession of egg-bearing females? Should there be a tolerance on the possession for enforcement?
- How should the recreationally fishery be managed?
- What other management options should be considered (e.g. escape vents, gear restrictions, shell height restrictions, etc...)



**ISSUE 4:  
HOW SHOULD THE  
CANCER CRAB  
FISHERY BE  
LICENSED?**

**Background**

The FIP examined the Jonah crab and lobster fisheries in offshore federal waters and found extensive overlap, as licensed lobstermen presently harvest 98.3% of the Jonah crab landed from federal waters. Massachusetts, Maine, and New Hampshire also tie Jonah crab harvest to lobster licenses. The lobster fishery is managed under effort controls that address whale entanglement issues. By linking the harvest of Cancer crab to the existing measures of lobster management plan, managers could potentially avoid increasing trap numbers, additional costs to states for plan development and enforcement, and determining resource allocation for the Cancer crab fishery.

**Management Questions**

- Should the FMP require a license for the commercial harvest of Cancer crab?
- For jurisdictions with a lobster fishery, should the FMP require a lobster license in order to commercially harvest Cancer crab or should the fishery be licensed separately?
- Should the directed fishery be limited to those vessels using lobster traps authorized under the lobster management plan?
- Should harvest by trap fishing vessels that are using crab traps not bearing lobster trap tags be restricted?
- Should trip limits be established? If so, should the historic harvesters using vessels deploying lobster traps be given a more liberal trip limit than other gears?
- Should states require a recreational license to harvest Cancer crab?
- Should harvest for bait purposes be included under a recreational or commercial license?
- Are there other licensing requirements that should be considered?

**ISSUE 5:  
WHAT TYPES OF  
DATA COLLECTION  
SHOULD BE  
PRIORTIZED TO  
MANAGE THE  
FISHERY?**

**Background**

Data collection for Cancer crab varies by state and survey. All states require some form of commercial catch reporting. Fishery-independent surveys vary throughout the range. Typical data collected to conduct fisheries stock assessments include harvest, number of traps fished, area fished, as well as biological and life history information.

**Management Questions**

- What types of data collection programs should be initiated to monitor the commercial and recreational fishery?

- What types of fisheries independent data should be collected by the states to help increase understanding of stock status and biology of Cancer crab?
- Should fishermen be required to report harvest if used for bait purposes?

***ISSUE 6:  
IS EMERGENCY  
ACTION NEEDED  
TO MANAGE THE  
FISHERY IN THE  
INTERIM?***

**Background**

The FIP recommended that the Commission take emergency action to implement management measures for Jonah crab based on increasing concern of the current and growing market for smaller female Jonah crabs. The FIP requested the Commission consider implementing an interim measure prohibiting the possession of female Jonah crab (with a 0.5-1% enforcement tolerance). If approved, measures contained in a Jonah crab FMP could go into effect, at the earliest, in early 2016, at which point the long-term reproductive capacity might already be seriously compromised.

Under the Commission’s procedures it may implement emergency action when the conservation of a coastal fishery has been placed substantially at risk by unanticipated changes in the ecosystem, the stock, or the fishery. This action shall originally be effective for a period not to exceed 180 days but may be extended for two additional periods up to a year each, provided the Commission has initiated action to prepare an FMP.

**Management Questions**

- Should emergency action be taken prior to the finalization of an FMP in order to address concerns of the harvest of small female Cancer crab?
- If emergency actions are implemented, what should they be?
- If emergency actions are implemented, when should they begin?

***ISSUE 7:  
RECOMMENDATIONS  
FOR FEDERAL  
WATERS?***

**Background**

There are currently no regulations in federal waters (3-200 miles) for Cancer crab fisheries.

**Management Questions**

- Should management in federal waters be consistent with state waters fisheries?
- What recommendations should the FMP make for federal waters harvest of Cancer crab?

***OTHER ISSUES***

The public may comment on other issues for consideration in the development of the Draft Fishery Management Plan for Cancer Crab?

- What other issue(s) should be considered in the Draft Cancer Crab FMP?

**Literature Cited**

Fishery Improvement Project: Johan Crab Fishery Briefing for the Atlantic States Marine Fisheries Commission. April 21, 2014.

Rhode Island Department of Environmental Management, 2012. 2013 Management Plan for the Crustacean Fishery Sector.

National Marine Fisheries Service Office of Science and Technology. Domestic Fisheries Database: Annual Landings. Available at: <http://www.st.nmfs.gov/>



# Atlantic States Marine Fisheries Commission

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## MEMORANDUM

October 15, 2014

**To: American Lobster Management Board**  
**From: Kate Taylor, Senior FMP Coordinator**  
**Re: Public Comment Summary for the Cancer Crab PID**

### **Cancer Crab PID Public Comment and Hearing Summary**

The public comment period on the Cancer Crab PIS was open from August 20 – October 3, 2014. During this time, comments were submitted by 11 individuals and five organizations. Public hearings were held in Maine, Massachusetts, Rhode Island, Connecticut, and Maryland. In total, 50 people attended the public hearings, with 80% of the attendance at the Massachusetts and Rhode Island hearings.

The following summarizes the individual and organization written comments, as well as the public hearing comments by state.

### **Individual Written Comments**

The majority of individual written comments focused on commercial regulations, management objectives, and licensing. Comments included support for a harvest prohibition for females (8) and linking crab permits to lobster permits (7). Recommendations for a minimum carapace width (CW) varied by species and ranged from 3.75” – 5”.

The following comments were received on each of the issues in the PID:

#### Issue #1 – Consistent Coastwide Management

Two comments specified that the management of Jonah and rock crab should be separate. One comment was received for each of the following:

- States should manage the fishery independently
- There are regional difference to consider under ASMFC management
- There are no regional differences
- If managed together the biological differences between the two species need to be addressed
- Consistent coastwide management is needed
- Management should be coordinated through the commission
- Commission should start with Jonah crab management and then focus on rock crab

#### Issue #2 – Management Objective

Five commenters stated that the management objective should be to maintain a healthy and sustainable fishery. Three comments supported inclusion on language to protect the participants who have been historically engaged in this fishery. One comment was received for each of the following:

- Adopt basic regulations that protect the biological integrity of the resource.
- Optimize economic return.

### Issue #3 – Commercial and Recreational Measures

Eight people commented in support of a harvest prohibition for females, with 3 people also commenting that there should be a 1-2% tolerance for the catch of female crab. One person supported a prohibition on the possession of egg bearing females, with tolerance.

With regard to a minimum size for Jonah Crab, four people were in support of a 5” CW and three people supported a 4.5” CW. One person supported a 3.75” CW and one person support a 4” CW for rock crab. One person supported a 4” CW for both species and one person specified that there needs to be different size regulations for Jonah and rock crab. One person commented that a prohibition of the harvest of females would not be needed with a 5”CW regulation. Two people were in favor of a tolerance for undersized crab, with one person specifying the tolerance should be set at 10%.

Three people did not want trip limits and one person was not in favor of any seasonal closures. Two people commented that the gear restrictions should be the same as lobster fishery. There was one comment in support of a recreational bag limit.

### Issue #4 – Licenses

Seven people supported linking crab permits to lobster permits and three people further commented that participants in the fishery should be limited to those with authorized lobster traps. Three comments stated that participants in the Jonah crab fishery should have a landings history of at least 250,000 pounds annually over the last three years to qualify for a permit and those that do not meet this criteria should be given a part time permit to harvest up to 5,000 pounds of crab as bycatch. Three people supported area specific permits. One comment was received for each of the following:

- The fishery should be managed under limit entry
- A commercial license should be required
- A recreational license should be required, in conjunction with recreational lobster license

### Issue #5 – Data collection

For comments pertaining to data collection, three people supported mandatory data collection and two people commented that it was important to need to figure out the size at maturity before regulations were put in place. One comment was received for each of the following:

- Data should be collected in the most cost effective manner
- All recreational harvest needs to be reported
- An industry led data collection program is needed
- The reporting requirements should be the same as lobster
- An assessment is needed to determine biomass and status of stock

### Issue #6 – Emergency Action?

Two commented were received in opposition to emergency action and one comments was received in support of emergency action.

### Issue #7 – Federal Waters

Three comments were received supporting consistent regulations in state and federal waters.

### Issue #8 – Other Issues?

Other issues that were brought up in the written comments included the need to set a control date (3); that there should be no, or limited, rules for the Jonah crab fishery (2); concern for the tremendous influx of participants into the fishery (2), and that this is a vital winter fishery (2).

One comment was received for each of the following

- Misidentification is due to the regional names for each species, not true lack of identification
- A clearly defined, universal name needs to be developed and outreach needs to be done
- The Commission should form an Advisory Panel immediately
- Regulations for cancer crab need to be separate from blue crab regulations
- Crabs shouldn't be sold whole
- The cancer crab fishery is an underutilized resource

### **Organization Written Comment**

The following is a summary of the comments received by each organization.

#### Atlantic Offshore Lobstermen's Association

- AOLA supports consistent coastwide management through the commission, starting with Jonah crab first. This should be a basic program to achieve long term sustainability, protect biological integrity of the resource and optimize economic return.
- There should be a commercial 5" minimum CW for both species (with a tolerance), which would cut out landing of females. There should be a prohibition (with a tolerance) on the harvest of egg-bearing females.
- A recreational bag limit should be implemented
- Participants in the crab fishery should have a lobster license and traps with tags.
- An industry led data collection program is needed
- Regulations need to be consistent in state and federal waters

#### Little Bay Lobster

- Consistent management should be coordinated through the commission. However, there needs to be an option to separate out rock and Jonah crab into their own FMPs in the future.
- The management objective should be to achieve the greatest overall benefit to the nation from the fishery
- If a minimum size is implemented it should be after consultation with the TC, AP and LEC. There should be consideration to a shell height regulations. Size restrictions should be different for Jonah and rock crab, and should include a tolerance.
- Escape vents should be considered in the commercial fishery.

- Recreational size limits should mimic the commercial fishery, but a recreational license is not necessary
- Participants in the crab fishery should have a lobster license and traps with tags.
- All commercial fisheries should be required to report catch and effort.
- Consistent regulations are needed across state and federal waters.

#### Massachusetts Lobstermen's Association

- A stock assessment and more data collection is needed prior to any management
- The fishery should be managed through limited entry. Crab permits should be linked to lobster permits and the fishery should conform to current lobster gear regulations.
- MLA supports a prohibition on egg-bearing females
- An industry led data collection program is needed

#### Mataronas Lobster Co, Inc.

- Management is needed through the Commission to regulate the fishery and ensure sustainability
- Management should be linked to the lobster fishery.
- The cancer crab fishery is an important winter fishery
- Recommend a 5" minimum CW implemented, with a 2% tolerance for undersized crab
- There should be a prohibition on the harvest of females, especially egg-bearing females, with a 1% tolerance.

#### NOAA's National Marine Fisheries Service

- NMFS authority to take emergency action is limited and must be based on a finding that an emergency exists, such as an unforeseen and critical biological, economical, or social problem.

### **Public Hearing Summary**

*Connecticut Department of Energy & Environmental Protection, Old Lyme, Connecticut*  
September 15, 2014

Attendance - 2 Attendees and 2 DEEP Staff. See sign-in sheet for details.

#### Issue #3: Commercial and Recreational Management Measures:

- One attendee said industry members were concerned over the time associated with gauging each crab for a carapace width limit, as some traps come up with 50 or 60 crabs.
- This attendee also indicated, as a matter of practice, the majority of industry members throw females back.
- This attendee stated that processors also don't want crabs less than 5" carapace width.

*Marine Department of Marine Resources, Portland Maine*  
September 22, 2014

Attendance – 6 people signed in, See sign-in sheet for details.

#### Issue #1 – Consistent Coastwide Management

One person supported coastwide management coordinated through the commission. It was quickly brought up that there is no problem with identification but there are regional names that need to be addressed. For example, in Maine they call Jonah crab rock crab and rock crab are called *peekytoe crab*. One person commented that management is needed for both species.

#### Issue #2 – Management Objective

One commenter stated that the long term sustainability of any cancer crab management program will be difficult given the variability and cyclical nature of the fishery. There was one comment in support of establishing sustainable levels that can be adjusted as new data is collected.

#### Issue #3 – Commercial and Recreational Measures

Two people commented in support of a harvest prohibition for female and one person also stated that there needs to be protection of egg-bearing females. One comment was received on each of the following:

- A small tolerance is needed as people will inadvertently land undersized crab
- A minimum size at some level is important
- Rock crab size limits should be smaller than Jonah crab
- Size regulations should be the same for commercial and recreational fishery
- Need to characterize what is used as bait.

#### Issue #4 – Licenses

There was one comment given in support of linking crab permits to a lobster permit, with authorized trap tags. One person commented that trip limits can't be set so low as to discourage the fishery.

#### Issue #5 – Data collection

Comments were provided that state sampling is opportunistic for crab, that NOAA needs to be involved with offshore data collection, and that reporting can't be onerous.

#### Issue #6 – Emergency Action?

One commented was provide in support of emergency action.

#### Issue #7 – Federal Waters

One commented was provide in support of consistent state and federal regulations.

#### Issue #8 – Other Issues?

Other comments provided included that rock crab is preferred catch; the Commission need to address crab parts in any management plan; the Commission should consider molt phase or hardness in regulations, as processors want hard crabs; and the Commission needs to issue a statement that management is in progress to makes this a sustainable fishery.



*Massachusetts Division of Marine Fisheries, New Bedford, Massachusetts*  
September 24, 2014  
Attendance – 24 people signed in. See sign-in sheet for details.

#### Issue #1 – Consistent Coastwide Management

Comments were provided that Massachusetts fishermen are mainly catch Jonah crab and not rock crab. There was support for consistency between the states regulations and for regional management. Similar to Maine, it was stated that there is no problem with identification but there are regional names that need to be addressed.

#### Issue #2 – Management Objective

Two fishermen supported a management objective to achieve the maximum economic yield.

#### Issue #3 – Commercial and Recreational Measures

Comments were provided that fishermen in Massachusetts mainly catch male and throw back the females. One fishermen pointed out that fishermen in other states don't do that, so a regulation protect females is needed. Do not prohibit harvest of females If a prohibition on harvest of females is implanted there needs to be a tolerance. One person expressed concern that a tolerance can be hard to manage with limited enforcement resources, especially if you are using a sampling method and not monitoring the entire catch. That same person said it would be better to have a size limit that covers 99% of the catch and by default prohibit retention of females. One person supported escape vents as a possible alternative to reduce catch of females rather than a minimum size restriction, so long as there were specific regulations to prohibit the blocking of vents

With regard to size restrictions, one processor stated that a 5" minimum CW would reduce the amount of crab available for processing by 30%, but at a 4.5" or 4.75" minimum CW 100% of the catch could be retained. One fishermen commented that if you are directing on crab they come aboard in a high volume and they are hard to measures; therefore, having a tolerance would slow the fishery down. One person commented that any size restriction needs to have a tolerance and, alternatively, one person commented that even a 1% tolerance could translate into a significant amount of crab if the catch is large enough.

Three fishermen commented that there is not enough information to set a regulation. One comment was received on each of the following:

- In order to be profitable you have to land a lot of crab.
- What would happened if a fishermen was cited once or more than once?
- There needs to be industry involvement in developing the regulations
- Opposed to any TAC or ITQ.
- The fishery should be managed through limited entry
- Management needs to be concurrent with monitoring

#### Issue #4 – Licenses

There appeared to be near consensus that crab harvest should be linked to a lobster permit, with authorized traps tags. Two people were opposed to trip limits and one person supported some type of trip limit. Three fishermen stated there shouldn't be consideration of a quota until an

assessment is completed. Other comments included that fishermen did not want to see more traps in the water and that the fishery needs to be able to grow.

#### Issue #5 – Data collection

One person stated that both stocks need to be assessed separately and one person commented that we need more information. One person suggesting using VTR data.

#### Issue #6 – Emergency Action?

There was some general agreement that any immediate regulations should be interim measures and not emergency action. Interim actions could include linking the harvest with lobster permits and possibly start at a 4.5” minimum CW. One person stated he wasn’t sure how there could be an emergency if we don’t know the status of the stock.

#### Issue #7 – Federal Waters

There was some general agreement supporting consistency between state and federal waters.

#### Issue #8 – Other Issues?

One person commented that the Commission or states should push for MSC certification, given the economic benefits certification could provide. One person commented that there may be a relationship between crab and lobster populations.

*Rhode Island Division of Fish and Wildlife, Narragansett, Rhode Island*  
September 25, 2014

Attendance – 21 people signed in. See sign-in sheet for details.

#### Issue #1 – Consistent Coastwide Management

Four commenters were in support of coordinated coastwide management through the Commission and three people noted that there are regional or area (e.g. inshore/offshore) differences in the fishery that need to be taken into consideration. There were two comments given that each species needs its’ own regulations. One person said there is not enough information to develop sustainable management measures.

#### Issue #3 – Commercial and Recreational Measures

Three people in support of a 4.5” minimum CW, two people spoke in opposition of a 5” minimum CW and one person supported a 5” minimum CW, with a tolerance. Two people expressed concern that if the Commission start with a high minimum size it will never be lowered. Two people commented that fishermen need to be able to harvest the crab before they die and not waste the resource. One commenter stated that any minimum size should be biologically based.

With regard to harvest of female crab, three people supported a prohibition with a tolerance. Three people also supported a prohibition on the harvest of egg-bearing females. One person commented that at a 4.5” minimum CW restriction (or at the right minimum size limit), there would be no need to adopt regulations to protect females.

Two people through the Commission needs more data before any regulations are developed and two people suggested area specific regulations should be considered. One comment was received on each of the following:

- Recreational measures should be consistent with commercial measures
- The use of escape panels should be considered. With rectangular vents very few crab are caught. With circle vents very few lobster are caught.
- The use of a crab height regulation should be considered

#### Issue #4 – Licenses

Three comments were given that crab harvest should be linked to a lobster permit, with authorized trap tags and two comments discussed the need to not allow more traps in the water. One person was concerned that those harvesting crab as bycatch in the sea bass fishery, and therefore don't have lobster trap tags, would be shut out of the crab fishery. One person recommending a crab endorsement to grandfather people with that don't have lobster permits.

#### Issue #5 – Data collection

Four people suggested that fishermen should be used in any data collection program and two commenters stated that there is not currently enough data collection. One person supported that anyone who catches crab for any purpose should have to report their catch. One person commented that data collection needs to occur in federal waters where the crab are and one person commented that VTS surveys in state waters cannot be extrapolated out to give an accurate sense of the resource.

#### Issue #6 – Emergency Action?

Three people were opposed to any emergency action, while one person supported a precautionary approach, including emergency regulations if necessary. One commented stated that there is not enough data to support emergency action measures.

#### Issue #8 – Other Issues?

Other comments provided included that:

- This is an important winter fishery which last only four or five months
- There has been a huge influx of boats coming into the fishery; a control data is needed
- The Commission should allow this fishery to grow
- A clear definition of a crab trap is needed
- There should be a specified timeframe to re-visit any regulations
- The commission should proceed slowly and the data should lead the way with industry participation

*Maryland Department of Natural Resources, Berlin Maryland*  
September 25, 2014

Attendance – 1 person signed in. See sign-in sheet for details

#### Issue #1 – Consistent Coastwide Management

The participant felt that a management plan for cancer crabs is needed, however, there are regional differences in the fishery that should be addressed. There was also hesitation with managing rock and Jonah crab together, since the two species occur in different areas and are not often caught together.

#### Issue #3 – Commercial and Recreational Measures

The participant was most concerned about the whole crab versus claw market. The Maryland fishery focuses on the claws, not the whole crabs, so management plans should address this. General discussion included management of stone crabs in Florida, where keeping one claw is allowed. The participant suggested a minimum size for the claw based on research. A 2” escape vent for traps was also suggested as a management measure to be considered.

The participant stated that a 5” minimum CW was appropriate for Jonah crab, as well as a minimum CW for commercially caught rock crab. The participant also supported the prohibition of female and possession of egg bearers in the commercial market.

#### Issue #4 – Licenses

The participant felt that the commercial license should be attached to the lobster license, with no restriction on harvest for trap fishing vessels. Trip limits are not needed, nor are recreational harvest licenses. The state should investigate the bait market and consider this in management, although this may be a Maryland-specific issue.

#### Issue #5 – Data collection

The participant strongly felt that dealer reporting be required and that research into the mortality associated with taking the claw should also occur.

#### Issue #7 – Federal Waters

The Maryland fishery is mostly a federal fishery, so all comments above apply. Specifically, a two inch vent requirement should be implemented.

M14-095

Connecticut Department of Energy & Environmental Protection  
Marine Fisheries Division  
Public Hearing for ASMFC  
Hearing for Cancer Crab Public Information Document  
9/15/2014  
Marine Headquarters  
Old Lyme, CT

Please PRINT your Name, Address and Phone number below

phone: 401-465-9669 David Spencer 20 Friendship St Jamestown, RI 02835
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## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

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October 3, 2014

Robert Beal, Executive Director  
Atlantic States Marine Fisheries Commission  
1050 N. Highland Street  
Arlington, VA 22201

Dear Bob,

I'm writing as representative of the Atlantic Offshore Lobstermen's Association (AOLA) to provide comments toward the cancer crab public information document. Below you will find responses to the questions posed in the Commission's PID.

### **ISSUE 1: CONSISTENT COASTWIDE MANAGEMENT OF A MIGRATORY STOCK**

*Is consistent coastwide management needed for the Cancer crab fishery?*

Yes. It is imperative to manage the crab resource in a consistent pattern throughout the range of the resource. Given the high, and increasing, value of the fishery it is critical to be proactive and preempt a stock decline.

*Should management of Cancer crab be coordinated through the Commission?*

Yes. The NMFS has indicated that they will not take lead on this issue, given lack of scientific information on the species, and other fishery management priorities. The NMFS process would also take many years to formulate a plan, whereas the Commission can accomplish it within two years. The Commission also has the option of implementing some conservation measures in an expedited manner in order to protect the stock. The Commission should move forward with a set of basic measures that protect biological integrity of the stock while collecting additional scientific information on the species.

*Are there regional differences in the fishery and/or in the Cancer crab stock that need to be considered when implementing management measures?*

No, none that we know of.

*Should the Commission include management of rock crab with the management of Jonah crab?*

We suggest the Commission manage both, but start with Jonah crab. The current fishery is focused primarily on Jonah and most of the landings are being made in three states (RI, MA, and ME). The process on rock crab should begin when the Jonah crab segment has been completed.

### **ISSUE 2: WHAT ARE THE APPROPRIATE MANAGEMENT OBJECTIVES FOR THE CANCER CRAB FMP?**

*What should be the objectives in managing Cancer crab fisheries through the Commission?*

1. Implement a basic management program that achieves (maintains) the long-term sustainability of the resource and fosters the collection of fishery and biological data.

2. Implement consistent coast wide management measures for State and Federal waters.
3. Collect fishery independent and dependent data throughout the range of the resource in the most cost effective manner.
4. Initially, adopt basic regulations that protect the biological integrity of the resource. Modify regulations as additional scientific information becomes available, and as needed.
5. Optimize economic return from the resource.

### **ISSUE 3: WHAT ARE THE APPROPRIATE COMMERCIAL AND RECREATIONAL MANAGEMENT MEASURES FOR THE CANCER CRAB FISHERY?**

*What level of management is appropriate for Cancer crab (e.g. basic, moderate, intense, etc...)?*

Basic. The lack of scientific information does not lend itself to a complex fishery management program. Key point is that there are no regulations currently to protect the crab stock. The Commission should implement basic measures that protect the species while the scientific information develops over the next few years. The Commission should also strive to minimize regulatory interference with the industry.

*Should required management measures be implemented concurrently with monitoring requirements?*

Yes. There is a need for basic management measures, a sound fishery dependent and independent data collection program, and scientific research on specific life history stages for each species.

*Should the FMP require a 5" minimum carapace width (CW) for commercially caught Jonah crab?*

Yes, but with inclusion of a tolerance. It is important for the fishery to gain functional compliance with any minimum size restriction as opposed to absolute compliance. The fishery is a volume fishery, which in some cases involves vessels landing in excess of 60,000 crabs on a single trip. It is going to be extremely difficult for a vessel to measure significant numbers of crabs and maintain the economic viability of the industry, since it takes considerable effort to measure a single crab (i.e. moving all the time, measurements of carapace width is from point to point, movement of vessel, etc). The same problems exist at the dealer level, but the volumes are greater and timing is an issue. There needs to be a minimum size/tolerance combination that promotes compliance by the vessels and dealers, without imposing a significant negative impact on efficiency. At the enforcement level, there need be a sampling protocol that does not require EPO's to observe an entire trip, nor measure large numbers of crab in order to determine compliance. The Commission should formalize the advisory process (committee AP) as soon as possible and ask them to meet and develop recommendation on this issue. This should also include the participation of members of the enforcement committee.

*Should there be a tolerance on the possession for enforcement?*

Yes. As noted above this is a low value, high volume fishery, so it is not reasonable to measure each individual crab. Traps usually get dumped on a culling table and then sorted. Given the volumes of crabs being landed on an individual trip, mistakes will be made regardless of which regulation gets implemented.

*Should there be a minimum CW for rock crab, if so what size range?*

Yes. AOLA supports a 5 inch minimum carapace size with a tolerance as noted above.

*Should there be a tolerance on the possession for enforcement (e.g. 5%)?*

Yes, with a tolerance. Both the commercial and recreational fishery should be controlled with the same basic measures and sizes.

*Should the FMP prohibit commercial harvest of female Cancer crab?*

No. Although AOLA supported a prohibition on landing females as part of the FIP working group we have since modified our position, given the extensive public comment on this issue. We now believe that a minimum size of 5 inches will prohibit landing approximately 98% of all females, so there is no need for a separate regulation. Data, gathered by MA DMF and industry, support this conclusion.

*Should there be a tolerance on the possession for enforcement?*

Yes, as noted above.

*Should there be a prohibition on the possession of egg-bearing females?*

Yes, but with a tolerance. A five inch size should protect the vast majority of egg bearing females. However, there has been discussion in some regions of fisheries using egg bearing females for conch bait and for other creative uses. The industry currently does not land or process egg bearing females and the management program needs to ensure that this practice continues in the future. A low tolerance is needed because females occasional get mixed in with males during the sorting process and end up at processing facilities. The details of any enforcement standard need to be developed in close coordination with the harvesting and processing industry and members of enforcement community.

*Should there be a tolerance on the possession for enforcement?*

Yes, as discussed above.

*How should the recreationally fishery be managed?*

Same size, plus a bag limit (possession limit).

*What other management options should be considered (e.g. escape vents, gear restrictions, shell height restrictions, etc...)*

None at this time.

#### **ISSUE 4: HOW SHOULD THE CANCER CRAB FISHERY BE LICENSED?**

*Should the FMP require a license for the commercial harvest of Cancer crab?*

Yes. Ninety Eight plus (98+) percent of current fishery landings are generated by fishermen with lobster licenses and lobster traps. The only requirement for participation in the commercial fishery should be possession of a state or federal lobster license and lobster traps with tags.

*For jurisdictions with a lobster fishery, should the FMP require a lobster license in order to commercially harvest Cancer crab or should the fishery be licensed separately?*

Yes, as noted above. Both crabs and lobster occur on the same bottom types and are caught by identical gear. Any other strategies, such as issuing new crab licenses, would only result in proliferation of fixed gear in state or federal waters, and compromise protected species and lobster management plans.

*Should the directed fishery be limited to those vessels using lobster traps authorized under the lobster management plan?*

Yes, for the reasons noted above.

*Should harvest by trap fishing vessels that are using crab traps not bearing lobster trap tags be restricted?*

Yes. Both the crab and lobster resources inhabit the same areas, so the two fisheries are virtually indistinguishable.

*Should trip limits be established? If so, should the historic harvesters using vessels deploying lobster traps be given a more liberal trip limit than other gears?*

No and No. There is currently no scientific basis for setting a trip limit, as the status of the stock is poorly understood. Trip limits have differential implications for different size vessels.

*Should states require a recreational license to harvest Cancer crab?*

No, but all landings must be accounted for in any recreational data collection program.

*Should harvest for bait purposes be included under a recreational or commercial license?*

A commercial license should be required for the sale of crabs as bait and all landings should be compliant with the commercial regulations and data reporting standards.

*Are there other licensing requirements that should be considered?*

Processors should be required to have a state and/or federal license and report all landings compliant with the ACCSP program.

#### **ISSUE 5: WHAT TYPES OF DATA COLLECTION SHOULD BE PRIORTIZED TO MANAGE THE FISEHRY?**

*What types of data collection programs should be initiated to monitor the commercial and recreational fishery?*

The majority of the crab resource is located in federal waters where lobster vessels make 3 to 10 day trips. In addition the crab resource is found throughout Area 3 which encompasses approximately 127,000 square miles. Given the spatial and temporal extent of the fishery it will be extremely difficult for the government to design and implement a quality, cost effective data collection program. AOLA suggests that the Commission consider industry led fishery dependent data collection efforts, such as expanding the current Commercial Fisheries Research Foundation project, which collect extensive data on lobster and crab in near and offshore areas. The current project includes six fishermen sampling in Area 2 and 6 in Area 3, which could be easily expanded based on available funding.

An expansion of this program could cover the entire commercial fishery. We do not think it necessary to sea sample the recreational fishery at this time.

*What types of fisheries independent data should be collected by the states to help increase understanding of stock status and biology of Cancer crab?*

Refer to response above

*Should fishermen be required to report harvest if used for bait purposes?*

Yes, as noted above.

**ISSUE 6: IS EMERGENCY ACTION NEEDED TO MANAGE THE FISHERY IN THE INTERIM?**

*Should emergency action be taken prior to the finalization of an FMP in order to address concerns of the harvest of small female Cancer crab?*

As suggested earlier, a five inch size standard with a tolerance , would protect the majority of the Jonah crab resource including female and egg bearing crabs.

*If emergency actions are implemented, what should they be?*

Refer to response above.

*If emergency actions are implemented, when should they begin?*

They should begin as soon as the Commission can agree on a minimum size and the specifics of a tolerance.

**ISSUE 7: RECOMMENDATIONS FOR FEDERAL WATERS?**

*Should management in federal waters be consistent with state waters fisheries?*

Yes. There should be identical regulations in both areas that govern the fishery. It is not necessary or desirable for NMFS to adopt new regulations for federal water, provided the States can regulate the fishery under the most restrictive provision of State/Interstate law as is done in the lobster FMP.

*What recommendations should the FMP make for federal waters harvest of Cancer crab?*

Same regulations in both areas.

**OTHER ISSUES**

*What other issue(s) should be considered in the Draft Cancer Crab FMP?*

No additional comments.

I appreciate the opportunity to comment.

Sincerely,



David Borden  
Executive Director

cc: AOLA Members

## *Little Bay Lobster Company*

Dear Commissioners:

Please find below my detailed comments on the issues outlined in the Cancer Crab Public Information Document (PID). I support moving ahead with the development of a Jonah crab fishery management plan (FMP). I am hopeful that the management measures will be limited to those necessary for the sustainability of the resource and will be designed to minimize the cost of industry compliance and agency enforcement. I want to stress the fact that there will be no need for a regulatory prohibition on taking female crabs if the FMP includes any reasonable minimum size limit.

The Jonah crab fishery requires vessel crews to handle large volumes of crabs under adverse conditions. The FMP or the enforcement agencies must make allowances for inadvertent technical violations of the regulations. I am concerned, however, that allowances based on percentages of the catch will entail statistically rigorous sampling protocols that may discourage enforcement personnel from even attempting to determine whether a large catch is within a published tolerance. This issue needs careful consideration during the development of the FMP.

My issue by issue comments are as follows:

### ***ISSUE 1: CONSISTENT COASTWIDE MANAGEMENT OF A MIGRATORY STOCK***

- Is consistent coastwide management needed for the Cancer crab fishery?
  - Management measures should be consistent to the extent practicable. Outlier states should not be allowed to dictate management measures that are not based on sound biological or economic principles.
- Should management of Cancer crab be coordinated through the Commission?
  - Yes.
- Are there regional differences in the fishery and/or in the Cancer crab stock that need to be considered when implementing management measures?
  - Management measures should be consistent to the extent practicable.
- Should the Commission include management of rock crab with the management of Jonah crab?
  - The inclusion of rock crab in the FMP would likely complicate and slow the process. If the Commission undertakes management of both Jonah crab and rock crab in the same FMP, the option to separate the species into separate FMPs should be maintained throughout the process.

### ***ISSUE 2: WHAT ARE THE APPROPRIATE MANAGEMENT OBJECTIVES FOR THE CANCER CRAB FMP?***

The FMP should include as an objective the achievement of the greatest overall benefit to the nation from the fishery, defined as producing the maximum sustainable economic yield from the fishery (MEY), which is further defined as the greatest difference between the value of resources used to take the catch and the revenue obtained from that catch, i.e. profit.

### ***ISSUE 3: WHAT ARE THE APPROPRIATE COMMERCIAL AND RECREATIONAL MANAGEMENT MEASURES FOR THE CANCER CRAB FISHERY?***

- Should required management measures be implemented concurrently with monitoring requirements?
  - Yes.
- Should the FMP require a 5” minimum carapace width (CW) for commercially caught Jonah crab?
  - Public comment on the PID raised legitimate questions about the most appropriate minimum size for Jonah crabs. These questions should be explored by the Technical Committee, the Plan Development Team, the Advisory Panel, and the Enforcement Committee. The FMP should require some minimum carapace width or the equivalent shell height that comes out of these discussions. Giving fishermen the option of using a shell height measurement may require less labor and therefore lower costs to implement on vessels (crabs that pass through a slot with the required height go overboard while crabs that do not pass through the slot are retained). Shell height may also enable a regulation requiring rectangular escape vents designed to minimize the retention of undersize crabs, as discussed below.
- Should there be a tolerance on the possession for enforcement?
  - There is general agreement that any minimum size limit for Jonah crabs should include a tolerance. Experience in the sea scallop fishery has shown that a published regulatory tolerance expressed as a percentage of the catch can be extremely troublesome. A regulatory tolerance expressed as a percentage of the total catch will require the development of a sampling procedure and the establishment of statistical confidence limits to be used by enforcement personnel for the purpose of establishing a violation that will stand up in court. Consideration should be given to a tolerance expressed in absolute terms rather than percentages. For example, the tolerance for undersize crabs could be one standard tote or sixty pounds. The use of an absolute tolerance rather than a percentage avoids the necessity to establish a sampling protocol and confidence limits around the sampled number of undersize crabs.
- Should there be a minimum CW for rock crab, if so what size range?
  - Whereas rock (sand) crabs run smaller than Jonah crabs, consideration should be given to a smaller minimum size for rock crabs. Otherwise the potential revenue from the rock crab fishery could be unnecessarily eliminated. The perceived difficulty in distinguishing between the species is only semantic. Fishermen know the difference between sand crabs and Jonah crabs.
- Should the FMP prohibit commercial harvest of female Cancer crab?
  - The FMP should not prohibit the commercial harvest of female Cancer crab. There is no biological theory or empirical evidence to support a complete prohibition on the commercial harvest of female Cancer crab. The spawning stock biomass of female Cancer crabs that would be protected by any reasonable minimum size would be more than sufficient to assure the maintenance of an adequate female spawning stock biomass.



There would be no benefit from increasing the difficulty and expense of complying with and enforcing regulations that are not needed.

- Should there be a prohibition on the possession of egg-bearing females?
  - There is no biological reason for a complete prohibition on the possession of egg-bearing females. All mature female crabs are likely to be egg-bearing, either internally or externally, as is the case for lobsters. Any of the proposed minimum size regulations will serve to protect a sufficient spawning stock biomass of female crabs. The small proportion of the female biomass that is larger than the minimum size will not threaten the sustainability of the resource, whether or not the crabs are egg-bearing. A regulation prohibiting the possession of egg-bearing female crabs is unnecessary and will only create unnecessary enforcement problems.
- Should there be a tolerance on the possession for enforcement?
  - See previous comments on enforcement tolerances.
- How should the recreationally fishery be managed?
  - There is little need to be concerned about the recreational fishery for Cancer crabs, which does not exist. The same minimum size regulations should apply to the recreational fishery as apply to the commercial fishery.
- What other management options should be considered (e.g. escape vents, gear restrictions, shell height restrictions, etc...)
  - Escape vents specific to crabs should be considered for inclusion in the FMP. The escape vent regulations in the lobster FMP are not sufficient to minimize the retention of undersize crabs. Shell height regulations have the potential to work in conjunction with crab escape vents to minimize the number of undersize crabs that would be brought aboard commercial crab fishing vessels. At present, circular so-called “crab vents” are designed to meet the requirements of the lobster fishery management plan while retaining most crabs regardless of size. In the interests of both crab and lobster conservation, a combination of circular and rectangular escape vents could be installed in traps that would meet the requirements of the lobster management plan through the circular vents and also utilize rectangular escape vents to minimize the retention of undersize crabs. This would require a regulation specifying the minimum height for rectangular vents based on a minimum shell height regulation for Jonah crabs and also requiring circular lobster escape vents.

#### ***ISSUE 4: HOW SHOULD THE CANCER CRAB FISHERY BE LICENSED?***

- Should the FMP require a license for the commercial harvest of Cancer crab?
  - Yes.
- For jurisdictions with a lobster fishery, should the FMP require a lobster license in order to commercially harvest Cancer crab or should the fishery be licensed separately?
  - The FMP should require a lobster license in order to commercially harvest Cancer crab. Testimony at the PID meetings indicated that no one harvesting crabs commercially could afford to do so without being able to keep the lobsters that they catch, so almost every vessel in the crab fishery

- likely has a lobster permit. If there are vessels in the crab fishery that do not have a lobster permit they can acquire a transferable lobster permit.
- Should the directed fishery be limited to those vessels using lobster traps authorized under the lobster management plan?
    - Yes.
  - Should harvest by trap fishing vessels that are using crab traps not bearing lobster trap tags be restricted?
    - Yes, crab fishing should be limited to traps bearing lobster trap tags.
  - Should trip limits be established? If so, should the historic harvesters using vessels deploying lobster traps be given a more liberal trip limit than other gears?
    - There should not be any trip limits on vessels deploying lobster traps to catch crabs. Vessels using other than trap gear should be prohibited from landing crabs or should have a minimal incidental catch allowance for personal use.
  - Should states require a recreational license to harvest Cancer crab?
    - No comment.
  - Should harvest for bait purposes be included under a recreational or commercial license?
    - The purpose of the harvest should not be a factor if the harvested crabs meet the minimum size and any other regulations.
  - Are there other licensing requirements that should be considered?
    - Not at this time.

***ISSUE 5: WHAT TYPES OF DATA COLLECTION SHOULD BE PRIORTIZED TO MANAGE THE FISEHRY?***

- What types of data collection programs should be initiated to monitor the commercial and recreational fishery?
  - At a minimum, data on catch and fishing effort should be collected to monitor the commercial fishery. Catch reports should indicate whether the target species was crab or lobster. The recreational fishery is of no consequence.
- What types of fisheries independent data should be collected by the states to help increase understanding of stock status and biology of Cancer crab?
  - Trawl survey data should be analyzed for catch per unit of effort and size frequency.
  - Sea sampling and port sampling of crab catches should be recorded and analyzed to determine changes in the size composition of the catch.
- Should fishermen be required to report harvest if used for bait purposes?
  - All commercial fisheries should be required to report catch and fishing effort.

***ISSUE 6: IS EMERGENCY ACTION NEEDED TO MANAGE THE FISHERY IN THE INTERIM?***

- Should emergency action be taken prior to the finalization of an FMP in order to address concerns of the harvest of small female Cancer crab?

- The public meetings on the PID brought forth a lot of good comments on the use of the term “Emergency Action.” It seems unlikely that the situation in the Jonah crab fishery would meet the requirements for an emergency action that would bypass the normal regulatory process. The states can generally implement regulations in a matter of months. The public generally supported the idea of having the states implement interim regulations that would go in place before the FMP is finalized. States should quickly establish a minimum size limit that will protect the spawning stock biomass as soon as a consensus is reached on the appropriate size.
- If emergency actions are implemented, what should they be?
  - A minimum size limit denominated in either carapace width or shell height or both, preferably implemented quickly but without emergency action.
- If emergency actions are implemented, when should they begin?
  - As soon as legally feasible.

***ISSUE 7: RECOMMENDATIONS FOR FEDERAL WATERS?***

- Should management in federal waters be consistent with state waters fisheries?
  - Yes, to the extent practicable. If a state differs significantly from the norm, federal regulations should be based on sound biological and economic principles.
- What recommendations should the FMP make for federal waters harvest of Cancer crab?
  - Federal regulations should be compatible with the FMP unless the FMP departs from sound biological and economic principles.

***OTHER ISSUES***

Issues that were not raised by the Fishery Improvement Project Working Group but deserve consideration in the development of the FMP include the following:

- The desirability of a minimum size based on shell height rather than carapace width or both.
- The potential regulation of escape vents to minimize the harvest of undersize crabs and the need to sort crabs on deck.
- The use of an absolute measure for any enforcement tolerance rather than a percentage of the total catch.
- Consideration should be given to the possibility that the current abundance of Jonah crabs, particularly in Southern New England, is related to the current scarcity of lobsters in that area. If the lobster management plan is successful in rebuilding the lobster population, the crab population may decline as a natural consequence. Fishermen should not be burdened with reference points that are simply unachievable given ecosystem conditions. Better information on ecosystem relationships may lead to the conclusion that rebuilding the lobster population requires reducing the crab population.



## Massachusetts Lobstermen's Association, Inc.

8 Otis Place ~ Scituate, MA 02066  
Bus. (781) 545-6984 Fax. (781) 545-7837

September 30, 2014

Kate Taylor  
ASMFC  
1050 N. Highland St, Suite A-N  
Arlington, VA 22201

Dear Ms. Taylor,

On behalf of its 1700 members, the Massachusetts Lobstermen's Association (*Association*) respectfully submits this letter of comment to the Atlantic States Marine Fisheries Commission (ASMFC) as the ASMFC explores the development of a fishery management plan for the Cancer Crab.

Established in 1963, the *Association* is a member-driven organization that accepts and supports the interdependence of species conservation and the members' collective economic interests. The *Association* continues to work conscientiously through the management process with the Division of Marine Fisheries and the ASMFC to ensure the continued sustainability and profitability of the resource in which our fishermen are engaged in.

The comments are as follows;

- Prior to any management proposal there needs to be a stock assessment on the biomass in two regions (Gulf of Maine and Southern New England) of the Cancer Crab alone – separate from other species of crabs.
- We would like to see more species specific scientific research done i.e. sexual maturation, growth rate, life span, optimal minimum size 4.5” for harvesting.
- Every State - Limited entry – You must hold a State or Federal lobster permit. To allow all lobstermen to continue to land crabs.
- Every State – Cancer Crabs can only be harvested in accordance with the current “Lobster-Gears” configuration regulations. <http://www.mass.gov/eea/agencies/dfg/dmf/laws-and-regulations/commercial-regulations>
- No Total Allowable Catch (TAC)
- Prohibit the landing of female egg bearing crabs.

- Utilize the fishermen for input on trends in their areas for fishing.
- Determine an acceptable allowance for error in sizing of crabs example – 1-2%
- No trip limits or days at sea – open fishery just as the commercial lobster.

Thank you for considering these comments and your long-standing support and cooperation through the development of management plans process.

Kind regards,

*Beth Casoni*

B. Casoni  
Executive Director, MLA

**Kate Taylor**

---

**From:** Gary Mataronas <lobster2@cox.net>  
**Sent:** Wednesday, October 01, 2014 12:05 PM  
**To:** Kate Taylor  
**Subject:** Cancer Crab

**MATARONAS LOBSTER CO., INC.**

**Gary S. Mataronas, President**

**22 CALIFORNIA**

**ROAD**

**LITTLE COMPTON, R.I.**

**02837 – 1010**

**(401) 635-2143**

September 29, 2014

Kate Taylor  
1050 North Highland Street  
Suite 200 A-N  
Arlington, VA 22201

**SUBJECT: CANCER CRAB PID**

Dear Kate,

I have been an Offshore Lobsterman for forty-one years and have been involved with the planning of the management and conservation plan for AREA 3 since 1990. I have owned and operated three different offshore lobster boats in that time.

I adamantly implore you to institute a Federal Cancer Crab Management Plan and let it be managed by the American Lobster Board. The catching of lobsters and Cancer crabs go hand in hand and should be managed under one body. The sooner a plan is formed and instituted the better, even if it has to be done under a Federal Emergency Action. It was previously a fishery that kept Lobstermen going in the winter months when lobster activity became dormant and carried us through to the spring when lobsters became active. With increased prices there are more boats getting involved with a directed fishery and I don't believe the resource can withstand this increased activity. Although I believe it is illegal, there are many boats fishing for crabs that do not have trap tags even though the traps they are using can and do catch lobsters. This definitely has to be stopped or the resource will

certainly collapse. There definitely needs to be controls put into place to regulate the Cancer crab fishery to make it sustainable for everyone involved. There should be a 5" minimum carapace width with a 2% tolerance for undersize crabs. There should be no taking of female crabs especially egg bearing females with a 1% tolerance.

The fishery should be managed just as the lobster fishery. All crab fishers should have a federal lobster permit for offshore Area 3 and trap limits should be the same as what is on their lobster permits and the same tags as what they have been issued for lobster traps. This will curtail any new entrants into the fishery and will not adversely affect effort controls or existing whale entanglement issues. It is imperative that speculation and new entrants into the unregulated Crab Fishery be curtailed now and until a management plan is formulated and put into place.

Sincerely,

Gary Mataronas

F/V Edna May

[lobster2@cox.net](mailto:lobster2@cox.net)



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

OCT - 2 2014

Robert Beal  
Executive Director  
Atlantic States Marine Fisheries Commission  
1050 North Highland St., Suite 200 A-N  
Arlington, VA 22201

RE: Cancer Crab PID Comment

Dear Bob:

I want to take this opportunity to provide a brief comment on the Cancer Crab Public Information Document. In general, NOAA's National Marine Fisheries Service (NMFS) supports fisheries management to help ensure the sustainability of our nation's fisheries. Given that landings of cancer crab have been steadily increasing over the past few years, the recent decrease in catch per unit effort, the potential market issues, and high level of interest in this fishery, I agree that management of the cancer crab fishery should be considered.

I understand that some questions came up during the public meetings on whether NMFS could take interim or emergency action to implement Federal regulations to protect the cancer crab fishery while a fishery management plan is being considered. In general, our authority to take emergency or interim measures is somewhat limited, and must be based on a finding that an emergency exists or to reduce overfishing (in the case of interim measures). Furthermore, there needs to be clear supporting justification for emergency action that is clearly linked to an unforeseen and critical biological, economical, or social problem. With the limited amount of data available for the cancer crab fishery and no readily apparent emergency situation, it would be difficult for us to justify taking emergency in this situation. Similarly, our understanding is that there is insufficient information to conclude that overfishing is occurring, and this means we could not take interim measures under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act. Given the Commission's and states' relatively less restrictive authority to implement emergency or interim measures, that may be a more effective approach if such measures are deemed necessary using the existing framework for cancer crabs.

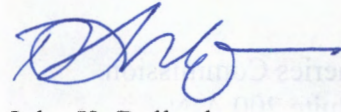
Thank you for the opportunity to comment. We would be happy to discuss this and other potential management approaches at any time or during the upcoming Atlantic States Marine Fisheries Commission Annual meeting.





Please use Michael Pentony at (978) 281-9283 as the point of contact if there is anything you'd like to discuss. We look forward to working with you on this matter in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "John K. Bullard", with a long horizontal stroke extending to the right.

for

John K. Bullard  
Regional Administrator

**New York State Department of Environmental Conservation**  
**Division of Fish, Wildlife & Marine Resources**  
**Bureau of Marine Resources**  
205 North Belle Mead Road, Suite 1, East Setauket, New York 11733



**Phone:** (631) 444-0430 • **Fax:** (631) 444-0434

**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)

**MEMORANDUM**

**TO: Kate Taylor, ASMFC American Lobster Plan Coordinator**

**FROM: Kim McKown, NYS DEC Crustacean Unit Leader**

**DATE: October 3, 2014**

**SUBJECT: New York public comments on the ASMFC Cancer Crab PID**

We received phone comments from three New York fishermen who harvest jonah crab in the Ocean off the south shore of Long Island. Information from harvest reports and discussion with fishermen indicates that the fishery is mainly taking place in NMFS statistical areas 537 and 613, most likely in LCMA 3. Below are the comments on potential management measures:

**No sale of female crabs:**

Two of the fishermen said they would have no problem with rules that prohibit the harvest of female crabs. They said they don't harvest females and that the market does not want the female crabs.

**Five inch minimum size limit:**

One of the fishermen said he wouldn't have a problem with a five inch minimum size he doesn't harvest crabs smaller than five inches, the market doesn't want the small crabs.

**Linking harvest with lobster permits and lobster trap tag allocations:**

One of the fishermen thought it would be alright to link Jonah crab harvest to the lobster permit and trap tag allocation. Currently, any trap fished in federal waters that can catch a lobster is considered a lobster trap and requires a federal permit and trap tag allocation to fish.

**No rules:**

Two of the fishermen felt there should be no, or limited rules for the jonah crab fishery. They felt that there were plenty of jonah crab around and rules weren't needed. One person said we should prohibit the harvest of females and then spend a few years collecting data and doing an assessment to determine the biomass and status of the stock.

cc: James Gilmore  
Steve Heins  
Rachel Sysak

## Kate Taylor

---

**From:** Bob Colbert <e.eaa3@comcast.net>  
**Sent:** Thursday, September 25, 2014 4:48 PM  
**To:** Kate Taylor  
**Cc:** Denny Colbert; e.eaa3@comcast.net  
**Subject:** FW: Cancer Crab PID

Hi Kate,

We attended the meeting last night. You did a real nice job... some of the guys did not seem to understand it was suppose to be a simple public comment period and not a big debate! We wanted to forward you our comments we are submitting. We are also trying to get a consensus amongst the fishermen too.

Thanks

Bob and Dennis Colbert

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**From:** Bob Colbert [mailto:e.eaa3@comcast.net]  
**Sent:** Thursday, September 25, 2014 4:41 PM  
**To:** Denny Colbert; e.eaa3@comcast.net  
**Subject:** FW: Cancer Crab PID

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**From:** Bob Colbert [mailto:e.eaa3@comcast.net]  
**Sent:** Thursday, September 25, 2014 4:35 PM  
**To:** Denny Colbert; 'e.eaa3@comcast.net'  
**Subject:** Cancer Crab PID

From: [e.eaa3@comcast.net](mailto:e.eaa3@comcast.net)  
To: [comments@asmfc.org](mailto:comments@asmfc.org)  
Subject: Cancer Crab PID  
Date: Thursday, 25 Sep 2014

Our names are Bob and Dennis Colbert who own and operate the F/V Miss Julie and the F/v Virginia Marie out of Sandwich, Ma. We have targeted and can show substantial landings since 1988 of the Cancer crab (Jonah). Each of our boats can show a minimum landing of 300,000 lbs, each year, with some years over 800,000 lbs.

In the last 3-4 years, due to it being an un-regulated fishery, there has been a tremendous influx of entrants into this fishery which poses a potential serious hazard to the health of this resource.

Some regulations are needed as soon as possible to help battle this potential hazard.

We feel;

1. A control date should be put in effect immediately to reduce the immediate influx of pressure on this resource prior to any regulations being implemented. There is precedence for this in other fisheries already regulated such as the Red Crab Fishery, the lobster fishery.....
2. Permits should be linked to lobster permits and be area specific.

3. A landing history of 3 years with landings of a least 250,000 lbs be required to qualify for a full time permit , all others being granted a part time permit of 5,000 lb by-catch limit (precedence set in other fisheries)
4. Prohibition of FEMALES ( extremely important) allow a 1 -2% threshold for enforcement
5. A 4.5" minimum carapace width until some research can be done to figure the optimum size. Cancer crabs do not reach a size of much over 6.5" before the go into a death shed. Therefore we want to harvest the crabs before they die, but make sure they reach sexual maturity to breed.
6. Mandatory data collection
7. Objective should be to maintain a healthy and sustainable fishery and protect the participants who have been historically engaged in this fishery. (precedence set in other fisheries)
8. Management of rock crab and Jonah crab should be separate
9. No Immediate emergency action needed at this time

Sincerely,  
Robert and Dennis Colbert  
F/v Miss Julie  
F/V Virginia Marie

## Kate Taylor

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**From:** Comments  
**Sent:** Thursday, October 02, 2014 1:25 PM  
**To:** Kate Taylor  
**Subject:** FW: crabs

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**From:** Mrslobster@aol.com [mailto:Mrslobster@aol.com]  
**Sent:** Thursday, October 02, 2014 1:11 PM  
**To:** Comments  
**Subject:** crabs

We the undersigned have been targeting Jonah crabs since 1990.

In the last 3-4 years, due to it being an un-regulated fishery, there has been a tremendous influx of entrants into this fishery which poses a potential serious hazard to the health of this resource.

Some regulations are needed as soon as possible to help battle this potential hazard.

We feel;

1. A control date should be put in effect immediately to reduce the immediate influx of pressure on this resource prior to any regulations being implemented. There is precedence for this in other fisheries already regulated such as the Red Crab Fishery, the lobster fishery ..
2. Permits should be linked to lobster permits and be area specific.
3. A landing history of 3 years with landings of a least 250,000 lbs be required to qualify for a full time permit , all others being granted a part time permit of 5,000 lb by-catch limit (precedence set in other fisheries)
4. Prohibition of FEMALES ( extremely important) allow a 1 -2% threshold for enforcement

5. A 4.5" minimum carapace width until some research can be done to figure the optimum size. Cancer crabs do not reach a size of much over 6.5" before they go into a death shed. Therefore we want

to harvest the crabs before they die, but make sure they reach sexual maturity to breed.

6. Mandatory data collection

7. Objective should be to maintain a healthy and sustainable fishery and protect the participants who have been historically engaged in this fishery. (precedence set in other fisheries)
8. Management of rock crab and Jonah crab should be separate
9. No Immediate emergency action needed at this time

Sincerely,

Robert Connolly - F/V American Beauty-Sandwich Mass.

September 12<sup>th</sup> 2014

Commentary Submitted on Cancer Crab PID:

ISSUE ONE:

Each State should continue to manage the Cancer crab fishery independently. If coastwide management is developed, there are regional differences that need to be taken into consideration when managing the Cancer crab fishery.

Jonah and rock crab can be managed together under the same FMP, as long as the biological differences in each species are taken into consideration.

Jonah crab and rock crab are separate species with different average size carapaces and should NOT be regulated as the same species unless these differences are taken into consideration. Rock crab has a smaller average carapace; Jonah crab has a larger average carapace.

ISSUE TWO:

The objective for managing the Cancer crab fishery should be to promote and maintain a healthy resource and a sustainable fishery. This can be accomplished through a minimum size limit and the no-take of female crab.

ISSUE THREE:

A basic level of regulation is adequate for the management of Cancer crab.

Appropriate regulations include:

NO take of female crab of either species

A 1% allowance of female crab

A minimum size limit of 5 inches for Jonah crab

A minimum size limit of 4 inches for rock crab

OR an overall minimum of 4 inches for both species

An allowance of 10% for undersized crab

NO seasonal closures (except those currently in effect)

NO daily trip limit

The gear restrictions currently in place for lobster traps are adequate for the crab fishery.

Recreational fishermen are beholden to the same regulations as commercial fishermen.

ISSUE FOUR:

A license should be required for the harvest of Cancer crab. Licensing for commercial Cancer crab harvesting should continue to be issued in conjunction to commercial lobster licenses for the reasons listed in the PID; vertical lines, cost, enforcement and resource allocation.

States should require a recreational license to harvest Cancer crab; this license can be issued in conjunction to a recreational lobster license.

Trip limits should not be established. In my experience harvest for bait purposes is not applicable to the State of Maine.

ISSUE FIVE:

I have no input on this item.

ISSUE SIX:

Emergency action should be taken to eliminate the take of female crab of both species.

ISSUE SEVEN:

Regulations should be the same for State and Federal waters.

OTHER ISSUES FOR CONSIDERATION:

The Cancer crab fishery is an economically vital winter fishery to many lobstermen and small-scale processors (picking houses) in Maine.

While the PID states "Jonah crab are typically the preferred catch over rock crab" that statement is NOT true in the State of Maine where rock crab is the preferred target species for processing.

Misidentification is primarily due to the regional name choice for each species, not true lack of identification ability. Fishermen have no issue differentiating the two species of crab based on appearance. Developing a clearly defined, universal name for each species would be greatly beneficial.

Thank you for your consideration in this matter.

Genevieve Kurilec McDonald  
F/V Hello Darlin' II  
#11370  
Stonington, Maine

genevieve.kurilec@maine.edu  
207 266 5113



# Palombo Fishing, Corp.

221 Third St.  
Newport, RI 02840  
Tel #: (401) 849-4982  
Fax #: (401) 847-9966

*f/v Endeavour  
f/v Timothy Michael  
f/v Freedom*

October 3<sup>rd</sup>, 2014

Dear Bob,

I'm writing as an offshore lobster boat owner, of three vessels in the lobster/crab fishery and a member of the Atlantic Offshore Lobstermen's Association (AOLA) to provide comments toward the cancer crab public information document.

I have been involved in the lobster/crab fishery out of Rhode Island since 1971, 43 years, a long time and over the years have tried to contribute to the health of the lobster/crab fishery by actively participating in AOLA, 14 years as President, current Treasurer and as an active member since we founded the organization in 1973. Below you will find responses to the questions posed in the Commission's PID.

## **ISSUE 1: CONSISTENT COASTWIDE MANAGEMENT OF A MIGRATORY STOCK**

*Is consistent coast-wide management needed for the Cancer crab fishery?*

Yes. It is imperative to manage the crab resource in a consistent pattern throughout the range of the resource. Given the high, and increasing, value of the fishery it is critical to be proactive and preempt a stock decline.

*Should management of Cancer crab be coordinated through the Commission?*

Yes. The NMFS has indicated that they will not take lead on this issue, given lack of scientific information on the species, and other fishery management priorities. The NMFS process would also take many years to formulate a plan, whereas the Commission can accomplish it within two years. The Commission also has the option of implementing some

conservation measures in an expedited manner in order to protect the stock. The Commission should move forward with a set of basic measures that protect biological integrity of the stock while collecting additional scientific information on the species.

*Are there regional differences in the fishery and/or in the Cancer crab stock that need to be considered when implementing management measures?*

No, there are none that we know of.

*Should the Commission include management of rock crab with the management of Jonah crab?*

We suggest the Commission manage both, but start with Jonah crab. The current fishery is focused primarily on Jonah and most of the landings are being made in three states (RI, MA, and ME). The process on rock crab should begin when the Jonah crab segment has been completed.

## **ISSUE 2: WHAT ARE THE APPROPRIATE MANAGEMENT OBJECTIVES FOR THE CANCER CRAB FMP?**

*What should be the objectives in managing Cancer crab fisheries through the Commission?*

1. Implement a basic management program that achieves (maintains) the long-term sustainability of the resource and fosters the collection of fishery and biological data.
2. Implement consistent coast wide management measures for State and Federal waters.
3. Collect fishery independent and dependent data throughout the range of the resource in the most cost effective manner.
4. Initially, adopt basic regulations that protect the biological integrity of the resource. Modify regulations as additional scientific information becomes available, and as needed.
5. Optimize economic return from the resource.

## **ISSUE 3: WHAT ARE THE APPROPRIATE COMMERCIAL AND RECREATIONAL MANAGEMENT MEASURES FOR THE CANCER CRAB FISHERY?**

*What level of management is appropriate for Cancer crab (e.g. basic, moderate, intense, etc...)?*

The lack of scientific information does not lend itself to a complex fishery management program. Key point is that there are no regulations currently to protect the crab stock.

The Commission should implement basic measures that protect the species while the scientific information develops over the next few years. The Commission should also strive to minimize regulatory interference with the industry.

*Should required management measures be implemented concurrently with monitoring requirements?*

Yes. There is a need for basic management measures, a sound fishery dependent and independent data collection program, and scientific research on specific life history stages for each species.

*Should the FMP require a 5" minimum carapace width (CW) for commercially caught Jonah crab?*

Yes, but with inclusion of a tolerance. It is important for the fishery to gain functional compliance with any minimum size restriction as opposed to absolute compliance. The fishery is a volume fishery, which in some cases involves vessels landing in excess of 60,000 crabs on a single trip.

It is going to be extremely difficult for a vessel to measure significant numbers of crabs and maintain the economic viability of the industry, since it takes considerable effort to measure a single crab (i.e. moving all the time, measurements of carapace width is from point to point, movement of vessel, etc). The same problems exist at the dealer level, but the volumes are greater and timing is an issue.

There needs to be a minimum size/tolerance combination that promotes compliance by the vessels and dealers, without imposing a significant negative impact on efficiency. At the enforcement level, there need be a sampling protocol that does not require EPO's to observe an entire trip, nor measure large numbers of crab in order to determine compliance.

The Commission should formalize the advisory process (committee AP) as soon as possible and ask them to meet and develop recommendation on this issue. This should also include the participation of members of the enforcement committee.

*Should there be a tolerance on the possession for enforcement?*

Yes. As noted above this is a low value, high volume fishery, so it is not reasonable to measure each individual crab. Traps usually get dumped on a culling table and then sorted. Given the volumes of crabs being landed on an individual trip, mistakes will be made regardless of which regulation gets implemented.

*Should there be a minimum CW for rock crab, if so what size range?*

Yes. AOLA supports a 5 inch minimum carapace size with a tolerance as noted above.

*Should there be a tolerance on the possession for enforcement (e.g. 5%)?*

Yes, with a tolerance. Both the commercial and recreational fishery should be controlled with the same basic measures and sizes.

*Should the FMP prohibit commercial harvest of female Cancer crab?*

No. Although AOLA supported a prohibition on landing females as part of the FIP working group we have since modified our position, given the extensive public comment on this issue. We now believe that a minimum size of 5 inches will prohibit landing approximately 98% of all females, so there is no need for a separate regulation. Data, gathered by MA DMF and industry, support this conclusion.

*Should there be a tolerance on the possession for enforcement?*

Yes, as noted above.

*Should there be a prohibition on the possession of egg-bearing females?*

Yes, but with a tolerance. A five inch size should protect the vast majority of egg bearing females. However, there has been discussion in some regions of fisheries using egg bearing females for conch bait and for other creative uses. The industry currently does not land or process egg bearing females and the management program needs to ensure that this practice continues in the future.

A low tolerance is needed because females occasional get mixed in with males during the sorting process and end up at processing facilities. The details of any enforcement standard need to be developed in close coordination with the harvesting and processing industry and members of enforcement community.

*Should there be a tolerance on the possession for enforcement?*

Yes, as discussed above.

*How should the recreationally fishery be managed?*

Same size, plus a bag limit (possession limit).

*What other management options should be considered (e.g. escape vents, gear restrictions, shell height restrictions, etc...)*

None at this time.

#### **ISSUE 4: HOW SHOULD THE CANCER CRAB FISHERY BE LICENSED?**

*Should the FMP require a license for the commercial harvest of Cancer crab?*

Yes. Ninety Eight plus (98+) percent of current fishery landings are generated by fishermen with lobster licenses and lobster traps. The only requirement for participation in the commercial fishery should be possession of a state or federal lobster license and lobster or crab traps with tags.

*For jurisdictions with a lobster fishery, should the FMP require a lobster license in order to commercially harvest Cancer crab or should the fishery be licensed separately?*

Yes, as noted above. Both crabs and lobster occur on the same bottom types and are caught by identical gear. Any other strategies, such as issuing new crab licenses, would only result in proliferation of fixed gear in state or federal waters, and compromise protected species and lobster management plans.

*Should the directed fishery be limited to those vessels using lobster traps authorized under the lobster management plan?*

Yes, for the reasons noted above.

*Should harvest by trap fishing vessels that are using crab traps not bearing lobster trap tags be restricted?*

Yes. Both the crab and lobster resources inhabit the same areas, so the two fisheries are virtually indistinguishable.

*Should trip limits be established? If so, should the historic harvesters using vessels deploying lobster traps be given a more liberal trip limit than other gears?*

No and No. There is currently no scientific basis for setting a trip limit, as the status of the stock is poorly understood. Trip limits have differential implications for different size vessels.

*Should states require a recreational license to harvest Cancer crab?*

No, but all landings must be accounted for in any recreational data collection program.

*Should harvest for bait purposes be included under a recreational or commercial license?*

A commercial license should be required for the sale of crabs as bait and all landings should be compliant with the commercial regulations and data reporting standards.

*Are there other licensing requirements that should be considered?*

Processors should be required to have a state and/or federal license and report all landings compliant with the ACCSP program.

## **ISSUE 5: WHAT TYPES OF DATA COLLECTION SHOULD BE PRIORTIZED TO MANAGE THE FISEHRY?**

*What types of data collection programs should be initiated to monitor the commercial and recreational fishery?*

The majority of the crab resource is located in federal waters where lobster vessels make 3 to 10 day trips. In addition the crab resource is found throughout Area 3 which encompasses approximately 127,000 square miles. Given the spatial and temporal extent of the fishery it will be extremely difficult for the government to design and implement a quality, cost effective data collection program.

I suggest that the Commission consider industry led fishery dependent data collection efforts, such as expanding the current Commercial Fisheries Research Foundation project, which collect extensive data on lobster and crab in near and offshore areas. The current project includes six fishermen sampling in Area 2 and 6 in Area 3, which could be easily expanded based on available funding.

An expansion of this program could cover the entire commercial fishery. We do not think it necessary to sea sample the recreational fishery at this time.

*What types of fisheries independent data should be collected by the states to help increase understanding of stock status and biology of Cancer crab?*

Refer to response above

*Should fishermen be required to report harvest if used for bait purposes?*

Yes, as noted above.

#### **ISSUE 6: IS EMERGENCY ACTION NEEDED TO MANAGE THE FISHERY IN THE INTERIM?**

*Should emergency action be taken prior to the finalization of an FMP in order to address concerns of the harvest of small female Cancer crab?*

As suggested earlier, a five inch size standard with a tolerance, would protect the majority of the Jonah crab resource including female and egg bearing crabs.

*If emergency actions are implemented, what should they be?*

Refer to response above.

*If emergency actions are implemented, when should they begin?*

They should begin as soon as the Commission can agree on a minimum size and the specifics of a tolerance.

#### **ISSUE 7: RECOMMENDATIONS FOR FEDERAL WATERS?**

*Should management in federal waters be consistent with state waters fisheries?*

Yes. There should be identical regulations in both areas that govern the fishery. It is not necessary or desirable for NMFS to adopt new regulations for federal water, provided the States can regulate the fishery under the most restrictive provision of State/Interstate law as is done in the lobster FMP.

*What recommendations should the FMP make for federal waters harvest of Cancer crab?*

Same regulations in both areas.

**OTHER ISSUES**

*What other issue(s) should be considered in the Draft Cancer Crab FMP?*

No additional comments.

I appreciate the opportunity to comment.

Sincerely,



William R Palombo  
President

Cc: Senator Jack Reed

Cc: Senator Sheldon Whitehouse



## Kate Taylor

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**From:** Christian Scola <scolathecrab@yahoo.com>  
**Sent:** Monday, September 01, 2014 7:06 AM  
**To:** Kate Taylor  
**Subject:** Cancer Crab PID

My name is Chris Scola and I harvest Jonah Crabs in the federal waters of LMA 4 off of Montauk NY. I suggest the following actions in the Jonah crab fishery.

1. Prohibition on the harvest of female crabs.
2. A minimum carapace width of 5 inches.
3. All licensing should be in conjunction with the possession of a federal lobster permit, or a state state lobster permit. All boats that possess a federal lobster permit should be granted an endorsement to land cancer crab in whatever state they possess either a state lobster license or lobster landing license. Since this fishery takes place almost exclusively in federal waters cancer crab regulations should be separated from any state blue crab regulations since these are two completely different fisheries. Linking cancer crab licensing to possession of a lobster permit will limit entry into the fishery since most states and federal waters in the fisheries range already have either limited entry or a moratorium on the issue of new permits.
4. The current escape vent requirements for Lobster pots are more than adequate for the crab fishery.
5. There should be no need for a special bait crab license. As long as the crabs in a fisherman's possession meet size and sex requirements then it should make no difference who the end user is. A dead crab is a dead crab. Reporting for the bait fishery should be the same as for the food fishery.
6. Reporting should be the same as federal lobster requirements.
7. At this time there should be no trip limits.
8. Lobster trap tags should be required for all traps used in the harvest of Jonah Crab. The fishery should be limited to those using lobster traps. Traps used exclusively for cancer crab should not exceed the maximum size limit for lobster traps.

I look forward to participating in the management of this fishery. Please do not hesitate to contact me if you have any questions regarding the fishery in my area. My contact information is scolathecrab@yahoo.com and I can be reached at home ( 631) 238-5241 or mobile ( 305) 394-4727. thank you for the opportunity to comment.

Sincerely  
Chris Scola

## Kate Taylor

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**From:** Craig Weedon -DNR- <craig.weedon@maryland.gov>  
**Sent:** Tuesday, September 23, 2014 9:20 AM  
**To:** Kate Taylor  
**Cc:** braelynch@yahoo.com  
**Subject:** Fwd: cancer crabs

Kate,

Below is a comment in reference to the Cancer Crab PID:

"My husband, Tom Smith, catches cancer crabs in the canyons off MD and VA. He catches them in lobster pots. He sells large claws only. He doesn't think these crabs should be sold whole as that uses small ones. He also doesn't think they should be used for bait."

Craig Weedon  
Coastal Fisheries Biologist  
[craig.weedon@maryland.gov](mailto:craig.weedon@maryland.gov)  
O-410-643-4601 ext. 2113  
C-410-562-6693

----- Forwarded message -----

**From:** Beverly Lynch <[braelynch@yahoo.com](mailto:braelynch@yahoo.com)>  
**Date:** Mon, Sep 22, 2014 at 12:08 PM  
**Subject:** cancer crabs  
**To:** [cweedon@dnr.state.md.us](mailto:cweedon@dnr.state.md.us)

My husband, Tom Smith, catches cancer crabs in the canyons off MD and VA. He catches them in lobster pots. He sells large claws only. He doesn't think these crabs should be sold whole as that uses small ones. He also doesn't think they should be used for bait.

## Kate Taylor

---

**From:** Brian & Jillian <afishinseacharters@hotmail.com>  
**Sent:** Tuesday, September 30, 2014 10:05 PM  
**To:** Kate Taylor  
**Subject:** Cancer crab PID  
**Attachments:** image.jpeg; ATT00001.txt

To all readers, My name is Brian Tripp I am a lobsterman from Sedgwick Maine. I am concerned about the cancer irroratus fishery which I call rock crabs. I fish some designated crab traps which generate a modest catch (300-500 lbs.) each week through out the summer. I do this to maintain markets and keep local pickers working. In the winter I plan to fish a day or two a week as markets require and weather allows, I target rock crabs. This is my primary winter fishery. On this peninsula about a 20 mile radius there are about 10 fisherman who target crabs in the winter and all sell directly to small crab shops which employ a few workers each. We depend on each other to get through the winter. I do not have a federal lobster permit or a productive winter lobster fishing territory. I am concerned that rock and Jonah crabs might be managed together. We catch very few Jonah crabs and pickers do not like them because of the splintering characteristics of the shell compromising the quality of their meat. This quality is a point of pride and necessary for a positive reputation which is hard earned. The conservation measures we currently employ are no female crabs are harvested and the shell size of males is 3 3/4" approx and larger. Pickers refuse to pick or buy females or small crabs so they are simply not commercially valuable. The rock crab population is stable and an underutilized local resource the markets limit the number of crabs harvested and the ex vessel price is low .40 - .60 cents per pound. The recruitment in this fishery is low, basically its something to get you out of the trap shop in the winter and make a little money to keep ahead of bills. I hope minimum size of rock crab and Jonah crab do not mirror each other. We don't keep small crabs Rock crabs are quick they hurt pretty bad when they bite you and the only way to handle them is to be very fast. It's not possible to pick a crab out of the trap then measure it without get a new lesson it pain and inventing a couple new swear words. My fingers are already beaten up pretty bad I can't imagine trying to measure each rock crab. The only way to make any money at crab fishing in the winter is to catch volume. At forty cents a pound it takes 1000 pounds to cover bait, fuel and have anything which even comes close to looking like a days pay. Please call me with any questions, you have a standing invitation to come fishing for rock crabs with me any day you can.

- Brian Tripp  
207 446-1810

## Kate Taylor

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**From:** Comments  
**Sent:** Wednesday, September 24, 2014 12:50 PM  
**To:** Kate Taylor  
**Subject:** FW: Cancer Crab PID

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**From:** James Violet [mailto:jv89@msn.com]  
**Sent:** Tuesday, September 23, 2014 3:14 PM  
**To:** Comments  
**Subject:** Cancer Crab PID

My Name is James Violet. I own and operate the 70' F/V Excalibur out of Newport R.I. I have been targeting Cancer crab(Johan) for over 20 years. In 2013 we landed over 750,000 lbs of johan crab, so it is a very important part of our catch. Since it is as of now a unregulated species , new and potential entrants to the fishery are potential hazard to the health of this fishery until some much needed regulations are in place. I believe the following steps should be taken:

1. A contol date should be put in effect immediately.
2. Permits should be linked to lobster permits and be area specific.
3. A landing history of 3 years with landings of a least 250,000 lbs be required to qualify for a full time permit , all others being granted a part time permit of 1,000 lb bycatch limit
4. Prohibition of FEMALES ( extremely important)
5. A 4.5" minimun carapace width until some research can be done to figure the optium size. Cancer crabs do not reach a size of much over 6.5" before the go into a death shed. Therefore we want to harvest the crabs before the die, but make sure they reach sexual maturity to breed.
6. Mandatory data collection
7. Objective should be to maintain a healthy and sustainable fishery and protect the participants who have been historically engaged in this fishery.

Sincerely,

James Violet  
F/V Excalibur  
Newport R.I.  
401-714-3433



# Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201  
703.842.0740 • 703.842.0741 (fax) • www.asmf.org

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## MEMORANDUM

October 7, 2014

**To:** American Lobster Management Board  
**From:** Dan McKiernan, Board Chair  
**Re:** State and Federal Regulatory Consistency

As tasked at the last Lobster Board meeting, a subcommittee of state and federal Commissioners met on September 3, 2014. The subcommittee was composed of Peter Burns (NMFS), Chip Lynch (NOAA General Counsel), Dan McKiernan (MA DMF), and David Borden (RI). Purpose of meeting was to discuss consistency between federal and Commission regulations. The following issues were discussed:

***Issue 1: Conservation tax of full business transfers***

Under the final federal rule, a 10-percent transfer tax will be assessed on all partial allocation transfers while full business transfers (sale of the entire permit) will not have a transfer tax. Under the Commission's plan both partial and full business transfers are subject to the 10% transfer tax for conservation purposes. Initially when the proposed rule was published the Commission expressed concerns in not implementing the 10% conservation tax for full business transfers. The Board recognizes that Lobster Conservation Management Area (Area) 1 does not currently have transferability due to the flat trap cap of 800 traps and therefore there is no mechanism in place to deduct traps from an Area 1 allocation. The Board requested that NMFS re-consider their proposed rule as the conservation tax is an important tool to help recover the Areas 2, 3 and Outer Cape Cod (OCC) lobster stocks and the reduction in traps provides a benefit to the Atlantic right whale by reducing the number of vertical lines in the water.

**Subcommittee recommendation:** The subcommittee had extensive discussion on this issue. NMFS does not have a mechanism to implement a 10% tax on full business transfers due to divergent regulations in multiple Area's. There is no trap allocation in Area 1, which is where the great majority of full business transfers occur. Because there is only a trap cap in Area 1, there is no allocation from which to debit a conservation tax. Massachusetts has had experience with implementing a transfer program in the OCC and found that most transfers occurred in the first year of the program. From his experience, full business transfer rates declines to low levels shortly after initial implementation of the regulation.

The group concluded that although the proposal had merit, it was far more important for the Commission, States, and NMFS to have the same transfer regulations in place. Concern was that if the Commission maintained its 10% transfer tax on full transfers, and NMFS did not, such a program would result in differing trap allocations for specific individuals and would likely complicate the transfer process. As such, the sub-committee recommends that the Commission proceed with development of an Addendum to remove this requirement from the FMP. Finally

the sub-committee recommends the Technical Committee annually review and advise the Board on the transfer rates and rate of trap attrition in the affected areas.

**Issue 2:** *Trap transfer increments*

Under the final federal rule, trap transfers may be processed in 10-trap increments. The Commission's plan does not include language on trap transfer increments.

**Subcommittee recommendation:** The Commission has adopted various transfer requirements that differ by LCMA. As an example, Addendum IV states that Area 2 transfers must be at least 50 traps and in increments of 10 traps when a transfer exceeds 50 traps. It also states that Area 3 transfers must be at least 50 traps, but with no specifics on the incremental amount for transfers in excess of 50 traps which is inconsistent with Area 2. Lastly, Addendum XIII required transfers for the Outer Cape in 50 trap increments, while also allowing those with allocations of less than 50 traps to transfer all of their trap allocation. Given these inconsistencies, NMFS sought comments during the DEIS and the proposed rule public comment period on the concept of standardizing the rule at 10 trap units in all LCMA's. They received no objections from the public.

The subcommittee recommended that the Board initiate an Addendum to the plan to adopt a requirement that traps be transferred in 10 trap increments in all area's that currently have trap transferability or adopt trap transferability regulations in the future. Logic for this action is to standardize the state/federal transfer regulations and to reduce regulatory ambiguity.

**Issue 3:** *Dual Permit Transfers*

Under the Trap Transfer Program, NMFS will allow a dual (state and Federal) permit holder to purchase Federal trap allocation from any other dual lobster permit holder. A dual permit holder can purchase a Federal allocation from an individual in another state, as well as an equal state-only allocation from a third individual in his/her own state for the purpose of matching the purchaser's state and Federal trap allocations. Any dual permit holders with different trap allocations must agree to abide by the lower of the two trap allocations to take part in the trap transfer program. Under the Commission's plan, a dual permit holder is restricted to transferring traps only to another dual permit holder from the same state. The Commission was supportive of this allowance in the federal proposed rule.

**Subcommittee Recommendation:** There was a general discussion of the origins of the ASMFC rule, and how it differed from the federal regulation. The original ASMFC rule was crafted in an attempt to allow the consolidation of trap allocations within specific State jurisdictions. This was done in order to maintain the character of each state's lobster fishery.

For example, if there were 55,000 traps allocated for Area 2 in Massachusetts, the idea was that those 55,000 traps could only be transferred to individuals within Massachusetts. This was intended to maintain the character of the Massachusetts fishery, and also stop the consolidation of the industry in a single port.

NMFS staff offered the view that it would be difficult to restrict federal trap transfers to individual states. Additionally, during the hearings on the federal proposed rule, industry members and some state representatives voiced the concern that states with low numbers of Area

2 fishermen and low trap allocations would be disadvantaged. Connecticut in particular voiced this specific concern during the public hearing process and Board meetings.

Some of the subcommittee members felt that the original proposal had merit and was designed to avoid some of the problems that have plagued the groundfish industry during its consolidation under the Sector rules. NMFS staff indicated that they had analyzed their version of the rule and suggested that it would not shift effort between states, which was one of the purposes of the Addendum XII proposal. They also thought that the NMFS version seems to give more flexibility to lobster industry and encourage transfers, which will add to the conservation tax benefits.

Although there are merits to both perspectives, the subcommittee concluded that it far more important for the two jurisdictions to have the same rules and avoid complicating the transfer process. It is recommended that the TC be tasked with documenting transfer rates, and rate of trap attrition in the each state or jurisdiction, and advise the Board of the results annually. If the Board views the consolidation patterns as problematic, it can propose corrective actions at a subsequent meeting.

M-14-091



**Paul J. Diodati**  
*Director*

# *Commonwealth of Massachusetts*

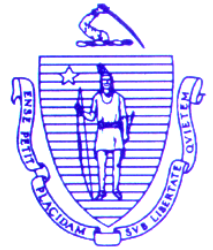
## **Division of Marine Fisheries**

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**Deval Patrick**  
*Governor*  
**Maeve Valley Bartlett**  
*Secretary*  
**Mary B. Griffin**  
*Commissioner*

### **MEMORANDUM**

To: American Lobster Management Board

From: Daniel J. McKiernan, Board Chair

Date: October 14, 2014

Re: Update on upcoming proposed federal rule changes to protect large whales and impacts on the Outer Cape Cod Lobster “haul-out” period.

In April 2014 NOAA National Marine Fisheries Service (NMFS) published a final rule implementing the Commission’s 2-month winter trap haul-out recommendation, as specified in Addendum XIII. The federal rule specifies a two-month closure from January 15 through March 15 (aligning with Massachusetts’ closure dates) and requires the removal of all traps from Outer Cape Area waters during this period. Additionally, in June NMFS published a final rule amending the Large Whale Take Reduction Plan, which included extending the Massachusetts Restricted Area and enacting a closure in this area from January 1 – April 30.

In August the Commonwealth of Massachusetts requested that NMFS consider shifting and extending the winter haul-out period from January 15 – March 15 to February 1 – April 30, as well as expanding the area of the closure to include the remainder of the Outer Cape Cod Lobster Management Area east of 70 degrees (Figure 1). In response, on October 1, 2014 a meeting of the Atlantic Large Whale Take Reduction Team (Team) was convened to get input regarding the recommended spatial and temporal modifications to the Massachusetts Restricted Area Closure. The timing of this review was critical because the recently enacted Massachusetts Restricted Area regulations would begin on January 1. These regulations will result in unprecedented impacts to winter-time lobstering and result in considerable safety concerns as lobstermen work to remove traps from the water in advance of the January 1 closure. We were pleased that NMFS agreed to fast-track the review of our request to accommodate the Commonwealth and its fishermen. The rationale for this exemption and other amendments were detailed in a letter to NMFS from the Commonwealth (dated 8/18/14, attached).

The Team agreed to move forward with the spatial and temporal changes to the closure. Therefore, if approved as a final rule by NMFS, January would no longer be closed to trap/pot fishing in the Massachusetts Restricted Area, but the closed area would be expanded to the east and south and include all of the Outer Cape Cod Lobster Management Area east of 70 degrees.

If approved, the Commonwealth will enact complementary regulations (by emergency due to the short timeline) to support this plan and will amend its regulations to shift the Outer Cape Cod haul-out period from January 15- March 15 to February 1- April 30. Additionally, if approved, the Lobster Board should also make similar changes through a new Addendum to modify the haul-out language as specified in Section 4.1.6 of Addendum XIII. This could likely be initiated at the February meeting. It is recommended that this be combined with any other proposed management changes, if possible.



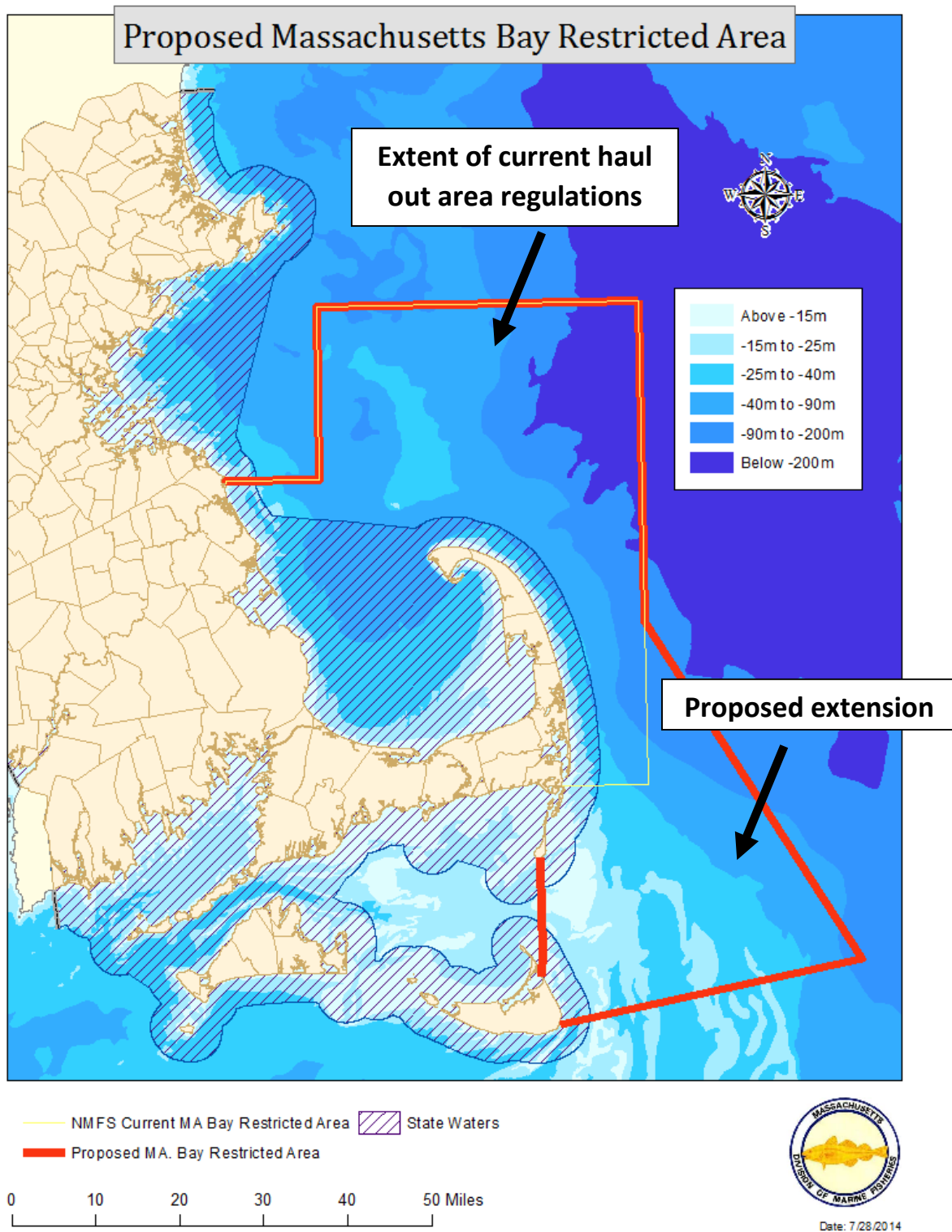


Figure 1. Proposed area modification to the winter haul out regulation.



**Paul J. Diodati**  
*Director*

# *Commonwealth of Massachusetts*

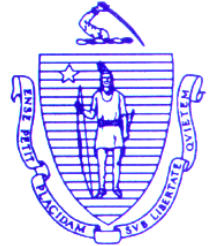
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**Maeve Vallely Bartlett**  
*Secretary*

**Mary B. Griffin**  
*Commissioner*

August 18, 2014

John Bullard, Regional Administrator  
NOAA Fisheries, GARFO  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Massachusetts Vertical Line Rule Exemptions Request

Dear John:

The Massachusetts Department of Fish and Game's Division of Marine Fisheries (*Marine Fisheries*) submits the attached request to the National Marine Fisheries Service (NMFS) for exemptions and modifications to the recently-enacted amendment to the Atlantic Large Whale Take Reduction Plan. These requests are consistent with NMFS' guidelines for exemption requests published in September 2010.

*Marine Fisheries* has been an active partner in the Take Reduction process since its inception in 1996, and has provided numerous comments on many aspects of the plan. Only now since the rules were published on June 27, 2014 can the agency craft precise and meaningful requests for amendments and exemptions. This is our first request for an exemption to the plan since the plan was adopted in 1997. Much of the plan's specifics, especially in past versions, were modeled after state rules developed by *Marine Fisheries*. The sinking groundline requirement is an example of this type of proactive and aggressive management. The Commonwealth required sinking groundline in all state waters in 2007; NMFS complemented this rule in 2009.

We fully understand NMFS' expectations that exemptions need to be conservation-based and, if resulting in increased risk, that risk should be negligible. The rationale for the exemptions requested here are based on safety and financial concerns for the industry and *Marine Fisheries*' intimate knowledge of whale and fixed gear presence in our coastal and nearshore waters, as well as consistency with NMFS' own strategies relative to vertical line risk in other areas. Note that *Marine Fisheries* is also uniquely poised to document the effects of the new plan, as well as any exemptions, thanks to a state and federally funded right whale surveillance program, a Disentanglement Program based at the Provincetown Center for Coastal Studies, and a longstanding mandatory data collection system that requires all commercial fishermen to report all commercial fishing trips as well as buoy line counts for all fixed gear fisheries.

The proposed exemptions have been crafted after our agency's extensive review of the final rule and the environmental impact statement as well as consultation with members of the lobster industry. Since the much anticipated release of the final rule, members of the Massachusetts lobster industry have met with *Marine Fisheries* in formal and informal meetings and expressed

dismay and frustration with some of the conservation strategies and the local impacts. We believe these amendments will provide critical relief for fixed gear fishermen from the Commonwealth and allow for continued and future co-existence of Massachusetts fisheries with endangered whales.

We look forward to working closely with you to implement these modifications as quickly as possible. Please contact me or my Deputy Director, Daniel McKiernan, to discuss these exemption requests.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Diodati". The signature is written in a cursive, slightly slanted style.

Paul J. Diodati  
Director

Enc: Massachusetts Vertical Line Rule Exemptions Request

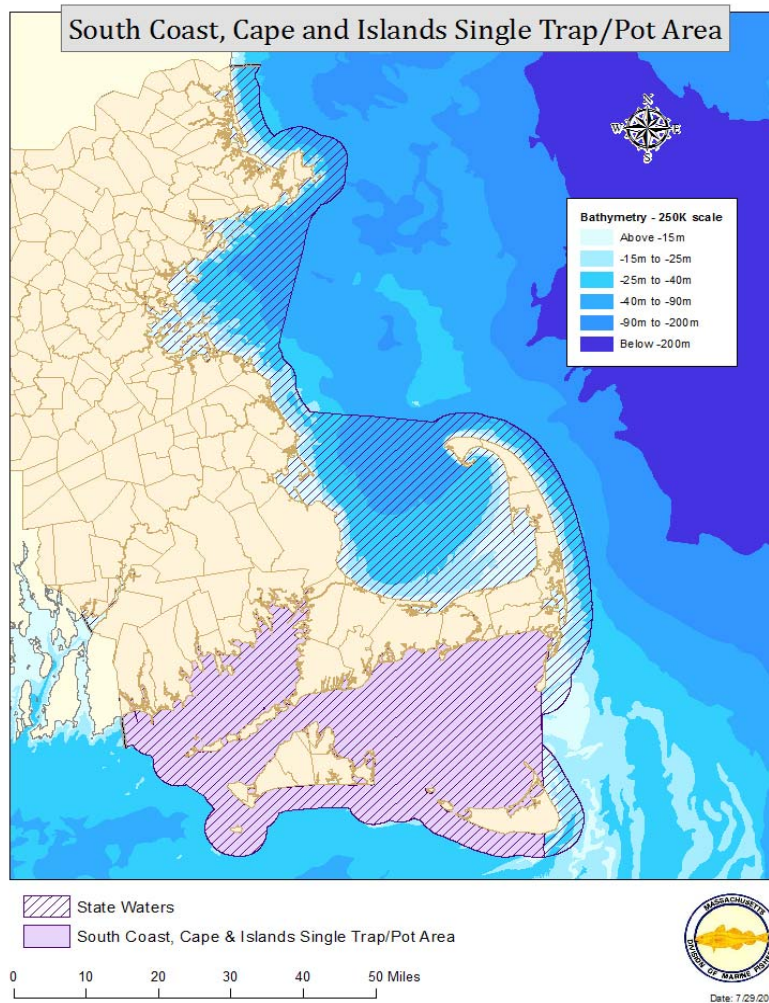
Cc: Secretary Maeve Vallely Bartlett, EEA  
Commissioner Mary Griffin, DFG  
Beth Casoni, Massachusetts Lobstermen's Association  
Massachusetts Marine Fisheries Advisory Commission  
Massachusetts Legislative Coastal Caucus  
U.S. Senator Ed Markey  
U.S. Senator Elizabeth Warren  
U.S. Representative William Keating  
U.S. Representative John Tierney  
Assistant Administrator Eileen Sobeck, Kate Swails, NMFS  
Dan McKiernan, Bob Glenn, Erin Burke, DMF

# Massachusetts Vertical Line Rule Exemptions Request

Submitted by the Massachusetts Division of Marine Fisheries  
August 18, 2014

The Massachusetts Division of Marine Fisheries (*Marine Fisheries*) requests the following amendments to the Large Whale Take Reduction Plan's regulations at 50 CFR Part 229.32. These include spatial exemptions to "trawling-up" requirements for pot/trap gears, new gear marking requirements for exempted gears, and temporal and spatial modifications to the Massachusetts Bay Restricted Area.

**Exemption Request #1: Year-round exemption to "trawling-up" in the Massachusetts state waters portion of the Northern Inshore Trap/Pot Waters south of 41° 40' N and west of 70° 00' W to the RI border (Figure 1). This would include all waters under the jurisdiction of the Commonwealth and include the center of Nantucket Sound, Vineyard Sound, and Buzzards Bay.**



**Figure 1.** Proposed southern New England inshore waters exemption area.

**Rationale.** An exemption of inshore Southern New England waters will be conservation neutral because the results of the co-occurrence model shows minimal overlap of large whales and fixed gear occurring in this area. Trap/Pot fisheries in the area are comprised of a combination of lobster trap, fish (black sea bass and scup) pot, and conch (whelk) pot, and in the upper estuaries and salt ponds, small-scale pot fishing for American eels and invasive green crabs. As confirmed by the co-occurrence model results, the historical and expected occurrence of large whales is negligible in the exemption request area, especially in the locations and times when these fisheries are prosecuted (namely Buzzards Bay, Vineyard Sound, and Nantucket Sound in the summer and fall).

*Marine Fisheries* already has an aggressive limited entry program with low trap limits for the lobster, fish and conch fisheries. Each fishery is described below.

Lobster trap fishing in Lobster Management Area (LMA) 2 has undergone an unprecedented decline especially in state waters. From 1999 (the peak of the fishery) to 2011, the number of traps fished declined 37% from 82,500 to roughly 52,000. Trap amounts are subject to strict regulations and permit-specific trap limits consistent with the Interstate American Lobster Management Plan Addenda VII, XII, and XVIII. Permit specific trap allocations were issued in 2006, and beginning next year, as a result of the mandates of Addendum XVIII, there will be six years of trap allocation cuts. Next year, each permit holder is expected to have their allocation reduced by 25%, followed by an annual 5% cut for the subsequent five years. While there is some latent trap allocation in the system, the American Lobster Board of the Atlantic States Marine Fisheries Commission (ASMFC) expects the reduction in actual traps fished to be at least 25%. Moreover, as the fishery declines in the inshore portions of the range due to ocean warming (ASMFC 2010) there has been, and will continue to be, an accelerated reduction in traps fished in the state waters portion of LMA 2. Lobster traps that are shifted from inshore (state) to offshore (federal) waters will be subjected to the “trawling up” mandate and fewer buoy lines will result. In summary, lobster trap fishing is declining in this area due to a combination of attrition in the fishery, aggressive effort controls, and ocean warming. Regulations forcing lobstermen to fish trawls to effectuate a reduction in buoy line count in the state waters portion of LMA 2 is not warranted.

The sea bass pot fishery is limited to 58 permits, just 200 pots per permit holder, and the season is open for only about six weeks in the late summer due to low quota available to the Commonwealth’s fishermen. Less than 30 permits were active in 2013. The fishery opens in early August with a routine closure of this quota-managed fishery by mid-September, when all pots must be brought ashore. The scup pot fishery occurs from May through October, but the 150 permitted fishermen are limited to just 50 pots. Less than 70 permits were active in 2013.

Finally, the conch pot fishery is limited to 144 permits and only 200 traps are allowed. The target species are knobbed and channeled whelk in shallow warm waters of Nantucket Sound, Vineyard Sound, and Buzzards Bay. In 2013, 86 permits were active.

These three fisheries are longstanding in the Commonwealth and have been under limited entry for over two decades. Single trap fishing is a normal business practice for most of the participants due to either low trip limits or low trap limits. Participants use single traps either as a harvesting strategy to maximize catch rates, or due to the small scale of the vessel where fishing trawls would be considered too dangerous. Because the state’s management strategy is to constrain effort

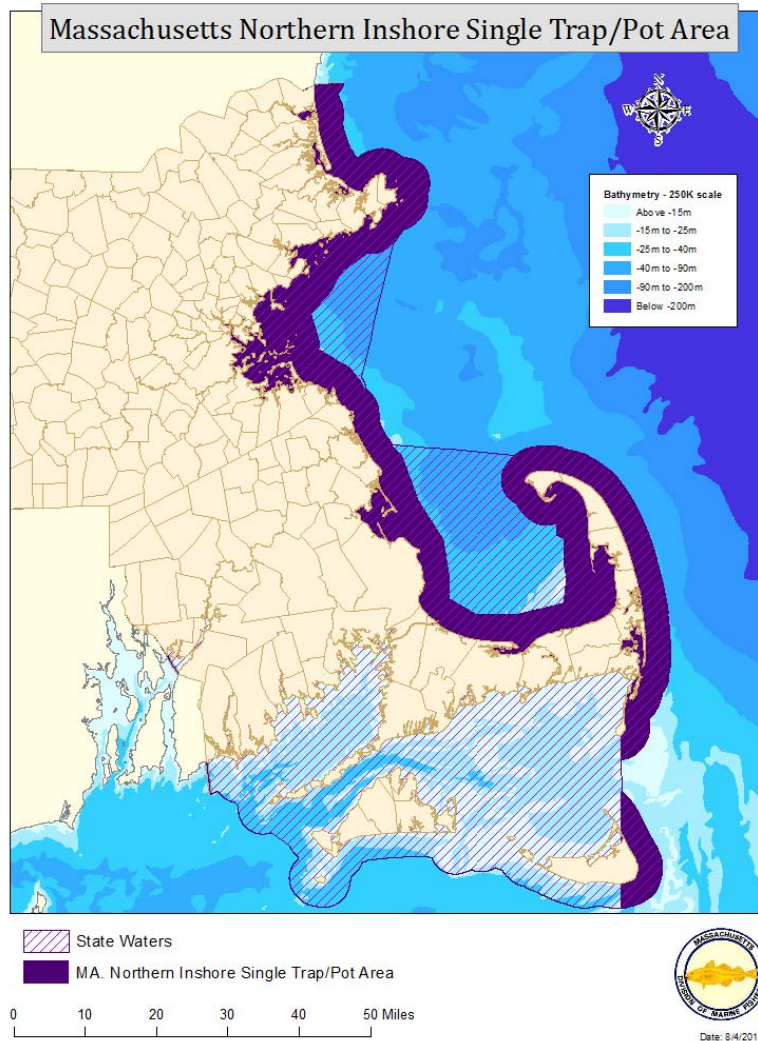
through low trap limits, the participants maximize catch rates by selective placement of single traps on optimal habitat. Large whales are exceedingly rare in the areas and times when these fisheries are prosecuted.

Also in the salt ponds and estuaries, some eel and green crab potting occurs in very shallow water. Without a specific gear exemption, or an exemption area, as was approved in Maine and New Hampshire waters, these small-scale pot fisheries taking place where there is almost no co-occurrence would inappropriately fall under the plan.

No special gear marking, strategic monitoring, or contingency/fallback plan is proposed for this request in the southern waters. We believe this area is sufficiently comparable to similarly exempted areas of LMA 4, 5, and 6 as well as Narragansett Bay, where no special gear marking, monitoring or contingency plans are currently required.

**Timing for Exemption.** The timing for the exemption from the trawling up requirements would align with the implementation timeline of June 1, 2015 that is outlined in the Final Rule.

**Exemption Request #2: Exemption to the “trawling-up” requirement within a portion of the Massachusetts state waters that lies within the Northern Inshore State Trap/Pot Waters. The area requested include those waters north and east of Cape Cod from 0-3 miles from shore for all trap/pot fisheries (Figure 2), with a new unique marking scheme for all single traps fished by commercial permit holders in this exempted area. (This exemption would not alter the provisions of the Massachusetts Bay Restricted Area closure.)**



**Figure 2.** Proposed northern Massachusetts inshore waters exemption area.

**Rationale.** Outside of the right whale season in the Cape Cod Bay area, Massachusetts has minimal occurrence of large whales within three miles of shore (compared to state waters beyond three miles and the waters of the EEZ). The seasonal fisheries, their scale and fleet composition, as well as the expected occurrence of large whales are completely analogous to those adjacent waters of New Hampshire where the state waters were exempted.

We acknowledge that the 3-mile zone surrounding eastern Cape Cod is more likely to see humpback whales than other state exempted waters, but NMFS must recognize that the area

known as the Outer Cape Cod Lobster Management Area (OCCLMA) is under the most restrictive effort controls of any American lobster trap fishery in the nation, and is worthy of an exemption. The area is managed by the Commonwealth under the auspices of the ASMFC. The management plan was crafted over a decade ago by the OCC Lobster Conservation Management Team, a voluntary group of professional lobstermen who opted for limited entry, draconian effort controls, and closed season as the pillars of their conservation plan. Their individual trap limits are controlled by individual trap allocations (based on historical trap fishing effort). The average trap allocation among current participants is approximately 400. Due to some of the strongest tides in New England and seasonally narrow zones of productive fishing bottom inhabited by migrating lobster, single trap fishing within the 0-3 mile area has been identified as absolutely critical by some participants.

At recent public meetings, participating fishermen have pleaded with *Marine Fisheries* staff and elected officials to take a closer look at the logistics of the fishery to understand the factors that result in single trap fishing being the safest, most economical, and productive technique in OCCLMA. We agree with those who insist that the “trawling up” mandate will have dramatic negative impacts on many participants. (*Marine Fisheries* will provide a future in-depth characterization of the OCC lobster fishery in advance of the review by the Take Reduction Team.) The dynamic tides, featureless substrate, and migratory nature of lobster experienced by this fishery dictate the use of single traps in nearshore waters. Unlike the coast of Maine, where fishing doubles or triples with 60' to 90' of groundline in confined areas of rocky substrate is productive, successful lobster fishing in OCC relies on spreading gear out across specific depth contours to take advantage of lobsters migrating to the inshore waters of Massachusetts Bay. When fishing on migratory lobsters where the density of “resident” lobsters that remain within a small home range is negligible, it is absolutely critical to fishing success to have traps spaced far enough apart so that the effective fishing radius of each trap does not overlap. As such, to maintain profitable catch rates in OCC, fishermen would have to fish doubles with extraordinarily long (150' to 300') groundlines to maintain profitable catch rates. This poses a significant safety threat to small boat fishermen in OCC.

*Marine Fisheries* believes it is critical to promote safe fishing practices for the smallest of operations. Note that state law allows full-time students to be holders of the Student Lobster Permit, authorizing the fishing of 25 traps from June 15 to September 15. These permit holders often fish alone and from small open boats. Single traps are deployed for reasons of scale and safety. We are deeply concerned about these fishermen’s safety due to the mandate of increased trawl length and the potential for gear conflicts for those who fish close to shore.

We believe there is a need to subject all small-scale pot fishermen to common standards whenever possible, including commercial, recreational, and student fishermen. Recreational lobstermen are allowed to fish up to 10 traps in any state waters, but the NMFS rules do not affect non-commercial fishing. Consistency is important because the non-commercial lobster fishery is nearly indistinguishable from the small-scale commercial fishery in fishing skill, style, and scale of operation. Through our public meetings on these issues, we have come to learn that single lobster trap fishing is conducted by student commercial lobstermen, small-scale commercial lobstermen, and recreational lobstermen within three miles, beyond the 1-mile distance we had previously believed. This warrants a uniform gear requirement (for both commercial and recreational) within this entire 3-mile inshore zone.



We do not believe there is consensus about the effect that a shift to multiple pot trawls will have on the severity and complexity of entanglements. Single traps are the lightest and simplest pot gear. Moreover, fishermen will invariably deploy heavier ropes in order to trawl-up. It is our contention that an allowance for single traps in the exemption area described here may actually be safer for whales than doubles, particularly in OCCLMA where single pot fishermen have told us they will have to fish groundlines that are very long to overcome the reduction in catch efficiency caused by fishing doubles in such a featureless bottom area. The typical “OCC gear configuration” for doubles would be a single buoy line attached to a groundline with the first trap gangion at the contour depth plus a 2:1 to 3:1 ratio (to allow for the severe currents in this area), and the second trap gangion at 150' to 300'. This would result in a configuration in which a whale entangled in the buoy line would be dragging one trap likely suspended off the bottom, and a second trap dragging along the seafloor. We contend that this convention would result in more complicated and potential injurious entanglements of large whales than would occur with single pots. NMFS must agree with the rationale that single pots may be less injurious to a whale, as the agency has *required* single pots in the Southeast U.S. for that very reason (see Final Rule).

Even a simple two-pot trawl when crossed over another similar trawl will result in a complex and heavy set of gear that could anchor a whale or result in serious injury when the whale attempts to free itself. The lobstermen we spoke to were willing to adopt a more elaborate marking scheme to identify the single trap buoy lines to prove their point. They insisted that a more elaborate marking scheme will reveal that the single trap approach is legitimately safer for large whales.

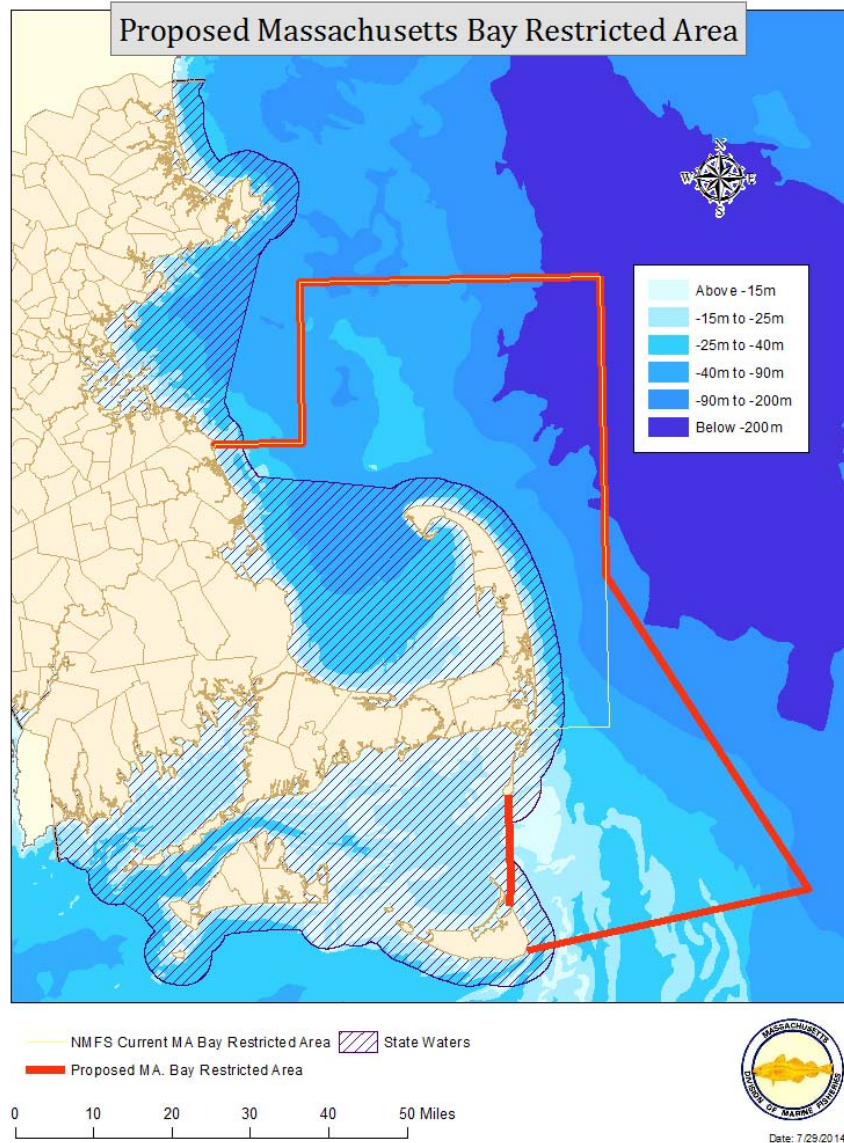
Finally, we believe disentanglement programs are essential to long-term conservation of endangered whales and are especially effective at mitigating single trap entanglements. The Commonwealth and the fishing industry are fortunate to have a program strategically positioned at the tip of Cape Cod to investigate and disentangle endangered whales. With long-standing NMFS support, the Commonwealth administers a long-term contract with the Provincetown Center for Coastal Studies to perform disentanglement. The Commonwealth is now investing \$150,000 annually in the Disentanglement Program to support the ongoing work.

We urge NMFS to be consistent in their application of the principle that single pots are potentially less injurious by approving this request. Massachusetts is in a unique position to monitor the effect of this exemption due to the proposed gear marking scheme, the fishing gear data collection system in Massachusetts, and the disentanglement program.

**Gear Marking.** We propose a new special gear marking scheme for all buoy lines on commercially fished single traps within the 3-mile exemption zone. Two different marking schemes are proposed: one for OCC permit holders and another for LMA 1 permit holders. To identify this exempted gear, the new vertical line marking scheme of three 12" red marks (top, mid, and bottom) should be refined with an additional 4" mark superimposed on the center of the 12" mark of a contrasted color. The additional colors for OCCLMA and LMA 1 would be determined after consultation with the lobster industry, NMFS, and the Take Reduction Team.

**Timing for Exemption.** The timing for the exemption from the trawling up requirements would align with the implementation timeline of June 1, 2015 that is outlined in the Final Rule.

**Exemption Request #3: Modify the Massachusetts Bay Restricted Area seasonal closure by: (A) Eliminating January from the closed period; and (B) Expanding the area extent of the closure to the east and south by including the remainder of the Outer Cape Cod Lobster Management Area east of 70 degrees (Figure 3).**



**Figure 3.** Proposed Massachusetts Bay Restricted Area Closure modification.

**Rationale.** A February 1 start date better matches the results of the co-occurrence model. The model shows minimal co-occurrence values in waters north of the Critical Habitat (especially on Stellwagen Bank) during the month of January. Right whales sightings in January are predictably much lower compared to the following three months (February – April) (Nichols et al., 2008).

There are many lobstermen who have historically fished the winter months in the Massachusetts Bay Restricted Area and will be impacted by the closure. Relatively strong lobster landings and

the high ex-vessel price make this a critical time for the Massachusetts lobster fishery, especially in the northern portion of the closed area. However, a closure start date of February 1 would allow lobstermen to complete normal lobster fishing operations through the lucrative holiday months of November and December and into January and then safely remove their fishing gear throughout the month of January when weather permits. We believe that although the area will not be closed by regulation in January, the effect of a February 1 closure date will be to severely reduce the amount of gear in the area during January as fishermen incrementally remove their gear to meet the February 1 deadline.

For OCCLMA, a shift in dates is also consistent with rulemaking already in progress by *Marine Fisheries*. The Division has begun rulemaking to amend the existing January 15 – March 15 haul-out period<sup>1</sup> to February 1 – March 31 for all OCC lobster permit holders, to accommodate lobstermen who sought to complete their fishing season in later January and for those who may need an extra two weeks to remove their gear from the water, delayed by January storms. Our proposed rule was approved by the Commonwealth’s Marine Fisheries Advisory Commission on April 13, 2014 and final enactment of the new state regulation is still pending because the Division was awaiting the outcome of the federal vertical line rule. If approved as a 3-month (February-April) closure, *Marine Fisheries* will work to accomplish an addendum to the ASMFC lobster management plan to amend that aspect of the OCCLMA effort control plan.

We note there is a substantial tradeoff and additional conservation resulting from this proposal. Increased whale protection is accomplished by expanding the closure to the southeastern portion of OCCLMA. Increasing the current closed area, estimated to be 2,140 square miles, to include all of OCCLMA, will increase the total area closure by an additional 900 square miles, thereby increasing the proposed area by 42%. The sighting-per-unit-effort results suggest the southern portion of the OCCLMA has predictably high numbers of right and humpback whales, especially in March and April. By leaving waters south of 41° 40' N and east of 70° 00' W open throughout the winter/early spring, we fear that this area could become a magnet for lobster gear and increase risk of entanglements there. Consequently, we recommend closing all of OCCLMA along with the Massachusetts Bay Restricted Area but only for three months.

This will create a more logical and streamlined regulation because OCCLMA permit holders are already subject to the aforementioned 2-month haul-out period (January 15 – March 15), and this new rule would amend the closure to be three months (February – April) coincident with the times when whales are most abundant. It also will make enforcement of seasonal closures more efficient because the dates of the closed period would be consistent across the entire area. The immediate impacts will be on OCC lobstermen who currently set their gear in late March and April in advance of the spring “run” of lobsters migrating inshore.

The other anticipated effect will be on the burgeoning whelk pot fishery for waved whelk in the EEZ portion of OCCLMA. This fishery is in its infancy but has already flourished in the EEZ off southern New England and Long Island. The fishery is anticipated to proliferate in this and other areas of the Gulf of Maine, especially east of Cape Cod when NMFS reopens the Northern and Southern Temporary Paralytic Shellfish Poisoning Closure Areas, expected later in 2014.

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<sup>1</sup> A two month winter-time “haul-out” period was created by the LCMT in the 2004 management plan adopted by the ASMFC as a means to ensure all gear was removed from the water and the restrictive trap limits were adhered to.

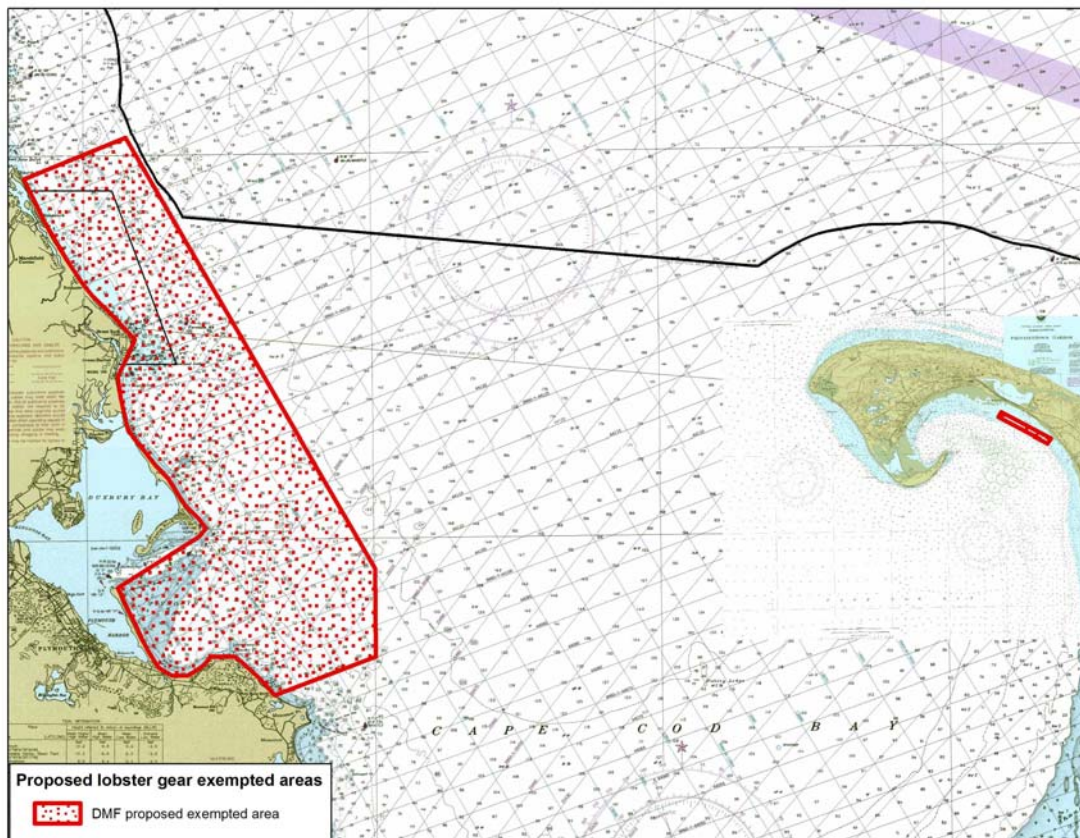
It is also worth referencing some historical facts about past closures. In the Final Rule's Response to Comments, NMFS' explains its rationale for establishing the January – April closure as a simple expansion of the existing gillnet closure in Cape Cod Bay Critical Habitat (CCBCH). However, that fails to recognize the historical basis of the CCBCH closure and current fishing practices. When *Marine Fisheries* enacted the January 1 – May 15 right whale season regulations in 1996, there was no reported gillnetting occurring in the area in the few years prior to the closure. The action was taken because we feared gillnets could proliferate in the area, displaced to Cape Cod Bay by the growing (federal) Harbor Porpoise gillnet closures that were enacted in Massachusetts Bay. The Commonwealth had no evidence then, nor now, that gillnets were involved in any right whale entanglements in state waters, but we prevented gear from being displaced into known right whales high use areas. However, even while we prohibited gillnetting in 1996, we allowed lobster trawl fishing to continue for nearly two decades. It is ironic that NMFS is using the gillnet closure in Critical Habitat as a part of its logic to create this expanded Massachusetts Restricted Area, but have exempted gillnetting in the expanded closure.

Finally, for the sake of fishermen safety in mid-winter, if harbors unexpectedly ice-up in January and or/weather becomes extraordinarily inclement that gear could not be removed during the month of January, NMFS should be prepared to declare a gear removal grace period in near real-time, for some period in early February at the discretion of the Regional Administrator. We urge NMFS to consult other regions or nations to examine their approaches for regulating and enforcing fixed gear fishery openings and closures in the face of inclement sea and weather conditions.

**Timing for Exemptions.** The timing for the exemption from the January portion of the seasonal closure would go into effect January 2015.

**Contingency Plans.** No trigger action (closure, etc.) is proposed in the event of an entanglement causing a serious injury or mortality during January in the Massachusetts Bay Restricted Area because we are proposing a more overall conservative strategy by expanding the areal aspect of the closure to include all waters of the OCCLMA. However, we welcome NMFS and TRT review of any entanglement event and any *Marine Fisheries* supplied analysis of data depicting buoy line counts and effects of the rule on effort and risk of entanglement.

**Exemption Request #4: Create discrete "Trap Storage Areas" within the Massachusetts Bay Restricted Area during April 16 – 30, where setting of lobster trap trawls would be allowed (Figure 4).**



**Figure 4.** Proposed Trap Storage Areas.

**Rationale.** Affected lobstermen have forecasted significant challenges associated with an unprecedented “opening day” effect caused by a May 1 lifting of the Massachusetts Bay Restricted Area closure. They anticipate extreme congestion at the piers and loading facilities as lobstermen compete to begin their season. Because the Cape Cod Bay vessels are not equipped to carry large amounts of traps in a single load, this bottleneck of loading space will constrain the setting of gear even after the opening date. For fishery management comparison, Canadian lobster fisheries are managed by seasons and trap limits, but the fishermen have vessels capable of carrying hundreds of traps at a time on the opening day of the season. In addition, for OCC lobstermen who fish traditional wooden traps, pre-season gear soaking has always taken place, especially in the Provincetown Harbor area where lobstermen have temporarily strung un-baited traps together just below the subtidal zone for a few weeks before setting them as single traps in May on the fishing grounds.

Participating fishermen have suggested that designated area be set aside for temporary gear storage during the last two weeks of April in order to mitigate the effects of the gear setting derby and accommodate traditional pre-season soaking practices. The discrete areas were selected in order to not pose a threat of right whale entanglements. On the western side of Cape Cod Bay, the

proposed Trap Storage Area is west of the federal and state designated Critical Habitat Area. This area is designed to service the needs of fishermen from the ports of Plymouth, Marshfield, and Cohasset. In the eastern portion of the Bay, the proposed Trap Storage Area is within the Critical Habitat but in sufficiently shallow water where right whales are unlikely to occur. This area is designed to accommodate the fleets in Provincetown/Truro and Wellfleet ports.

The coordinates (in degrees decimal minutes format) of the proposed Trap Storage Areas are as follows:

- 1) Western Cape Cod Bay - polygon with following corners, conforming to shoreline along westernmost boundary

	NW	NE	SE	S	SW
Lat	42 9.396	42 10.478	42 59.265	41 56.96	41 56.017
Long	-70 42.087	-70 38.579	-70 30.0	-70 30.0	-70 33.476

- 2) Eastern Cape Cod Bay

	WNW	ENE	ESE	WSW
Lat	42 3.037	42 2.329	42 2.216	42 2.908
Long	-70 8.107	-70 6.399	-70 6.515	-70 8.199

**Gear Marking Scheme for the Trap Storage Areas.** No unique gear marking or rigging schemes are proposed for these temporary Trap Storage Areas.

**Contingency Plans.** If aggregations of three or more right whales are seen within any of the proposed Trap Storage Areas in the seven-day period prior to their opening, the area would be closed until *Marine Fisheries* and PCCS determine right whales have departed the Bay. If an entanglement causing a serious injury or mortality attributable to a Trap Storage Area occurs, the exemption would be rescinded, or alternative buoy line construction would be mandated in the following year through state rulemaking.

### References

Atlantic States Marine Fisheries Commission (ASMFC). 2010. Recruitment failure in the Southern New England lobster stock. Report by the ASMFC American Lobster Technical Committee, April 2010. 57 p.

Nichols, O.C., R.D. Kenney, M.W. Brown. 2008. Spatial and temporal distribution of North Atlantic right whales (*Eubalaena glacialis*) in Cape Cod Bay, and implications for management. *Fishery Bulletin*, 106(3), 270-280.



NEW JERSEY DIVISION OF  
**Fish and Wildlife**  
P.O. Box 400  
Trenton, NJ 08625-0400  
David Chanda, Director



**New York State**  
**Department of Environmental**  
**Conservation**

Division of Fish, Wildlife and Marine Resources  
205 N. Belle Mead Rd, Suite 1  
East Setauket, NY 11733  
Joe Martens, Commissioner

## **Memorandum**

October 6, 2014

**TO:** ASMFC American Lobster Technical Committee

**FROM:** Peter Clarke (NJDEP) and Kim McKown (NYDEC)

**SUBJECT:** LCMA 4 10% Reduction in Harvest Proposal for 2015

Implemented in July 2012, Lobster Conservation Management Area (LCMA) 4 was required to v-notch all egg bearing females coupled with a seasonal closure from February 1<sup>st</sup> to March 31<sup>th</sup> in order to accomplish a 10% reduction in harvest as outlined by ASMFC Addendum XVII. Upon evaluation, the ASMFC Lobster Management Board determined that LCMA 4 did not reach the required 10% reduction in landings for fishing year 2013. Due to the reduction not being met, a Lobster Conservation Management Team (LCMT) 4 meeting was held on October 1, 2014 to develop revised management options in order to meet the required reduction for 2015.

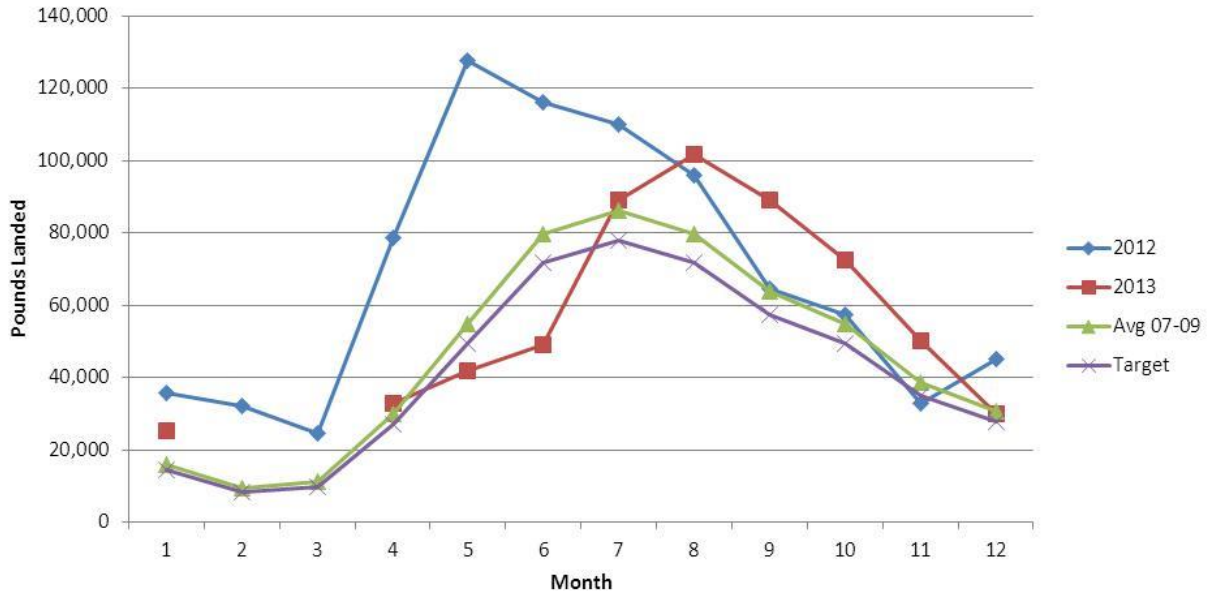
The LCMT 4 developed 2 possible options for achieving the required reduction. The preferred option by all LCMT 4 members was a 10% reduction in trap allocation to achieve a 10% reduction in harvest. The non-preferred option is a closed season from April 30-May 31 (Option 1 in the tables provided). If new management measures for 2015 are different than the current 2014 measures, mandatory v-notching of egg bearing females will be removed from the regulation.

Additionally, the LCMT 4 members also expressed concerns surrounding a LCMA 4 specific stock assessment and strongly feel that LCMA 4 exhibits vast differences in the fishery compared to LCMA's 2 and 6. Until a separate stock assessment is performed for LCMA 4 only, they would like area 4 to be included with area 3 and not combined with areas 2 and 6. The LCMT members feel that the area 4 fishery compares most closely with area 3 and the fishery is not similar enough in areas 2 and 6 to combine. Due to the lack of science and independent data collection in LCMA 4, the resounding recommendation from all LCMT 4 members is the need for independent research. This will provide the basis and data needs for an independent Area 4 stock assessment in the future. Research topics discussed included DNA comparison between LCMA 4 harvested lobsters vs. lobsters harvested in other areas of SNE and GBK as well as tagging/recapture studies in the same areas.





### NY and NJ LCMA 4 Landings





# Atlantic States Marine Fisheries Commission

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## MEMORANDUM

September 19, 2014

**To: American Lobster Management Board**  
**From: Dan McKiernan, Board Chair**  
**Re: Summary and conclusions of the Lobster Trap Allocation History database meeting and the consequential recommendations on the timing of trap allocation cuts for LCMA's 2 and 3**

On Thursday August 28, 2014, a meeting of the Lobster Trap Allocation History (LobsTAH) Database Working Group was convened to address the goals of the final database, discuss ways to ensure the allocation and permit information are properly maintained at the state, federal, and ACCSP level and reviewing timing of trap allocations and trap cuts.

### Attendance

Karen Holmes (ACCSP)	Ted Hawes (GARFO)	Renee Zobel (NH F&G)
Kate Taylor (ASMFC)	Dan McKiernan (MA DMF)	Scott Olszewski (RI DEM)
Peter Burns (GARFO)	Tom Hoopes (MA DMF)	John Lake (RI DEM)
Chip Lynch (GARFO)	Story Reed (MA DMF)	Colleen Giannini (CT DEEP)
Julie MacKey (GARFO)	Kerry Allard (MA DMF)	Kim McCowan (NY DEC)

### Agenda

1. Review the status of Lobster Trap Allocation History Database
2. Group discussion of Database functions and questions on future improvements
3. Discussion of pending issues associated with transferability
  - a. How a dual permit holder's changes to a state and federal permit are handled in each respective jurisdictions' systems, and how that might affect our ability to maintain accurate records of an entity's allocation;
  - b. Accounting for the transfer of traps with multi-area histories;
  - c. Business rules and transfer administration (applications, forms, processing, communications, coordination, etc.)

### Background

Addendum XVIII 's effort control initiatives enacted in August 2012 will further reduce fishing mortality in southern New England through trap allocation cuts for Area 3 and Area 2 with a 5 and 6 year schedule (respectively). The initiation of these cuts is contingent on the simultaneous establishment of trap allocation transfer program to mitigate the effects of the trap allocation cuts on individual businesses. Both the trap cuts and the transfer program are also contingent on the

creation of a central database that would house both federal and state trap allocations. The need for this database was first established back in Addendum XII approved in February 2009.

For the past two years, ACCSP staff have endeavored to create a database that would house all state-issued and federal-issued trap allocations in a single database maintained by state agencies and NMFS to effectively track trap allocations, and execute transfers with the requisite trap transfer tax (10%). Key to the success of this database is the ability to link, for any dual permit holders, the state allocation and the corresponding federal allocation and allow the cooperating fishery managers and licensing staffs across agencies to be able to identify these corresponding permits issued to single fishing entities.

## **Meeting Results**

### **Database Update**

A demonstration of the latest version of the database and its functions was shown by Karen Holmes of ACCSP (via webinar). The database is still in development and only Massachusetts and Rhode Island state data have been uploaded. As of the date of the meeting, NMFS was still in the process of approving each individual permit holder's federal allocations for Areas 2 and Outer Cape Cod (OCC). Consequently, none of the federal allocations had yet to be added to the database. NMFS is still in the process of completing their processes of allowing eligible federal permit holders to request trap allocation for Area 2 and OCC. This process is expected to be completed by late fall 2014.

After reviewing the database functions, concerns were expressed by members of the working group that the current version of the database was insufficient in its ability to link permits and allocations across and within jurisdictions to a single entity. As constructed, the database was designed to allow only transfers between vessels or between named persons. This approach reflected the traditional schism in the state vs. federal approach of NMFS issuing permits to vessels while states were issuing permits to named persons. A resolution was proposed by Karen Holmes to expand the data elements that states and NMFS will furnish to the ACCSP.

During the meeting, there was much discussion focused on how state and federal permit permitting staff need to create future internal business rules concerning issuance – or amendments - of permits to those entities that have been issued state and/or federal trap allocation. Discussion focused on how records from the respective state and federal permit files might get “refreshed” in the ACCSP trap allocation database. It was agreed that it is critical to prevent the splitting off of the allocations to two separate businesses (vessels) resulting in the so-called “pregnant boat syndrome.” It is recommended that each agency (states and NMFS) issuing permits to persons or vessels with trap allocation “flag” these records and if changes to any aspect of the permit are requested by the holder, those changes should be delayed until all agencies permitting that permit holder and vessel are notified. Such changes would include

permit transfer or sale, change in company name, vessel replacement, vessel re-registration, and placing federal permit in Confirmation of Permit History (CPH).

The work to establish linkages between the state and federal permitting systems for individual fishing businesses is challenging because it is unprecedented. It is well known that NMFS issues permits to vessels and states issue permits to persons. Moreover, when a permit holder or vessel owner amends their state or federal permit, there has not been formal communication that occurs between agencies that both permit the fishing business. In the past this has not had significant consequences, however under Addendum XII, there are consequences: To prevent the pregnant boat syndrome, dual permit holders are not allowed to split the permits off to different vessels without consequences. According to Addendum XII 4.1.2: *“If a dual permit holder “splits” his/her permits by transferring either the federal or state permit to another entity, then the entire fishing history is to remain with the federal permit for the purpose of the initial qualification and allocation decision.”*

For the corresponding state and federal records for permits that are issued to a single entity (dual permit holder) it is possible to establish linkages because states collect vessel information and NMFS collects permit and vessel owner information. The key to success will be for each jurisdiction to collect and maintain identifying data elements that would be common to the federal and state data systems to establish linkages for single fishing entities in the ACCSP trap allocation database.

The problems identified by state participants were the many routine state permit changes that could compromise the database. These are rather routine permit amendments and include: vessel replacement, permit transfer to another person, addition or dropping of a federal permit, and addition or change to a company name. These changes would make it more difficult to maintain the integrity of the records of a dual permit holder in the ACCSP database that is being designed to effectively track the trap allocations for an entity that holds both a state and federal permit (or permits with allocations in multiple states) and has been approved for trap allocation.

### **Business Rules and Transfer Administration**

The Working Group discussed establishing official procedures and forms for the execution of transfers. An official prototype form will be drafted that can be reproduced with identical content by each state and NMFS for consistency.

As for creating an annual schedule, the federal rule requires all applications for transfers of federal trap allocation must be submitted by September 30 of a calendar year for processing and approval by year's end. The updated trap allocations would appear on the recipients new permit issued for the following year and the trap tag order would be approved for the updated (post transfer) quantity of allocated traps.

As for the question of agency lead, it was recommended that federal and dual permit holders with trap allocation who seek to transfer allocation should apply to NMFS for the transfer to be

executed, while state-only permit holders who seek to transfer their allocation should apply to the state where the allocations are held. For dual permit holders, NMFS would notify and seek concurrence from the state agency where the state allocations are held.

### **Trap Tag Distribution**

Additionally, the states and NMFS are dealing with the unresolved issue of the trap tag vendor for 2015. ASMFC has issued a RFP for vendors to compete for the contract for the next two years to issue trap tags. Successful trap tag issuance is critical for this program to succeed.

### **Rule changes are warranted for successful implementation of transfer program**

NMFS final rules on trap transfers are not completely compatible with various addenda of the interstate plan and, to function effectively, the database must track and execute a single set of business rules for both state and federal permit holders. To complement the recent actions taken by NMFS concerning trap allocation transfers, it will be necessary for ASMFC to enact a new Addendum to make minor amendments to its interstate plan rules. See 7/28/14 memo to the Board from Kate Taylor. These include the issues of conservation tax on full business transfers, increments of amount of trap allocation that may be transferred; and dual permit transfers.

### **Schedule of implementation of trap cuts and allocation transfers**

The Board was previously briefed in August 2014 on the ongoing challenges – and resulting delays - in the development of the database and the NMFS ongoing processing and appeals of trap allocations applications. As the working group has moved forward to address these challenges, fishing year 2015 is an impossible deadline to meet for the trap cuts and trap allocation transfers. The working group has developed the following proposed timeline for database completion, trap allocation and trap cuts:

- Late Fall/Early winter 2014 – all federal allocations completed
- Winter 2015 - complete the testing of the database
- Winter/Spring 2015 – States and NMFS hold public hearings for active and new fishermen, as well as permit brokers and fishing industry representatives, to inform the stakeholders about how the state/federal program will function and to explain the trap allocation and transfer rules.
- September 30, 2015 - Allocation transfer applications for NMFS and states will be accepted through this date and will be approved (or denied) in advance of the re-issuance of 2016 permits and trap tag orders.
- May 1, 2016 - trap allocation cuts will be executed for the 2016 fishing year

# **Request For Qualification and Proposal for Tag Manufacturing and Distribution**



**September 22, 2014**

**This RFP distributed by:  
The Atlantic States Marine Fisheries Commission  
On behalf of its Member States**

**All Proposals and other communications must submitted by October 10, 2014 to:**

**Kate Taylor, Senior Fisheries Management Plan Coordinator  
Atlantic States Marine Fisheries Commission  
1050 N. Highland Street, Suite 200A-N  
Arlington, VA 22201  
ktaylor@asmfc.org  
(703) 842-0740**

## INTRODUCTION

The Atlantic States Marine Fisheries Commission (Commission) seeks a qualified Vendor for manufacturing and distributing high quality tags for use in commercial and recreational American lobster fishing operations along the U.S. Atlantic Coast.

## TERMS AND CONDITIONS

**SCOPE:** To manufacture and ship an estimated 1.2 million tags per year ordered by an estimated 3,500 authorized individuals/companies as required by the Commission during a period of November 1, 2014 through May 31, 2016.

**CONTRACT PERIOD:** Contract to begin November 1, 2014 and end May 31, 2016. The Commission reserves the right, by a majority vote of the applicable member states, to cancel the contract early if the requirements and payables within this contract are not successfully met and the guidelines are not adhered to.

**PRICES & DISCOUNTS:** Prices will remain firm for the duration of the contract. All prices are F.O.B. Destination.

**ORDERING PROCEDURE:** Delivery Orders (DO) will be created by the state agency. Refer to Attachment A.

**QUALITY OF PRODUCT:** Tags must be of high quality and able to withstand adverse environmental conditions including temperature extremes, extended sea water immersion and exposure to direct sunlight and spray from pressure washers. Refer to Attachment A for specific information.

**PAYMENT:** Payment methods vary. Processing of payments will begin upon 1) receipt of order form by the individual/company AND 2) authorization by the state agency or NOAA Fisheries. The pricing offered to the Commission shall be the final cost to the states and industry regardless of payment method. No surcharge or other compensation will be allowed. The Commission reserves the right to reject your bid if you are unwilling to accept this condition.

**RECEIPT:** Separate receipts are required for each order and to be sent to the authorized harvester or company. All receipts must reference: the authorized harvester or company, the authorizing agency, the payment amount and method received, description of the processed order, unique order number, and a tracking number for the shipment. Confirmation of orders should be sent electronically (where applicable) to the authorized individual or company and updated with shipment information upon availability. A copy of the receipt should be sent with the shipment order.

**PRICE ADJUSTMENTS:** Prices quoted shall remain firm for the duration of the contract. Price increases may be allowed due to changes in State and/or Federal law(s) with proper documentation. Any reduction in price may occur anytime during the contract period and shall apply on all shipments made on or after the date the reduction price becomes effective.

The state reserves the right to seek additional discounts from the contractor, or to contract separately for single purchase for a particular State project or other immediate use if, in the judgment of the Division of Purchases, the quantity required is sufficiently large to enable the State to realize a cost savings over and above the published contract prices, whether or not such a savings actually occurs.

**DELIVERY:** Deliveries shall be made within fifteen (15) business days of receipt of the order as specified by the contract, and in Attachment A, during the normal receiving hours of the ordering harvester, company, or agency. The contractor shall be responsible for the delivery of items in first class condition at the point of delivery and in accordance with good commercial practices.

**TAXES:** The states are exempt from the payment of excise taxes. Exemption certificates will be furnished upon request.

**REPORT OF PURCHASES:** Vendor will be required to furnish the Commission or member state with detailed summary of the total purchases made under this contract. This total may be requested yearly or at any time during the contract period.

**CANCELLATION OF CONTRACT:** The Commission reserves the right to cancel contracts upon a sixty day written notice OR cancel contracts IMMEDIATELY if the contractor does not conform to the terms and conditions of bid/contract.

**EXTENSION OF CONTRACT:** The Commission may, with the consent of the Vendor, extend the contract beyond the indicated expiration date if it is in the State's best interest.

## **APPLICATION PROCESS AND GUIDELINES**

### **STATEMENT OF QUALIFICATION AND PROPOSAL**

Your Statement of Qualifications and Proposal (Proposal) must include the following information:

- Company name, address, and brief description
- Contact information for key personnel to be assigned to this project
- A one page narrative as to your interest, particular abilities, and qualifications related to this RFQP, including specific examples of similar work (e.g. dealing with multiple organizations/purchasers, tight timeframe, volume, etc...)
- Detailed proposal on how your company would be able to meet the Terms and Conditions, including:
  - Potential design of tags (e.g. material, available colors, font, etc...),
  - Proof of tag durability
  - Shipment tracking capabilities
  - Manufacturing timeframes
  - Customer service policies, and
  - Proposed pricing structure(s)
- References



## **DEADLINE**

All Proposals must be received no later than 5 p.m. on October 10, 2014. All Proposals and other communications must be addressed and submitted to:

Kate Taylor, Senior Fisheries Management Plan Coordinator  
Atlantic States Marine Fisheries Commission  
1050 N. Highland Street, Suite 200A-N  
Arlington, VA 22201  
ktaylor@asmfc.org  
(703) 842-0740

## **PROPOSAL EVALUATION PROCESS**

This is an open and competitive process. Each Proposal will be reviewed and evaluated by the Commission based on the provided qualifications and proposed pricing structure. The price you quote should be inclusive. If your price excludes certain fees or charges, you must provide a detailed list of excluded fees with a complete explanation of the nature of those fees.

## **CONTRACT TERMS**

The Commission will negotiate contract terms upon selection. All contracts are subject to review by all applicable member states, and a project will be awarded upon signing of an agreement or contract, which outlines terms, scope, budget and other necessary items.

## **ABOUT THE COMMISSION**

In the early 1940s, recognizing that they could accomplish far more through cooperation rather than individual effort, the Atlantic coast states came together to form the Commission. An Interstate Compact, ratified by the states and approved by the U.S. Congress in 1942, acknowledged the necessity of the states joining forces to manage their shared migratory fishery resources and affirmed the states' commitment to cooperative stewardship in promoting and protecting Atlantic coastal fishery resources. For over 70 years, the Commission has served as a deliberative body of the Atlantic coastal states, coordinating the conservation and management of 25 nearshore fish species

# ATTACHMENT A

## DESCRIPTION OF THE TAGS

- 1) The tags must be made of high-density polyethylene (or other comparable material), flexible, and durable so as to be attached to any lobster trap, and/or fyke net and will survive intact in the salt water and New England weather for at least one year.
- 2) The tags must be easy to attach, even while wearing gloves, aboard a rocking boat.
- 3) The number of allowable tags will depend on permit/license/endorsement type and/or Lobster Management Area (LMA) and state or federal approval.
- 4) The standard tag types are:
  - State waters (for both commercial and recreational)
  - State and Federal Waters (Dual)
  - Federal waters only (EEZ)
  - Catastrophic loss (any of the above type)

The state-water licenses are issued to individuals while federal-water -permits are issued to vessels. The production of Catastrophic loss tags are only in the event of a catastrophic loss of an individual's or vessel's tags. Catastrophic loss tags are authorized by the state and issued to individuals or vessels who have had a documented loss of more than 10% of their maximum allocation. Catastrophic loss tags are a full replacement of the allocation and are a different color than standard tags they are replacing. States may have additional standard tag types.

- 5) The color of the tag, plug, and the imprint color change annually for each tag type. Each tag type has a different plug (or some other patent-protected sub-component of the tag) color. Refer to Attachments E and F for proposed tag colors. The purpose of the plug is to prevent the counterfeiting of trap tags.
- 6) Tags cannot be produced without authorization from the federal or state's authorized agent under any circumstances. In order to be legally allowed to purchase and possess trap tags an individual/vessel must have a valid license and/or federal permit. In the case of a dual license/permit scenario, individuals/vessels must have both the state license and federal permit renewed.
- 7) The tag must attach to the trap or net using a locking mechanism such that the tag cannot be removed without being cut or broken, and thus cannot be easily reattached or reused.
- 8) The tag should not interfere in any way with the operation of the trap or net.
- 9) The dimensions of each tag are should be as follows: minimum length 6 to 7 inches and width 3/8 to 1/2 inches. Other dimensions may be considered.

10) Each tag must be imprinted, with few exceptions, with five pieces of information:

- License or Permit Number
- Lobster Management Area (LMA)
- Tag type (state, dual, EEZ, or other)
- Tag number (sequential numbers from 0-maximum number)
- Year

The maximum number of characters to be printed on a tag is fifteen (15) although some state tags will require additional or different imprinting, to be specified. The printing must also survive, and be readable, in a salt-water environment for at least one year.

11) Replacement tags may also need to be manufactured. Color is to be predetermined by the Commission. These trap tags are processed immediately for use by the state or NOAA Fisheries and come at no cost to the state or NOAA Fisheries.

12) Non-commercial tags or recreational tags may need to be produced as well. Color to be predetermined by the Commission. These trap tags are processed immediately for use by the state and come at no cost to the state.

13) Additional tag types may be requested throughout the year by the state or NOAA Fisheries at no additional cost (e.g. additional replacement or recreational tags).

### **DISTRIBUTION, REPORTING AND INVOICING REQUIREMENTS**

1) Harvesters will order the tags from the states or directly from the Vendor throughout the year. It is critical that the Vendor be able to process orders directly from the harvester or company upon authorization by the state agency or NOAA Fisheries.

- a. If harvesters order tags from the states, the states will electronically submit orders daily, up to five days per week, to the Vendor with each harvester's name, address, license number, zone area and number of tags requested.
- b. If harvesters order tags from the Vendor, the state or NOAA Fisheries will supply the Vendor with a list of eligible harvesters approved to buy tags (state licensed individuals, dual permitted individuals, federally permitted vessels, and other authorized individuals) in Excel format on a weekly or more frequent basis (See Attachment C for a state example and Attachment D for a federal example). These spreadsheets will include harvester name, business name (where applicable), vessel information (where applicable), license/permit number, other required endorsement (where applicable), address, phone number, LMA, and authorized number of trap tags per tag type. The harvesters will also submit an order form to the Vendor, supplying their name, address, phone number, license/permit numbers, LMA, number of tags ordering, and payment method. If an individual submits an order form and is not on the federal or state's list, the Vendor is required to contact the federal or state's agent to obtain authorization to process the tags. The Vendor must only process orders based on authorization spreadsheet sent from the state or NOAA Fisheries and not on

the individual or vessel order forms they receive. If there is a discrepancy between the payment amount and tags ordered, the Vendor should contact the harvester first and, if necessary, the state or NOAA Fisheries. Once the state has authorized the individuals or companies that are qualified to receive trap tags, the order may be processed and tags are shipped to the ordering individual, company, or in some cases the states.

- 2) The Vendor will ship the requested number of tags to each harvester or state within 15 business days of receiving both the electronic notification from the state and individual harvester order form. If this time element cannot be met then it is critical that the state be notified immediately with an appropriate amount of time that the tags can be shipped.
- 3) In the event the tags will take longer than the 15 business-day requirement, or of a breakdown, malfunction or any other delay in the manufacturing or processing of tags, the state **MUST** be notified immediately by phone and email, outlining the problem, the resolution and date when shipments will resume.
- 4) The Vendor is responsible for the delivery of the tags to the harvester/state and for replacing any tags that are lost in transit or that are faulty. (The Vendor will redo any incorrect tags and ship to the harvester at the Vendors expense.)
- 5) As tags are shipped, the Vendor will report to the state when shipped, or at a minimum weekly, a listing of each harvester's or company's name, license/permit number, the order batch letter/number, the shipping date, quantity shipped, tracking number, and detailed summary of the order.
- 6) If any tags are returned undeliverable, the Vendor should immediately contact the state.
- 7) **Timely Vendor communication regarding issues and questions is essential.** A 24-hour response time to inquiries is expected. The Vendor should notify the states on a weekly basis with outstanding orders that have no associated approvals to allow for resolution of potential issues and ensure timely deliver to the license/permit holder.

#### **ANTICIPATED ORDERING AND DISTRIBUTION TIMELINE**

##### *November - February:*

- Order forms are sent to authorized licensees/permit holders by the states and NOAA Fisheries. Refer to Attachment B for an example of the order form. Licensees/Permit holders are given a recommended submit date to ensure timely delivery of their order.
- States will send Vendor a description of each tag scenario authorized for use.
- Authorized list is sent to Vendor by each state.

##### *January – June:*

- Orders begin for state license/permit holders
- Weekly authorization lists sent to Vendor, as needed

- Vendor supplies weekly excel spreadsheets to the states containing information about orders received and ship date, along with notes as to problems that may have delayed shipment of tags.
- Problems and questions addressed daily as needed.

2013

Maine Department of Marine Resources

Carl Wilson and Deirdre Gilbert

# [MAINE - AMERICAN LOBSTER COMPLIANCE REPORT]

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**I. Introduction**

Monitoring:

The DMR is responsible for the development and continuation of reliable scientific information for the use in management decisions regarding the lobster fishery. To accomplish this goal the DMR relies on monitoring programs first established in 1967 and more recent programs established in the 1980s, 1990s and as recently as 2006. Landings in 2013 were 125.8million pounds valued at \$363.9 million. In 2013, one fishery-dependent and three fishery-independent programs were used to evaluate the lobster population and associated fishery.

During 2013, several changes to the regulations governing lobster management took effect relative to the use of bait in the lobster fishery. Statutory changes included:

- Measures to ensure accurate reporting by dealers
- Revisions to the structure and composition of the Maine Lobster Marketing Collaborative
- Guidelines for the development of State of Maine fishery Management Plans
- Changes to the Swans Island Lobster Conservation Area trap limit
- Expansion of the military waiver for licenses
- Flexibility for lobster zone councils to recommend entry ratios
- Exemption of the medical waiver for licenses

II. **Request for *de minimis*, where applicable.** (To be eligible for *de minimis* consideration, a state must prove that its commercial landings in the most recent two years for which data are available did not exceed an average of 40,000 pounds.)

III. **Previous calendar year’s fishery and management program**

a. **Commercial Harvests:** Total Harvest, Total Trap and non-trap , Total harvest by LCMA, and Total Harvest by Biological Stock (Fill in the table), total traps fished (not traps purchased)

Total State Harvest	Total Trap Harvest	Total Non-Trap Harvest	Total Harvest by LCMA	Total Harvest by Stock	Total Traps Fished
125759424.13	125759424.13	0	125759424.13	125759424.13	2,934,000 Total tags sold.

b. Total **Recreational** Harvest, recreational harvest by traps, and recreational harvest by divers (Fill in the Table)

Total Harvest	Harvest by Traps	Harvest by divers	Total Traps Fished
UK	Trap only	NA	UK

- c. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

A complete copy of Maine lobster and crab regulations can be found at the following link.  
[http://www.maine.gov/dmr/lawsandregs/regs/25\\_022214version.pdf](http://www.maine.gov/dmr/lawsandregs/regs/25_022214version.pdf)

- d. Monitoring Programs (Fill in for the programs your state participates in)

e. **Sea Sampling:**

A total of 152 observer trips were completed, recording information from 34,936 trap. Biological information was obtained from 222,710 lobsters. Statistical areas 511, 12 and 13 were lightly sampled from January through April (n=6). During the months of May through November, each management zone was visited three times for a total of 21 trips monthly. Catch per trap continues to increase, as does the incidence of shell disease. The percentage of egg bearing lobsters that are v-notched in the fishery has declined from a peaks in 2008

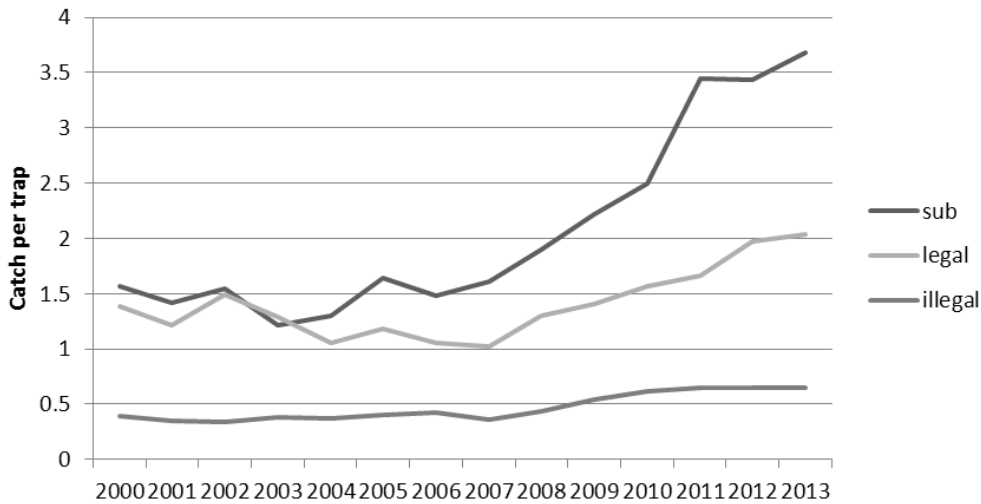


Figure 1. Mean catch per trap of sublegal, legal and illegal lobsters along the coast of Maine, all months sampled.



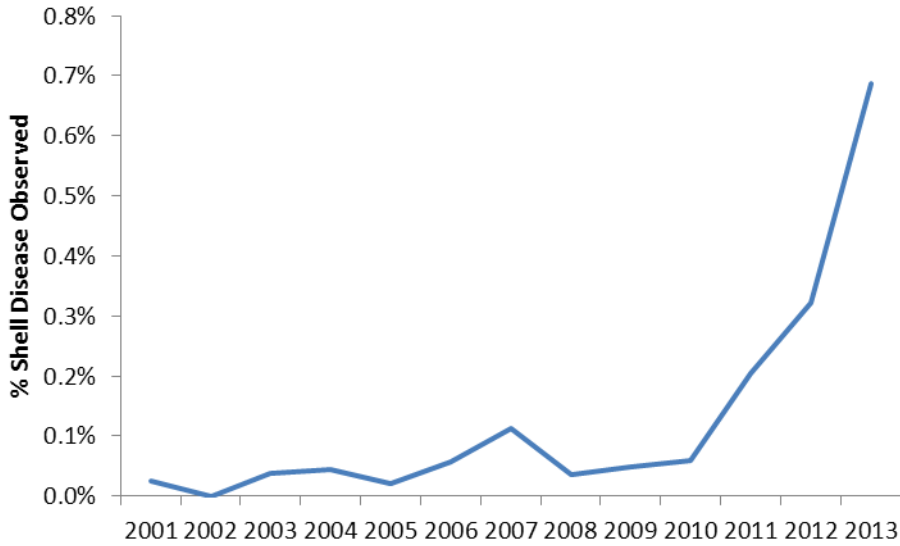


Figure 2. The incidence of shell disease for all lobsters measured, May-November. All zones.

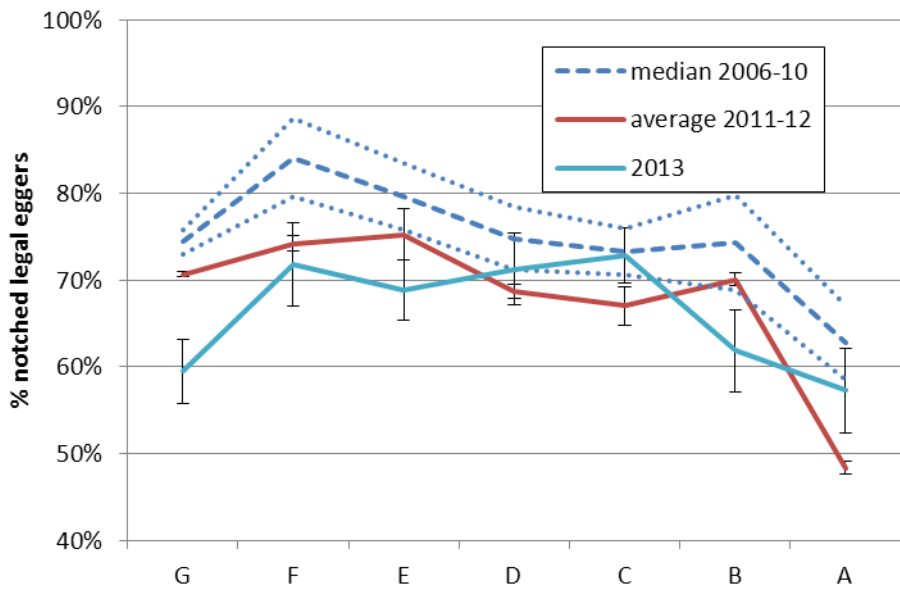


Figure 3. The percentage of legal sized egg bearing lobsters with a v-notch at the time of capture. Zones run from west (G) to east (A).

f. **Port Sampling:**

The Maine port sampling program was suspended following the 2012 sampling year. There are no plans to continue this program.

g. **YOY Settlement or larval:**

2013 settlement was below the time series mean for all seven management zones. In most areas, this was the third consecutive year of low settlement. There has been a general decline in settlement since the mid-2000s, and projections indicate a downturn in landings is likely.

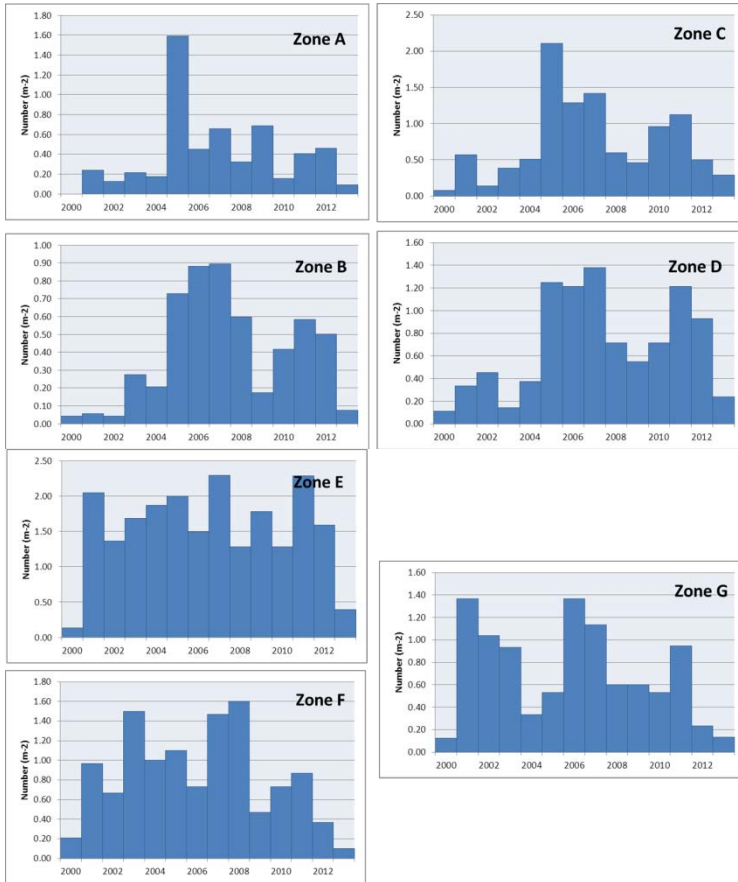


Figure 4. Density of newly settled lobsters, as observed by the settlement survey since 2000. Lobster management zones run from East (A) to West (G).

#### h. Ventless Trap Survey:

2013 marked the eighth year of the ventless trap survey. Traps were set during the months of June, July and August. 2013 catch rates were at time series high for 511, and slightly off peak for 512 and 513.

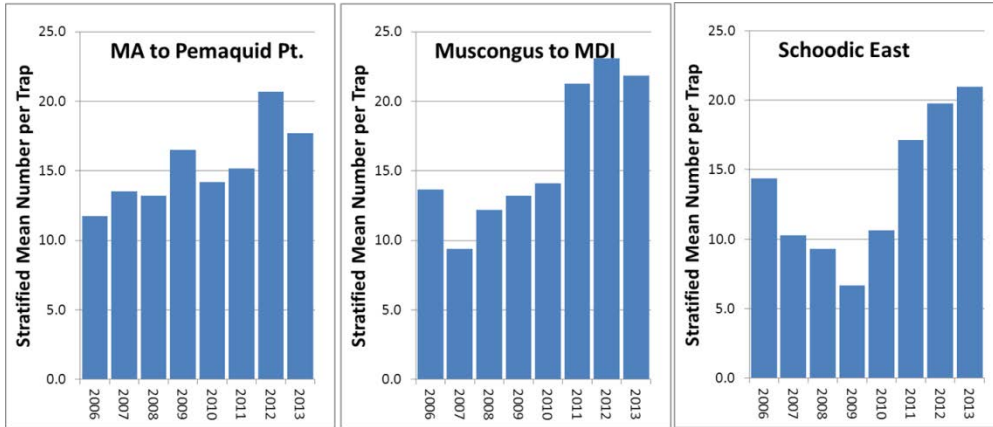


Figure 5. Stratified ventless trap catch rates for statistical area 511 (Schoodic East), 512 (Muscongus Bay to Mount Desert Island) and 513 (MA to Pemaquid Point).

**i. State Trawl Surveys:**

**SPRING 2013 SUMMARY**

The survey began May 6, 2013 in Portsmouth, New Hampshire and finished on June 7<sup>th</sup> off of Lubec, Maine. We completed 113 tows out of the scheduled 120. This translates to a 94.2% completion rate, with an average of 4.5 tows per day. A total of 19,012 lobsters were sampled for this survey, 8941 were females, 10,067 were males, 1 gynandromorph, and 3 were unknown. Total weight of lobsters was 3889.6 kilograms.

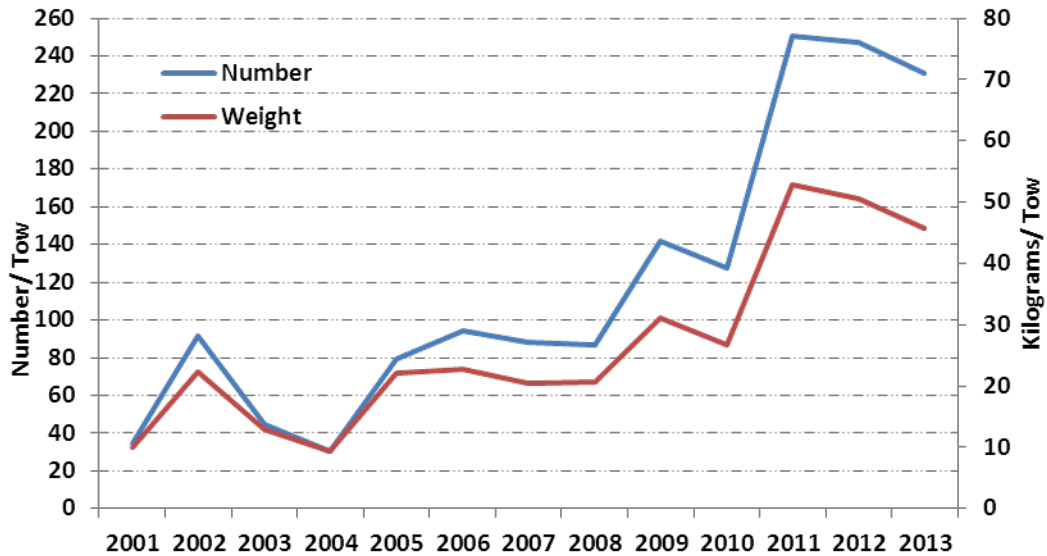


Figure 6. Stratified mean numbers and weights of lobsters caught in all spring surveys

<b>SPRING</b>				
<b>Stratified Mean</b>			<b>Stratified Mean</b>	
	<b>Number</b>		<b>Weight</b>	

	Mean	CV	Mean	CV
<b>2001</b>	34.67	0.33	10.04	0.29
<b>2002</b>	91.47	0.32	22.42	0.29
<b>2003</b>	44.64	0.32	12.81	0.27
<b>2004</b>	30.17	0.24	9.31	0.22
<b>2005</b>	79.24	0.36	22.02	0.33
<b>2006</b>	94.52	0.46	22.75	0.38
<b>2007</b>	87.97	0.27	20.38	0.25
<b>2008</b>	86.54	0.46	20.63	0.47
<b>2009</b>	141.89	0.48	31.02	0.38
<b>2010</b>	127.54	0.24	26.80	0.21
<b>2011</b>	250.20	0.27	52.90	0.25
<b>2012</b>	247.04	0.26	50.57	0.23
<b>2013</b>	230.63	0.25	45.77	0.23

FALL 2013 SUMMARY

The survey began September 23, 2013 in Portsmouth, New Hampshire and finished on October 25<sup>th</sup> off of Lubec, Maine. We completed 96 tows out of the scheduled 120. This translates to an 80.0% completion rate, with an average of 4.0 tows per day. A total of 16,201 lobsters were sampled in this survey, 8011 were females, and 8189 were males, with 2 unknown. Total weight of lobsters was 3585.3 kilograms.

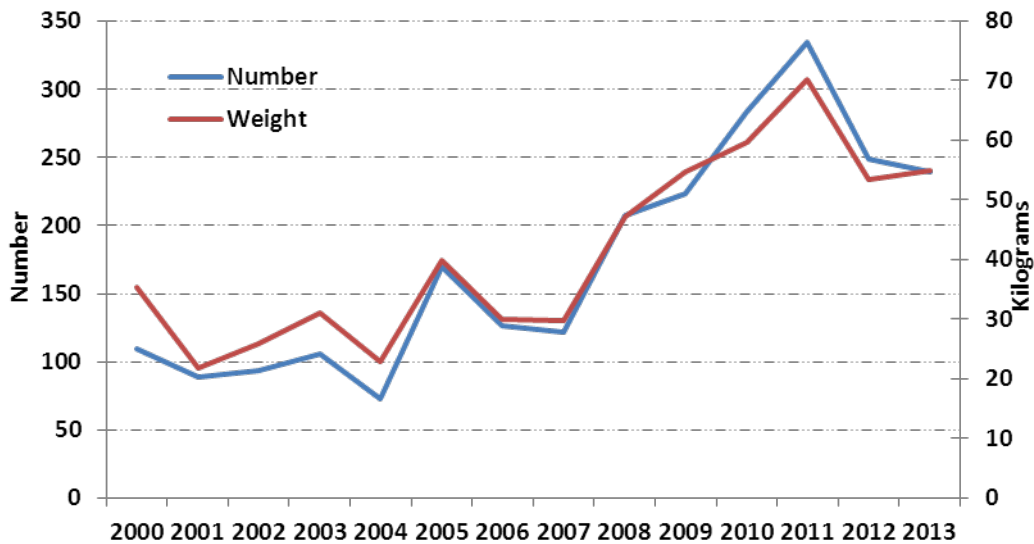


Figure 7. Stratified mean numbers and weights of lobsters caught in all fall surveys

<b>FALL</b>				
<b>Stratified Mean</b>			<b>Stratified Mean</b>	

	<b>Number</b>		<b>Weight</b>	
	<b>Mean</b>	<b>CV</b>	<b>Mean</b>	<b>CV</b>
<b>2000</b>	109.43	0.39	35.44	0.30
<b>2001</b>	88.61	0.37	21.79	0.28
<b>2002</b>	93.61	0.23	25.97	0.19
<b>2003</b>	105.40	0.16	30.99	0.16
<b>2004</b>	73.21	0.36	22.84	0.28
<b>2005</b>	169.79	0.30	39.83	0.31
<b>2006</b>	126.31	0.33	30.02	0.31
<b>2007</b>	121.53	0.30	29.75	0.27
<b>2008</b>	207.77	0.36	47.15	0.25
<b>2009</b>	223.66	0.34	54.62	0.27
<b>2010</b>	280.43	0.21	59.57	0.21
<b>2011</b>	334.86	0.23	70.25	0.21
<b>2012</b>	247.29	0.20	53.20	0.18
<b>2013</b>	239.39	0.17	54.86	0.18

#### **IV. Planned management programs for the current calendar year**

##### **Regulatory Changes:**

The Department undertook rule-making to enact a mandatory review of all lobster and crab baits to prevent the introduction of contagious pathogens, pests, parasites, or invasive species into Maine waters. The Department is authorized to issue lists of approved and prohibited baits, and bait dealers have to apply to the Department for review of any bait source that has not been previously classified.

##### **Statutory Changes:**

The Maine Legislature enacted laws making the following changes to Marine Resources statutes:

- Additional measures to ensure that lobster dealers accurately attribute landings to the license holder under whose authority the lobsters were taken;
- Revisions to the structure and composition of the entity responsible for the marketing and promotion of Maine lobster, resulting in the formation of the new Maine Lobster Marketing Collaborative with an increased budget, reaching \$2.25 million in 2016;
- Additional guidance regarding the development of fisheries management plans for state water fisheries, including what the plans must address and what they must include;
- An increase in the Swans Island Lobster Conservation Area trap limit from 475 traps to 550 traps;
- An expansion of the ability for an individual serving in the military to obtain a waiver from the requirement to purchase their lobster license each year (was previously 6 years and was expanded to 10 years);
- Increased flexibility for Zone Councils to recommend that the yearly entry calculation be based on either licenses retired or tags associated with licenses retired;

- An expansion of the medical waiver to allow the family member (spouse or child) who has completed the apprenticeship program to haul the license's holders gear if medical issues prevent the license holder from fishing, for up to one year.

d. Summarize monitoring programs that will be performed.

Existing monitoring programs will remain intact for 2014 (sea sampling, ventless trap, trawl survey).

e. Highlight any changes from the previous year (note if you are canceling or suspending a program)

In response to a public health closure at the mouth of Penobscot River (mercury contamination), the DMR will be setting additional traps in the closure to collect confirmation samples. Approximately 75 traps will be set on a quarterly basis.

# AMERICAN LOBSTER STATE COMPLIANCE REPORT

-2013-

Submitted by the State of New Hampshire

## I. Introduction

The American lobster (*Homarus americanus*) fishery in New Hampshire state waters is located in Lobster Conservation Management Area (LCMA) 1 and in the Gulf of Maine (GOM) stock. Both fisheries dependent and fisheries independent data are collected from state waters, and due to the fact that vessels fishing in offshore waters land catch in New Hampshire ports, data regarding some of these activities are also collected and regulations enforced. Currently, American lobster is managed under Amendment 3 to the Interstate Fishery Management Plan. The goal of Amendment 3 is to have a healthy American lobster resource and management regime, which provides for sustained harvest, maintains appropriate opportunities for participation, and provides for cooperation development of conservation measures by all stakeholders.

This report summarizes both fisheries dependent and fisheries independent data collected by New Hampshire Fish and Game (NHF&G) personnel, and also highlights changes in regulations pertaining to the lobster fishery. During the reporting period NHF&G continued to collect lobster harvester and dealer data to standards set by Atlantic Coastal Cooperative Statistical Program (ACCSP). Furthermore, NHF&G collected data from the following projects pertaining to lobster: sea sampling, port sampling and the Random Stratified Ventless Trap Survey.

In 2013, Regulations were changed in 602.12 regarding the legal length of lobsters in each respective lobster management area. A copy of the regulations for 2013 can be found in appendix I.

## II. Request for *de minimis*, where applicable.

New Hampshire does not request *de minimis* status

## III. Previous calendar year's fishery and management program

### a. Commercial Harvests:

All licensed lobster harvesters fishing in New Hampshire state waters are required to report harvest and effort data. Harvesters are required to report monthly, trip-level data collecting all ACCSP standard data elements if they landed 1,000 pounds or more the previous year, or annual, monthly-summarized data if they landed less than 1,000 pounds the previous year. In 2013, 3,822,844 pounds of lobster were landed in New Hampshire, of that total 813,842 came from state waters, where 37,779 traps were fished.

b. **Recreational Harvest:**

Recreational lobster fishing in New Hampshire represents those harvesters that fish with 5 traps or less with no sale of harvested lobster allowed. All recreational lobster harvesters are required to report monthly-summarized harvest and effort data on an annual basis. Table 1 summarizes information pertaining to the recreational harvest of lobster collected by NHF&G in 2013.

**Table 1. Summarized recreational harvest data pertaining to boats harvesting lobster from New Hampshire state waters in 2013.**

Year	Total Harvest (lbs)	Harvest by Traps (lbs)	Harvest by divers	Total Traps Fished
2013	6,553	6,553	N/A	472

c. Copy of the regulations that were in effect in 2013 can be found in Appendix I.

d. Monitoring Programs:

e. **Sea Sampling:**

Lobsters were sampled monthly from May through November at four areas including the Piscataqua River, Isles of Shoals and along the northern New Hampshire coast (north of Rye Harbor to Maine border). The southern New Hampshire coast (Rye Harbor and south to the Massachusetts state border) was sampled in alternate months starting in May.

The following biological data were collected for each lobster: sex, presence and developmental stage of eggs, cull condition, molt stage, shell disease and each lobster was measured for carapace length (mid-dorsal carapace length to the nearest millimeter). Data were also collected as to the number of nights each trawl had been fishing, number of traps per trawl, type of bait used, water depth of each trawl, and a surface water temperature was taken at the time of each trip. Table 2 shows the total number of trips taken and lobsters sampled in 2013.

**Table 2. Total number of trips taken and lobsters sampled during sea sampling trips in New Hampshire state waters in 2013.**

Year	Statistical Area	# Trips	# of Lobsters
2013	513	20	15,998

f. **Port Sampling:**

Lobsters were sampled on a monthly basis at NH dealers with boats fishing in federal waters from April through December in 2013. Sampling took place at the lobster dealers, where an interview with the captain occurred and a biological sample was taken. If the captain was not available at the time of the sample, a phone interview was conducted. The interview consisted of the following questions: name, vessel name, type and amount of bait, number of trawls hauled, number of traps per trawl, number of set days, percent of traps



hauled that were single parlor, size of crew, location of area fished, average depth (feet), total weight (lbs) of landed catch, and were any lobsters (number and size) kept or sold at another location.

A biological sample was taken from the landed catch. A maximum of 100 and a minimum of 15 lobsters were sexed, measured for carapace length to the nearest millimeter (mm), noted for molt stage and shell disease, and the measured catch was weighed (lbs). The minimum number of lobsters that could be sampled (15) was chosen because at certain times of the year, when catches are low, lobster fishers may not land 100 lobsters. Table 3 shows the total number of trips interviewed and lobsters sampled in 2013.

**Table 3. Total number of fishing trips taken and lobsters sampled from boats fishing in state and federal waters during port sampling in 2013.**

Year	Statistical Area	# of Trips	# of Lobsters
2013	464	8	1196

**g. Random Stratified Ventless Trap Survey:**

Since 2009, NHF&G has been conducting the coastwide Random Stratified Ventless Trap Survey in state waters (statistical area 513). New Hampshire follows the standardized coastwide procedures for this survey. A total of three sites were surveyed twice a month from June through September in 2013. Catch per unit effort (stratified mean catch per trap haul) from 2009 through 2013 is presented in Table 4. The relative abundance indices associated with this survey shows a general upward trend from 2009 through 2013.

**Table 4. Stratified mean catch per trap haul, for all lobsters captured during the coastwide Random Stratified Ventless Trap Survey in New Hampshire state waters from 2009 through 2013.**

Year	Stratified mean catch per trap
2009	6.9
2010	9.2
2011	13.9
2012	13.8
2013	10.5

**IV. Planned management programs for the current calendar year**

- d. The regulations that will be in effect in 2014 are the same as 2013 with the exception of Fis 608.01. This regulation requires any resident or non-resident with a lobster landing license or a commercial saltwater license whom lands lobster in New Hampshire and does not report trip-level harvest to another state or federal agency to report this information to the state in accordance with Fis 608.01(d).
- e. All monitoring programs conducted in 2013 will be conducted in 2014. Additionally, the Lobster Settlement Survey will be reinstated in 2014. This survey was not conducted in 2013 due to funding issues.
- f. All changes (if any) from previous year can be seen in section IV (d) and (e).

**Appendix I. Full text of New Hampshire statutes and administrative rules pertaining to Lobster and Crabs.**

**Statutes**

**I. Lobsters and Crabs**

**Section 211:18**

**211:18 License. –**

I. No person shall take lobsters and crabs from any water under the jurisdiction of this state without first procuring a valid and proper license to do so as provided in paragraph III. No such taking shall occur during the time from sunset to one hour before sunrise. The executive director shall adopt rules pursuant to RSA 211:62 relative to the licenses to be issued under paragraph III including, but not limited to, terms, limits, eligibility, transferability, sale, exemptions, revocation, trap tag fees, and control of entry date.

I-a. Any person who purchases a license to take lobster and crabs in waters of the state of New Hampshire pursuant to this section shall be deemed to have given consent to law enforcement officers to haul, for any purpose, their lobster and crab gear set for the purpose of taking or keeping lobster and crabs within the jurisdiction of the state of New Hampshire.

**II. [Repealed.]**

II-a. A person who is a resident of a state that provides reciprocal commercial permits or licenses to take lobsters to New Hampshire residents may take lobsters or crabs commercially upon first obtaining a license from the department, if the person's commercial license from the person's state of residence provides at least the equivalent number of traps allowed in the respective license class sought pursuant to this section.

[Paragraph III effective until January 1, 2012; see also paragraph III set out below.]

**III. The following fees shall apply to the following licenses:**

(a) If a person is a resident of this state and does not take lobsters or crabs for the purpose of selling them and does not use more than 5 traps, the person may receive a noncommercial license for the fee of \$35.

(b)(1) Any individual who possessed a valid commercial lobster and crab license or resident wholesale dealer's license pursuant to RSA 211:49-c or the provisions of former RSA 211:39-a in this state or any state that provides reciprocal permits or licenses as specified in paragraph II-a in any year from 1994 to 1998, inclusive, and who had documented landings of more than 12,000 pounds of lobster and crab in at least 2 of those years shall be eligible to receive a commercial lobster and crab license.

(2) Notwithstanding subparagraph (b)(1), the executive director may adopt rules to increase the number of commercial licenses available under this subparagraph from only those individuals who hold a valid limited commercial license, provided that any increase in licenses complies with the Atlantic States Marine Fisheries Commission lobster management plan.

(3) The fee for a resident commercial lobster and crab license shall be \$300 and the fee for a nonresident commercial lobster and crab license shall be \$600.

(c) Any individual who is not eligible for the commercial license under subparagraph (b) and any other individual engaged in commercial taking of lobster and crab may receive a limited commercial license. The fee for a resident limited commercial lobster and crab license shall be \$103 for new licensees on and after January 1, 2006, and \$175 for licensees who held a limited commercial license prior to January 1, 2006. The fee for a nonresident, limited commercial lobster and crab license shall be \$350.

[Paragraph III effective January 1, 2012; see also paragraph III set out above.]

III. The following criteria shall apply to the issuance of lobster and crab licenses by the department:

(a) If a person is a resident of this state and does not take lobsters or crabs for the purpose of sale and does not use more than 5 traps, the person may receive a recreational lobster and crab license.

(b) Any individual who possessed a valid commercial lobster and crab license or resident wholesale dealer's license pursuant to RSA 211:49-c or the provisions of former RSA 211:39-a in this state or any state that provides reciprocal permits or licenses as specified in paragraph II-a in any year from 1994 to 1998, inclusive, and who had documented landings of more than 12,000 pounds of lobster and crab in at least 2 of those years shall be eligible to receive a commercial lobster and crab license.

(c) Any individual who possessed a valid limited commercial lobster and crab license prior to January 1, 2006 shall be eligible to receive a limited commercial lobster and crab license.

(d) Any individual wishing to engage in the commercial taking of lobster and crab may receive a part-time commercial lobster and crab license.

(e) Beginning January 1, 2012, any eligible individual shall purchase a commercial or limited commercial lobster and crab license for each calendar year in order to remain eligible to purchase such license in subsequent years, except that:

(1) Active duty military personnel stationed outside the state for any portion of the calendar year may submit duty orders and a written request to the executive director to obtain an exemption for that year.

(2) The purchase requirement shall not pertain to those individuals prohibited from purchasing a valid lobster and crab license for the entire calendar due to a court conviction for violation of marine fisheries regulations.

(3) The purchase requirement shall not pertain to those individuals who file with the executive director, each year, a notarized affidavit indicating their intent to remain eligible to purchase such license in subsequent years. The notarized affidavit shall be on a form provided by the department and shall be postmarked on or before June 30 of that year.

[Paragraph III-a effective January 1, 2012.]

III-a. The following fees shall apply to lobster and crab licenses issued under this section:

- (a) Resident commercial lobster and crab license; \$300.
- (b) Nonresident commercial lobster and crab license; \$600.
- (c) Resident limited commercial lobster and crab license; \$175.
- (d) Nonresident limited commercial lobster and crab license; \$350.
- (e) Resident part-time commercial lobster and crab license; \$103.
- (f) Nonresident part-time commercial lobster and crab license; \$350.
- (g) Recreational lobster and crab license; \$35.

[Paragraph III-b effective January 1, 2012.]

III-b. Notwithstanding paragraph III, the executive director may adopt rules to increase the number of commercial lobster and crab licenses available under this section from only those individuals who hold a valid limited commercial or part-time commercial lobster and crab license, provided that any increase in lobster and crab licenses complies with the Atlantic States Marine Fisheries Commission lobster management plan.

IV. [Repealed.]

V. Nothing in this section shall pertain to the taking of green crabs.

**Source.** RL 245:42. 1950, 12:2. 1951, 200:1. RSA 211:18. 1965, 305:1. 1977, 286:1. 1981, 498:5. 1986, 214:4. 1987, 62:3. 1996, 246:1, 2. 1998, 116:1, 2. 1999, 26:4, II. 2004, 166:2. 2005, 204:1. 2006, 140:1, eff. Jan. 1, 2007. 2011, 81:1, eff. Jan. 1, 2012.

#### **Section 211:18-a**

**211:18-a Penalty, Loss of License.** – In addition to any other penalty any lobster license holder convicted of assaulting an enforcement officer or wilfully damaging any boat or motor used by an enforcement officer shall lose his lobster license for one year.

**Source.** 1965, 170:2, eff. June 22, 1965.

#### **Section 211:18-b**

**211:18-b Green Crabs.** – [Repealed 1997, 10:25, I, eff. Jan. 1, 1998.]

#### **Section 211:18-c**

**211:18-c Crabs.** – Notwithstanding any provisions of this chapter to the contrary any person may take 12 crabs a day by angling, diving, or by hand without a license.

**Source.** 1971, 240:1. 1987, 62:5, eff. April 29, 1987.

#### **Section 211:18-d**

**211:18-d Penalty for Misuse of Lobster and Crab License.** – Any person who furnishes to another person or permits another person to have or use a lobster and crab license issued to himself or any other person or changes or alters such license or uses a license issued to another person or makes a false statement in application to obtain said license shall be guilty of a misdemeanor.

**Source.** 1977, 286:2, eff. June 26, 1977.

#### **Section 211:19**

**211:19 Definition.** – [Repealed 1973, 580:2, eff. July 5, 1973.]

#### **Section 211:19-a**

##### **211:19-a Rye Harbor, Prohibition.** –

I. The taking of lobsters and crabs in Rye Harbor by any person is forbidden. No lobster or crab trap buoys may be placed in the harbor or the approach channel to the harbor. A fisherman has 24 hours to remove his or her gear from restricted areas after an authorized enforcement officer makes a verbal request to the fisherman to remove said gear. An extension may be granted in the case of rough seas or thick fog.

II. State conservation officers and persons appointed by the Pease development authority, division of ports and harbors shall enforce the provisions of this section, and may remove gear from the restricted area if the verbal request authorized in paragraph I of this section is ignored.

III. Rye Harbor as used in this section means the area below high water mark inside the northeast and southwest breakwater on the seashore at Rye, and an area west of an imaginary line beginning 200 feet seaward from the day marker on the northeast jetty on the northeast boundary of the channel and running

northeasterly at right angles to the northeast boundary of the channel to Ragged Neck point. The harbor master may designate and buoy at his discretion a channel, at least 100 feet wide, running from the jetties at the harbor entrance to a point in the vicinity of the whistling buoy. Said channel as designated shall be the approach channel to Rye Harbor.

IV. Any person who violates any provision of this section shall be guilty of a violation and his license to trap lobsters shall be suspended for a minimum of 30 days.

**Source.** 1965, 170:1. 1969, 261:1. 1973, 531:61. 2001, 290:9, eff. July 1, 2001.

#### **Section 211:20**

**211:20 Helper's License.** – Any person licensed under the provisions of RSA 211:18 may get a helper's license which entitles the person to have the help of a person in the taking of lobsters or crabs. The helper's license may be transferred to any one helper employed by the licensee, but may not be transferred to a person who previously had a lobster license which is under suspension. A helper may assist, set, or haul pots or traps or any other device used in the taking of lobsters and crabs only in the presence of and aboard the boat of a person licensed under the provisions of RSA 211:18, and who holds a valid helper's license. The fee for a helper's license is \$10. The executive director shall adopt rules pursuant to RSA 541-A relative to the terms and restrictions of a helper's license to comply with lobster trap limits established under the Atlantic States Marine Fisheries Commission management plan for American lobster relative to reduced fishing effort.

**Source.** 1953, 199:2. RSA 211:20. 1965, 305:2. 1971, 146:1. 1997, 10:3. 2000, 256:1, eff. Aug. 11, 2000.

#### **Section 211:21**

**211:21 Revocation; Suspension.** – The executive director may revoke or suspend the lobster and crab license of any person who has been found guilty in any court of a violation of any provision of this chapter or any rule adopted under this chapter by the executive director. If an appeal is taken the license shall be suspended pending the disposition of said case and for not more than one year thereafter from date of conviction by the higher court. The executive director shall revoke or suspend the license of any person who has been found guilty in any court a second time within 5 years of the first finding of guilt, of a violation of any such laws or regulations, for a period of not less than one, nor more than 3 years from the date of such finding or conviction. The executive director may order any license to be suspended or revoked, after due hearing, for any cause that he may deem sufficient. Any person whose license has been revoked or suspended shall not accompany any licensed fisherman or assist him in any way while he is engaged in taking or transporting lobsters or crabs.

**Source.** RL 245:43. 1950, 12:3. RSA 211:21. 1955, 308:7. 2009, 11:2, eff. June 16, 2009.

#### **Section 211:22**

**211:22 Removal of Devices.** – Any person whose license has been suspended shall within 5 days remove from the waters all lobster traps, pots, cars, or any device used in taking or storing of lobsters and crabs. Said lobster traps, pots, cars or devices shall be taken to a place of storage on the shore and shall be inspected by a conservation officer and such traps, pots, cars or devices shall not be placed in the water again by any other person until they have been inspected by a conservation officer and rebranded with the last name and initials of the new user in a manner satisfactory to the conservation officer.

**Source.** 1947, 278:1. 1950, 12:4, eff. May 18, 1950.

**Section 211:23**

**211:23 Who May Take Lobsters and Crabs.** – [Repealed 2004, 166:6, eff. May 24, 2004.]

**Section 211:23-a**

**211:23-a Prohibited Methods of Taking.** – No person shall at any time take from any waters under the jurisdiction of this state any lobsters by diving, spearing or dipping.

**Source.** 1955, 324:5, eff. Aug. 5, 1955.

**Section 211:24**

**211:24 Female Lobsters.** – [Repealed 1977, 189:3, eff. Aug. 13, 1977.]

**Section 211:25**

**211:25 Spawn, Etc.** – No person shall remove spawn from any female lobster and no person shall take, serve, have in his possession, sell, or offer for sale any female lobster carrying spawn or any lobster spawn.

**Source.** RL 245:46. RSA 211:25. 1977, 189:1, eff. Aug. 13, 1977.

**Section 211:26**

**211:26 Female Lobsters.** – Whoever takes, buys, sells, or has in his possession any female lobster bearing eggs shall be guilty of a violation and, in addition, shall be guilty of a violation for each additional oviparous female lobster involved. However, a person who takes any such female lobster and immediately returns it alive to the waters from which it was taken is not subject to the penalty. This section shall not apply to lobsters spawning in cars or pounds, if they are, upon discovery, immediately liberated alive in the coastal waters; nor shall anything herein contained be construed as prohibiting the executive director or his agents from possessing and transporting female lobsters carrying spawn for propagation purposes.

**Source.** 1950, 12:7. RSA 211:26. 1965, 305:3. 1973, 531:62. 1977, 189:2, eff. Aug. 13, 1977.

**Section 211:27**

**211:27 Legal Length; Rulemaking.** –

I. No person may transport, buy, sell, give away, or expose for sale, or possess for any purpose, any lobster less than the minimum legal length alive or dead, cooked or uncooked, measuring from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell. The minimum legal length shall be determined in rules adopted by the executive director under RSA 211:62.

II. (a) Whoever ships, transports, carries, buys, gives away, sells, or exposes for sale, or possesses for any purpose, lobster meat, which has been cooked, before or after the meat has been taken from the shell, without the tail meat being whole and intact, and of a length determined in rules adopted by the executive director under RSA 211:62, shall be guilty of a violation of this section.

(b) All lobster meat shall be delivered in containers marked as prescribed by rules adopted by the executive director.

(c) For the purpose of this paragraph cooked lobster meat taken from the shell shall be laid out straight and measured from end to end and it shall not include the small part that is on the body end of the tail meat.

III. (a) Notwithstanding the provisions of paragraphs I and II, no person licensed pursuant to RSA

211:18 shall take, possess, or land any lobster greater than the maximum legal length from or on the waters under the jurisdiction of the state.

(b) A person not licensed to take lobster in accordance with RSA 211:18 may possess, transport, or land in accordance with RSA 211:49-a, RSA 211:49-aa, RSA 211:49-b, RSA 211:49-c, and RSA 211:49-d lobster greater than the maximum legal length if the lobster was legally taken from waters outside the jurisdiction of the state.

(c) The maximum length shall be measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell. The maximum legal length shall be determined by rules adopted by the executive director under RSA 211:62.

(d) All lobster possessed in accordance with this paragraph shall be whole and intact.

**Source.** RL 245:47. 1943, 114:1. 1950, 12:8. RSA 211:27. 1965, 305:4. 1967, 48:4. 1983, 85:1. 1989, 78:1. 1998, 349:1. 2010, 56:2, eff. July 1, 2010.

### **Section 211:28**

**211:28 Exceptions.** – Nothing in the provisions of RSA 211:27 shall be construed to prevent hotels or restaurants serving cooked lobster to guests for immediate consumption as food from chopping meat taken from lobster of legal length in reasonable quantities for current use; nor shall RSA 211:27 prevent an individual from chopping lobster meat for immediate consumption for himself, his family or his guests.

**Source.** 1950, 12:9, eff. May 18, 1950.

### **Section 211:29**

**211:29 Lobster Meat.** – No person, firm or corporation shall transport, possess or offer for sale lobster meat from sources outside the jurisdiction of this state unless such meat shall comply with RSA 211:27. The inclusion of any such meat of less than the prescribed legal length within any container, package, receptacle or tray shall subject all such meat included in said container, package, receptacle, or tray to be forfeited and the possessor of such meat shall be subject to the penalty imposed for violation of RSA 211:27. Provided, however, that the provisions of this section shall not prohibit the sale of lobsters canned in hermetically sealed cans not requiring refrigeration when the contents of the cans do not weigh over eight ounces net. Nothing in the provisions of this section or RSA 211:27 shall prohibit the processing and distributing within the state by packers or processors located within or without the state of processed lobster meat for the purpose of canning or freezing for resale as processed stews, newburgs, chowders or pies, or prohibit wholesalers and retailers from selling processed lobster meat packed in stews, newburgs, chowders or pies providing they are licensed as required by RSA 211:38.

**Source.** 1951, 200:3; 231:1. RSA 211:29. 1955, 308:9. 1961, 145:1, eff. May 26, 1961.

### **Section 211:30**

**211:30 Mutilated Lobsters.** – The possession of lobsters, or parts thereof, alive or dead, cooked or uncooked, mutilated in such manner as to make accurate measurements as prescribed in this chapter impossible, shall be prima facie evidence that they are not of required legal length. Provided that this section shall not apply to hotels, restaurants, or individuals having in possession chopped lobster meat as provided in RSA 211:28 or lobster processed under a lobster tail permit in accordance with RSA 211:38-a.



**Source.** 1951, 200:3, par. 47-c. 2010, 56:3, eff. July 1, 2010.

### **Section 211:31**

#### **211:31 Limitation. –**

I. No person, except the owner or a conservation officer, shall take up, lift, molest, have in his possession, or transfer any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs, nor take, remove or carry away from the beach or shore, any such pot, trap, car or other contrivance or warp or buoy without the written permission of the owner. In addition to the penalty for violation of this section, said person, if he holds a license, shall lose said license for one year.

II. The executive director of the fish and game department shall post sufficient permanent signs in proper places as the executive director deems necessary to inform the public of the provisions of RSA 211:31, I.

**Source.** RL 245:48. 1951, 200:4. RSA 211:31. 1975, 301:1, eff. June 7, 1975.

### **Section 211:32**

**211:32 Marking Pots and Traps. –** No person shall set any pot or trap for any lobster or crab without having the pot or trap and buoy attached, plainly carved or branded with his last name and initials. No person shall use or set in any tidal water any car or other contrivance for holding or keeping lobsters or crabs without having such car or contrivance plainly marked with the last name and initials carved or branded thereon. Any pots, traps, cars or other contrivance used to catch or store lobsters or crabs in violation of any provision hereof and any lobsters or crabs therein shall be forfeited.

**Source.** RL 245:49. 1950, 12:10, eff. May 18, 1950.

### **Section 211:33**

**211:33 Distinctive Colors. –** Each applicant for a lobster and crab license shall state the color scheme or other special markings of the buoys desired to be used by him. These colors, if approved by the executive director, shall be set forth in his license, and all buoys used by the licensee shall be marked accordingly. Also, each lobster boat must have painted said colors on port and starboard bow in a section not less than one foot square, or a freshly painted buoy set at the highest point on the boat excluding the mast and visible for 360 degrees. Such buoy or colors must be permanently attached at all times that lobster gear fished under that license is in the water.

**Source.** 1950, 12:11. 1951, 200:5. RSA 211:33. 1972, 25:1. 1975, 85:1, eff. June 14, 1975.

### **Section 211:34**

**211:34 Traps on Trawls. –** No pot, trap or other contrivance for taking or holding lobsters or crabs shall be set or buoyed other than plainly and separately except as hereinbefore provided. When pots, traps, or other contrivances are set on trawls, buoys plainly marked as provided in RSA 211:32 and 33 shall be set on both ends of the trawls. Pot or trap trawls used for taking lobsters and crabs which contain less than 5 pots or traps may be plainly marked on one end.

**Source.** 1951, 200:6. 1997, 10:4. 2008, 320:1, eff. Aug. 31, 2008.

### **Section 211:35**

**211:35 Reports. –** [Repealed 1985, 40:4, I, eff. June 8, 1985.]

### **Section 211:36**

**211:36 Forms for.** – [Repealed 1985, 40:4, II, eff. June 8, 1985.]

### **Section 211:37**

**211:37 Prohibition.** – If a conservation officer informs a person that his boat, automobile, truck, or any motor vehicle, wharf, dock or landing or contents thereof are about to be inspected, it is unlawful for the person to throw or dump or cause to be thrown or dumped from any boat, automobile, truck or other motor vehicle, dock, wharf, or landing, or destroy or cause to be destroyed any fish, lobsters, crabs, shellfish, or any pot, trap, car, contrivance, bag, box or other receptacle used for storing or catching lobsters or crabs, or the contents thereof, or any article or thing, or to cut loose any article or thing which may be attached to the boat, automobile, truck or any other motor vehicle, dock, wharf, or landing prior to the inspection. Any person who refuses or attempts to refuse to stand by for such inspection is guilty of a misdemeanor. The executive director shall suspend the license of the person for not less than one year. Any lobsters or crabs thrown or dumped or caused to be thrown or dumped in violation of this section are prima facie evidence that these lobsters or crabs were taken in violation of these statutes. A person is guilty of a violation for each lobster or crab which is thrown or dumped contrary to this section.

**Source.** 1941, 27:4. RL 245:52. 1947, 278:2. 1950, 12:12. RSA 211:37. 1965, 305:5. 1977, 588:38, eff. Sept. 16, 1977.

### **Section 211:38**

**211:38 Lobster Meat.** – No person shall sell lobster meat which has not been processed and sealed within containers which do not require refrigeration without first procuring a license to do so. The executive director shall issue such license for a period of one calendar year pursuant to the provisions of RSA 211:39, RSA 211:49-aa, and RSA 211:49-c. The license shall expire on December 31 of each year.

**Source.** RL 245:53. 1951, 200:7. RSA 211:38. 1961, 146:1. 1967, 48:1. 1985, 291:7. 2000, 256:2, eff. Aug. 11, 2000.

### **Section 211:38-a**

#### **211:38-a Lobster Tail Permit.** –

I. Any person who is licensed to engage in the wholesale trade of marine species in accordance with RSA 211:49-c may engage in the processing of lobster tails after procuring from the executive director a lobster tail permit. The lobster tail permit authorizes the licensee to remove a lobster tail from a legal sized lobster, as defined in RSA 211:27, I and II, and process that whole and intact lobster tail. No lobster greater than the maximum legal length as described in RSA 211:27, III shall be used for lobster tail processing. Processing shall only be conducted at the one location or place of business which is listed on the lobster tail permit. All containers in which lobster tails are packed to be sold, shipped, or transported must be clearly labeled with the name, address, and permit number of the packer along with a description of the product. The processing and possession of these lobster tails shall be permitted only for distribution outside New Hampshire.

II. The executive director may adopt rules relative to the taking, inspection, and processing of lobster necessary for implementation and enforcement of this section in accordance with RSA 211:62 and which may also include rules for determining that lobster tails processed under this section were removed from legal-sized lobsters and other provisions as may be necessary.

III. Measurements for the purpose of inspection shall consist of removal of the cooked meat intact from the lobster tail section and measured to ascertain conformity with size restrictions as specified in RSA 211:27, II.

**Source.** 2010, 56:1, eff. July 1, 2010. 2011, 81:2, eff. May 16, 2011.

### **Section 211:39**

#### **211:39 Retail Dealer's License. –**

I. No person, firm or corporation shall engage in a retail trade in lobsters or crabs, without first having procured from the executive director a license therefor. Such license shall entitle the holder, as a retail dealer, to buy, sell, ship and transport lobsters and crabs in retail trade within and outside this state. A separate license shall be required for each market, store, vehicle or other facility where lobsters and crabs are sold in retail trade. A retail dealer's license shall not be required of a person to buy or transport lobsters and crabs that are possessed by him for consumption by himself or family, nor of a properly licensed fisherman who, by virtue of his lobster and crab license, may transport and sell any lobsters and crabs that have been lawfully taken by him.

II. A fee of \$25 shall be charged for a license issued to a resident retail dealer selling lobsters, lobster meat or crabs.

III. A fee of \$50 shall be charged for a license issued to a nonresident retail dealer selling lobsters, lobster meat or crabs.

IV. The fees prescribed in RSA 211:39, II and III shall be charged for each license obtained by a retail dealer.

**Source.** 1950, 12:13. 1951, 200:8. RSA 211:39. 1967, 48:2, 3. 1985, 291:8. 1997, 10:5, eff. Jan. 1, 1998.

### **Section 211:39-a**

**211:39-a Wholesale Dealer's License. –** [Repealed 1997, 10:25, II, eff. Jan. 1, 1998.]

### **Section 211:40**

**211:40 Revocation. –** Any person holding a license under RSA 211:38 or 39 who is convicted of a violation of the laws relating to lobsters and crabs shall forfeit such license for not more than one year from the date of conviction in the discretion of the executive director.

**Source.** 1950, 12:14, eff. May 18, 1950.

### **Section 211:41**

**211:41 Search and Seizure. –** [Repealed 1975, 340:14, I, eff. Aug. 6, 1975.]

### **Section 211:42**

**211:42 Exceptions. –** The provisions of this subdivision relative to taking marine species shall not apply to transportation of marine species in interstate commerce where shipment originated outside the state and is consigned outside the state.

**Source.** 1951, 200:10. RSA 211:42. 1975, 340:10, eff. Aug. 6, 1975.

### **Section 211:43**

**211:43 Definition. –** The word "resident" as used in this subdivision when applied to a corporation shall mean a corporation organized under the laws of this state. The word "nonresident" as used in this subdivision when applied to a corporation shall mean a corporation organized under the laws of another state.

**Source.** 1951, 200:12, eff. Jan. 1, 1952.

#### **Section 211:44**

**211:44 Penalties.** – Any person who violates a provision of this subdivision shall be penalized as follows:

I. For each offense under RSA 211:22, 23, 23-a, 32, 34, 38 or 39 shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

II. For an offense under RSA 211:18, 18-a, 20, 21, 31, any person shall be guilty of a misdemeanor.

III. For an offense under RSA 211:24, 25, 26, 27, or 29, any person shall be guilty of a violation, and each lobster or crab or parts thereof involved will constitute a separate offense.

IV. [Repealed.]

**Source.** RL 245:56. 1951, 200:11. RSA 211:44. 1965, 305:6. 1973, 528:122. 1975, 340:14, II. 1985, 40:1, eff. June 8, 1985.

#### **Section 211:44-a**

**211:44-a Penalty.** – [Repealed 1975, 340:14, III, eff. Aug. 6, 1975.]

#### **Section 211:45**

**211:45 Disposition of Fees and Fines.** – [Repealed 1965, 307:2, eff. Sept. 5, 1965.]

### **Administrative Rules**

Fis 602.09 Marking and Tending of Gear.

(a) It shall be required of anyone taking crustaceans or finfish to identify all pots, traps or nets left unattended in the following manner:

(1) All fixed gear shall have the name of the owner permanently affixed.

(2) High flier buoys, as customarily used on longline gear, shall be marked with the name of the owner;

(3) Pot or trap trawls shall be marked at each end with at least a single buoy made of highly visible material;

(4) Gill nets and longline sets 6,000 feet or less shall be buoyed on each end to support a vertical shaft at least 5 feet high with a radar reflector of at least 100 square inches reflective area;

(5) Flags and pennants affixed to buoys marking a string of gear as required by this section shall be of uniform color;

(6) Weak links with a maximum breaking strength 1100 pounds shall be used in gillnet panels and on all flotation and/or weighted devices attached to the buoy line of gillnets set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances;

(7) Weak links with a maximum breaking strength of 600 pounds shall be used on all flotation and/or weighted devices attached to the buoy line of all other fixed gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances; and

(8) Beginning April 5, 2009, groundlines between traps or gillnet panels shall be sinking for all gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances.

(b) It shall be required of anyone fishing unattended pots or traps to conform to the requirement set forth in RSA 211:33.

(c) Tending of pots and traps, excepting weirs, shall be restricted to the period from one hour before sunrise to sunset.

Source. #1878, eff 12-4-81; ss by #2839, eff 8-31-84; ss by #4868, eff 7-20-90; ss by #6291, eff 7-20-96; ss by #8087, eff 5-27-04; ss by #9014, EXEMPT, eff 1-1-08; ss by #9299, eff 10-22-08

#### Fis 602.10 Lobster Trap Construction.

(a) No person shall fish for or take lobsters unless the trap is equipped with unobstructed escape vents or gaps in the parlor section which shall have:

(1) A rectangular or oblong escape vent not less than 1 15/16 inches by 5 3/4 inches located next to the bottom edge;

(2) At least 2 circular escape vents not less than 2 7/16 inches in diameter;

(3) A gap caused by raising, modifying or separating horizontal laths to comply with paragraphs (1) or (2);

(4) A gap caused by separating or modifying vertical laths to comply with paragraph (1);

(5) A gap caused by separating both ends of 2 laths 1 3/4 inches on the top of the parlor section next to the middle bow or supporting frame and directly over the parlor head; or

(6) In a wire or plastic trap, a gap created by cutting vents in the side or end to comply with paragraphs (1) or (2).

(b) No person shall set, raise, haul, or transfer any lobster trap unless the trap is equipped with an escape vent as required in this section or has been exempted under (c) below.

(c) The executive director shall exempt specific trap designs from the escape vent requirements of this section if it is statistically proven that the specific trap design will only take crabs and is incapable of taking lobsters. Any such trap design shall be approved by the executive director in writing after inspection by an agent for the executive director.

(d) In addition to the escape vents required in (a) all traps used to fish for or take lobsters shall have at least 2 runners or sills and an escape panel designed as follows:

(1) For a rectangular wire or plastic mesh trap:

a. At least 2 parallel runners or sills attached to the bottom of the trap running along the entire length of the exterior.

b. An unobstructed escape panel which shall be:

1. Located in the parlor section on the sides or end;

2. Hinged at the top of positively buoyant panels or at the bottom of negatively buoyant panels;

3. Tied with an untreated natural fiber such as cotton, sisal, hemp or jute not exceeding 3/16 inches in diameter before immersion in sea water, or a piece of non-stainless, uncoated ferrous metal wire not exceeding 3/32 inches in diameter; and

4. Of sufficient size to create an opening of at least 3-3/4" x 3-3/4" when the panel is removed or opened.

(2) Any non-rectangular wire or plastic mesh trap shall have at least 2 runners or sills and shall have an escape panel designed to create a space of at least 3-3/4" x 3-3/4" when open.

(3) The construction design of the runners, or sills, and the escape panels of a non-rectangular wire or plastic mesh trap shall be approved in writing by the executive director after inspection by his agent shows that the design of the trap will fish the same as the criteria for traps under (d)(1), above.

(4) Nothing shall be placed in the parlor section of any rectangular wire or plastic mesh trap, whatever the design, which would obstruct the 3-3/4" x 3-3/4" escape panel after disintegration of the natural fiber or other material.

(5) For a wood lath half-round or so-called "round" or wood rectangular trap:

a. Every wood lath half round or so-called "round" or wood rectangular trap shall have at least 2 parallel runners or sills on the bottom, running the entire length of the trap exterior.

b. Every wood lath half-round or so-called "round" or wood rectangular trap shall have an unobstructed escape panel which shall be:

1. Created by one untreated, softwood lath running the full length of the parlor section, which shall:

(i) Have the same dimensions as the other laths on the trap;

(ii) Not be located where it will rest on the sea-bottom; and

(iii) After disintegration, leave a space of at least 3.0 inches between adjacent laths; and

2. An opening of at least 3.0 inches between adjacent laths, running the length of the parlor section which is laced with an untreated natural fiber such as cotton, sisal, hemp, or jute not exceeding 3/16 inches in diameter before immersion in sea water; and

c. Nothing shall be placed in the parlor section of a wood lath half-round or so-called "round" or wood rectangular trap which might obstruct the 3 inch opening after disintegration of the untreated lath or natural fiber lacing.

(6) Any other type of wooden trap shall have runners or sills as described in (5)b.1. and an unobstructed escape panel laced with an untreated natural fiber such as cotton, sisal, hemp or jute not exceeding 3/16 inches diameter before immersion in sea water to provide a minimum opening of at least 3 3/4" x 3-3/4" in the parlor section when lacing disintegrates.

(e) The executive director shall exempt a specific trap design from the provisions of Fis 602.10(d) if the trap design will take only crabs and is incapable of taking lobsters.

(f) Any such trap design that meets the requirements of (e) above shall be approved by the executive director in writing after inspection by his agent.

Source. #4170, eff 11-26-86; amd by #4247, eff 3-30-87; amd by #4616, eff 5-25-89; ss by #5789, eff 2-18-94; amd by #5953, eff 1-25-95; amd by #6916, eff 12-22-98; amd by #7002, eff 5-25-99; ss by #7215, eff 3-16-00, EXPIRED: 3-16-08

New. #9216, INTERIM, eff 7-24-08; ss by #9299, eff 10-22-08

#### Fis 602.11 Lobsters.

(a) No person shall possess any V-notched female American lobster. For the purposes of this paragraph, V-notched lobster means any female lobster marked with a V-notch in the right flipper next to the middle flipper or any female lobster which is mutilated in a manner which could hide or obliterate the mark. The right flipper shall be determined when the underside of the lobster is down and its tail toward the person making the determination.

(b) No person shall be considered in violation of paragraph (a) if any such lobster is immediately returned to the natural habitat.

(c) All commercial and limited commercial lobster licensees shall immediately V-notch and return to the water, all egg-bearing female lobster captured in the process of taking lobster. For the purpose of this paragraph, a V-notch is a "V" shaped notch, cut by means of a sharp bladed instrument, of at least 1/4 inch and not greater than 1/2 inch in depth and tapering to a sharp point in the flipper next to and to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down.

(d) Any person who has more than one area designated on their federal lobster permit shall comply with the most restrictive measures regardless of where the lobsters were taken.

Source. #4395, eff 4-18-88; ss by #5789, eff 2-18-94, EXPIRED: 2-18-00

New. #7215, eff 3-16-00; ss by #7711, eff 6-20-02; amd by #7914, EXEMPT, eff 6-30-03; ss by #9919, EXEMPT, eff 4-29-11

Fis 602.12 Legal Length for Lobster.

(a) The minimum length for lobster shall be 3 1/4 inches except the minimum length for lobster taken or possessed in state waters by any vessel federally permitted to take lobsters in:

(1) Lobster Management Area 3 as specified in 50 CFR 697.18 shall be 3 1/2 inches except the minimum length beginning January 1, 2013 shall be 3 17/32;

(2) Lobster Management Areas 2, 4, 5, and the Outer Cape Lobster Management area shall be 3 3/8;

(3) Lobster Management Area 6, as specified in 50 CFR 697.18, shall be 3 5/16.

(b) The maximum length for lobster shall be 5 inches except as provided in RSA 211:27, III(b) or any vessel federally permitted to take lobsters in:

(1) Lobster Management Areas 2, 4, 5 and 6 shall be 5 1/4 inches; and

(2) Lobster Management Area 3 shall be 6 3/4 inches.

(c) Lobster tail meat taken from the shell shall not be less than 4 1/4 inches.



(d) Lobster and lobster meat taken from the shell shall be measured in accordance with RSA 211:27.

(e) No person shall possess or offer for sale individual lobster tails with the lobster meat in the shell except a person, firm or corporation properly licensed pursuant to RSA 211:49-c and who possesses a lobster tail processing permit specified in Fis 609.03.

Source. #4604, eff 4-26-89; ss by #4868, eff 7-20-90; ss by #6291, eff 7-20-96; rpld by #6443, eff 5-15-97; ss by #6916, eff 12-22-98; ss by #7711, eff 6-20-02; ss by #7914, EXEMPT, eff 6-30-03; ss by #8343, EXEMPT, eff 7-1-05; ss by #8819, EXEMPT, eff 2-1-07; ss by #9186, EXEMPT, eff 6-24-08; amd by #9772, INTERIM, eff 8-26-10, para (e) EXPIRED: 2-22-11; amd by #9887, eff 3-15-11 (para (e)); amd by #10266, EXEMPT, eff 1-29-13; (para (a) &(b))

Fis 602.13 Lobster Trap Limits.

(a) Any individual holding a commercial lobster and crab license shall not use more than 1200 traps to take lobsters.

(b) Individuals holding a limited commercial lobster and crab license shall not use more than 600 traps to take lobster provided the individual held a limited commercial license prior to January 1, 2006.

(c) Individuals holding a limited commercial lobster and crab license and who do not meet the requirement of (b) shall not use more than 100 traps to take lobster.

(d) No person shall take or possess lobster using a trap with a volume greater than 22,950 cubic inches.

(e) Any individual person with a trap allocation in Atlantic States Marine Fisheries Commission's (ASMFC) Lobster Conservation Management Areas (LCMA) 2, 3, 4, 5 or 6 who transfers any portion of their trap allocation to another individual shall not be permitted to fish for lobsters in state waters.

(f) Lobsters shall only be taken by trap in state waters pursuant to RSA 211:18.

Source. #6916, eff 12-22-98; ss by #8303, EXEMPT, eff 4-1-05; ss by #8528, EXEMPT, eff 1-1-06; amd by #9468, EXEMPT, eff 5-12-09

Fis 602.14 Transfer of Limited Commercial and Commercial Lobster Licenses - Temporary Physical Disability.

(a) A person holding a limited commercial or a commercial lobster license, pursuant to RSA 211:18 III, who suffers a temporary physical disability that precludes the ability to take lobsters for a minimum of 30 days may temporarily transfer a license as follows:

- (1) A commercial license to a person qualified pursuant to RSA 211:21; or
- (2) A limited commercial license to a person qualified pursuant to RSA 211:21 not presently licensed to take lobsters pursuant to RSA 211:18.

(b) The transferor shall submit in writing to the executive director the following:

- (1) The description of the temporary physical disability;
- (2) A physician's letter attesting to the disability;
- (3) The following information on the person who will be acting on the licensee's behalf:
  - a. Name;
  - b. Address; and
  - c. Current lobster license number; and
- (4) The time frame of the expected duration of the transfer.

(c) Any cost associated with obtaining the medical documentation shall be the responsibility of the transferor.

(d) The transferred license shall be valid for the period of the disability but no longer than 2 years from the date of transfer and shall convey all the privileges, rights and restrictions associated with such license.

(e) The transfer of the license shall not be effective until a letter from the executive director has been received stating that the transfer of the license has been made.

[Source.](#) #6916, eff 12-22-98; ss by #8303, EXEMPT, eff 4-1-05; amd by #8819, EXEMPT, eff 2-1-07

Fis 602.15 Transfer of Limited Commercial and Commercial Lobster License.

(a) In the event a commercial lobster license holder, pursuant to RSA 211:18 III, suffers death or a permanent physical disability that precludes the ability to take lobsters, the license holder or heirs may request the transfer of the license to a person qualified pursuant to RSA 211:21 as follows:

- (1) The transferor shall submit in writing to the executive director and include the following:
  - a. The description of the disability;
  - b. A physician's letter attesting to the disability; and

c. The following information on the person who will be receiving the license:

1. Name;
2. Address;
3. Phone number;
4. Current lobster license number; if applicable; and
5. The relationship of the person to the licensee.

(2) Any cost associated with obtaining the medical documentation shall be the responsibility of the transferee.

(b) A person holding a resident commercial lobster license who has landed a verified 12,000 pounds of lobster for any 2 years during the previous 3 years may request the transfer of the commercial license to a person qualified pursuant to RSA 211:21 as follows:

(1) The transferor shall submit in writing to the executive director the following information about the transferee:

- a. Name;
- b. Address;
- c. Telephone number; and
- d. Current lobster license number, if applicable.

(c) A person holding a resident limited commercial lobster license, pursuant to RSA 211:18 III(c) prior to January 1, 2006, who has landed a verified 6,000 pounds of lobster during any 2 years of the previous 3 years may request the transfer of the limited commercial lobster license to a person not presently qualified under RSA 211:18 III(c) prior to January 1, 2006 but qualified pursuant to RSA 211:21 as follows:

(1) The transferor shall submit in writing to the executive director the following information about the transferee:

- a. Name;
- b. Address;
- c. Telephone number; and
- d. Current lobster license number, if applicable.

(d) The transferred license shall convey all the privileges, rights and restrictions associated with such license.

(e) The transfer of the license under (a), (b) and (c) shall not be effective until a letter from the executive director has been received stating that the transfer of the license has been made.

(f) No person may hold more than one NH lobster license.

(g) The person to whom the license is to be transferred shall have no outstanding states or federal fisheries violations nor be under any states or federal fisheries violation penalty.

Source. #6916, eff 12-22-98; ss by #8303, EXEMPT, eff 4-1-05; amd by #8819, EXEMPT, eff 2-1-07; ss by #9014, EXEMPT, eff 1-1-08

Fis 602.16 Lobster Trap Tags.

(a) No person licensed in accordance with RSA 211:18 shall fish with, raise, or possess on board a vessel or submerged within the waters under the jurisdiction of this state, a lobster trap without a valid lobster trap tag affixed to the trap and issued to said person except:

(1) Helpers licensed in accordance with RSA 211:20; or

(2) A surrogate lobster licensee in the case of a temporary physical disability as specified in Fis 602.14 who may fish with, raise, or possess lobster traps with lobster tags not issued specifically to them.

(b) Any person licensed under RSA 211:18 who possesses on board a vessel any trap which is capable of taking lobsters shall be presumed to be in possession of a lobster trap.

(c) A lobster trap tag shall be:

(1) Securely attached to the frame of the lobster trap, in a manner for which it was designed such as a self-locking mechanism;

(2) Legible and clearly visible for inspection; and

(3) Not be altered or defaced.

(d) Lobster trap tags shall be valid for only one year beginning on June 1 and ending on May 31 of the following calendar year.

(e) Lobster trap tags shall be purchased directly from a vendor established by the Atlantic States Marine Fisheries Commission (ASMFC). The fee shall be based on the total volume of tags purchased by the states participating in the lobster fishery.

(f) The fish and game department shall supply the vendor with:

(1) The licensee's name and mailing address;

(2) Whether the licensee is fishing in federal and/or state waters; and

(3) The number of tags the licensee may purchase.

(g) A person licensed pursuant to RSA 211:18 may purchase from the vendor:

(1) Up to 1200 lobster trap tags for a commercial license plus additional lobster trap tags of 10% of the trap limit allowed in accordance with Fis 602.13 to cover routine trap losses;

(2) Up to 600 tags for a limited commercial license plus additional lobster trap tags of 10% of the trap limit allowed in accordance with Fis 602.13 to cover routine trap losses; and

(3) Up to 5 tags for a recreational license plus an additional 2 to cover routine trap losses.

(h) No person shall fish more than the number of traps allowed in accordance with RSA 211:18 and Fis 602.13.

(i) Replacement tags shall be available to a lobster licensee by exchanging trap tags with the fish and game department on a one-for-one basis to allow for the necessary rotation and maintenance of lobster traps.

(j) In the case of catastrophic tags losses, which exceed the maximum number of tags that can be purchased specified in (g), an entirely new allotment of replacement trap tags shall be issued. The original tags shall not be valid following the issuance of replacement tags.

(k) Trap tags shall be issued to valid licensed lobster harvesters based on approved ASMFC Lobster Fishery Management Plan amendments and addenda.

[Source.](#) #7214, eff 6-1-00; amd by #8819, EXEMPT, eff 2-1-07; ss by #9286, EXEMPT, eff 9-29-08

Fis 602.17 Commercial Lobster Helper.

(a) The requirement of this section shall not apply to persons on vessels permitted by National Marine Fisheries to trap American lobster.

(b) Helpers under this section shall not be persons who hold a commercial license to take lobster that only allows the use of 100 traps.

(c) Whenever more than one person holds a commercial lobster license, whether it is commercial lobster license or limited commercial lobster license for 600 traps, and the licensees are simultaneously on board and utilizing a single vessel, the taking of lobsters and crabs shall be prohibited except as specified in (d) through (g).

(d) Two persons who each hold a commercial lobster license, whether it is a commercial lobster license or a limited commercial lobster license which allows the use of 600 traps, and who each have verified landings of lobster in New Hampshire for any 2 years of the previous 3 years, may fish together on the same vessel as follows:

(1) The licensee whose traps are to be fished to take lobsters and crabs shall have obtained a letter of authorization as specified in (e) from the executive director to allow the other licensee to be the licensee's lobster helper;

(2) The licensee also shall have obtained a helpers license pursuant to RSA 211:20 to use a helper; and

(3) The letter of authorization shall be on board the vessel when ever the 2 licensees listed in the letter are on board the vessel at the same time.

(e) The licensee in (d)(1) shall request a letter of authorization from the executive director by providing in writing the following:

(1) The licensee's name and license number;

(2) The name of the vessel and the registration number and/or USCG documentation number which will be used for the taking of lobsters and crabs; and

(3) The name and commercial or limited commercial license number of the person who will be used as a helper.

(f) A person shall not request nor hold more than one letter of authorization from the executive director at any given time.

(g) If there are 2 licensees with authorization letters utilizing the same vessel to haul lobster gear, only one licensee's gear shall be hauled in a calendar day.

Source. #7464, eff 3-23-01; ss by #9425, eff 3-17-09; ss by #9703, eff 5-1-10

# 2013 Massachusetts - American Lobster Compliance Report

## I. Introduction

The Commonwealth of Massachusetts manages lobster fisheries under the Interstate Fishery Management Plan for American Lobster. State waters include portions of three Lobster Conservation Management Areas (LCMA, 1, 2, and Outer Cape Cod) and many vessels involved in the offshore lobster fishery (LCMA 3) use state ports as homeports. Consequently, state lobster management must address four different fisheries within the state as well as the non-commercial sector, dealers, and consumers.

Included within this report is a summary of Massachusetts' 2013 lobster fishery management program and proposed changes for 2014. In 2013, MADMF promulgated a regulations that increased the minimum size for lobsters taken from Lobster Management Area 3 by 1/32 inch, from 3 ½ inch to 3 17/23 inch and clarified that all non-trap commercial lobster permit holders are required to declare the Lobster Management Area(s) they intend to fish in during any year comply with the most restrictive rules of the conservation areas declared. In the coming year, MADMF intends to reduce trap allocations in LMA2 to comply with the Interstate Management Plan for American Lobster. In addition to compliance measures, MADMF is also considering closing certain areas of the Cape Cod Bay Critical Right Whale Habitat to the fishing of lobster gear during the period of February through April, when there is an abundance of northern right whales.

## II. Request for *de minimis*, where applicable. NA

## III. Previous calendar year's fishery and management program

- a. **Commercial Harvests:** In 2012 Massachusetts landed a total 14,917,238 lbs of lobsters fishing a total of 386,797 traps.

**Table 1. 2012 MA Commercial Lobster Harvest by Stock Area**

Stock Area	Live Lbs
GB	3,683,656
GOM	10,519,368
SNE	635,794
UNKNOWN	78,421

Source: DMF Trip-Level and NMFS Vessel Trip Reports

**Table 2. 2012 MA Commercial Lobster Harvest (lbs) by Gear Category and Estimated<sup>1</sup> LMA**

LMA	Non-Trap	Trap
LMA1	76,628	9,784,792
LMA2	106	517,828
LMA3	70,743	2,389,345
OCLMA	37,027	1,258,209
UNKNOWN <sup>2</sup>	707,522	75,038

Source: DMF Trip-Level and NMFS Vessel Trip Reports

<sup>1</sup>LMA of harvest estimated according to LMA designated on permit. Non-trap permits can designate multiple LMAs, thus majority of non-trap harvest is UNKNOWN

<sup>2</sup>UNKNOWN: Permit holder designated into multiple LMAs

**b. Recreational Harvest:** Currently MADMF does not have direct query access to the *Active Network: Outdoors™* data system (contractors handling all MA recreational licensing and reporting) that contains MA recreational lobster data. We are actively working with the contractor to enhance our data access and query capabilities, so the 2011 and 2012 recreational lobster data will be provided as soon as possible.

Total Harvest	Harvest by Traps	Harvest by divers	Total Traps Fished

**c. Regulations:** For a complete copy of Massachusetts lobster regulations in effect for 2012 see Appendix A.

**Monitoring Programs**

**d. Sea Sampling:** MADMF completed its 32nd year of fishery dependent at-sea sampling for lobsters. MADMF instituted fisheries dependent at-sea trap sampling in 1981 as a long-term coastwide monitoring program in order to produce biological and catch per unit effort data on the American lobster resource. A sea sampling/survey design was chosen by which both catch per unit effort and biological data could be collected temporally and spatially with sufficient precision for stock assessments. The methods for this program can be found in MADMF Technical Report TR-29: ([http://www.mass.gov/dfwele/dmf/publications/tr29\\_lobster\\_monitoring.pdf](http://www.mass.gov/dfwele/dmf/publications/tr29_lobster_monitoring.pdf)). The objective of the trap sampling program is to assess variations in population parameters due to environmental factors, fishing pressure, and regulatory changes. The number of trips completed and traps sampled by management area are depicted in Table 4.

**Table 4.** Summary of 2012 Massachusetts sea-sampling effort by NMFS Stat Area and LCMA

LCMA	Stat Area	2012	
1	514	# of Trips	63
		# of Trap Hauls	11,764
OCC	521	# of Trips	18
		# of Trap Hauls	2,028
2	538	# of Trips	3
		# of Trap Hauls	869
	537	# of Trips	5
		# of Trap Hauls	1,799

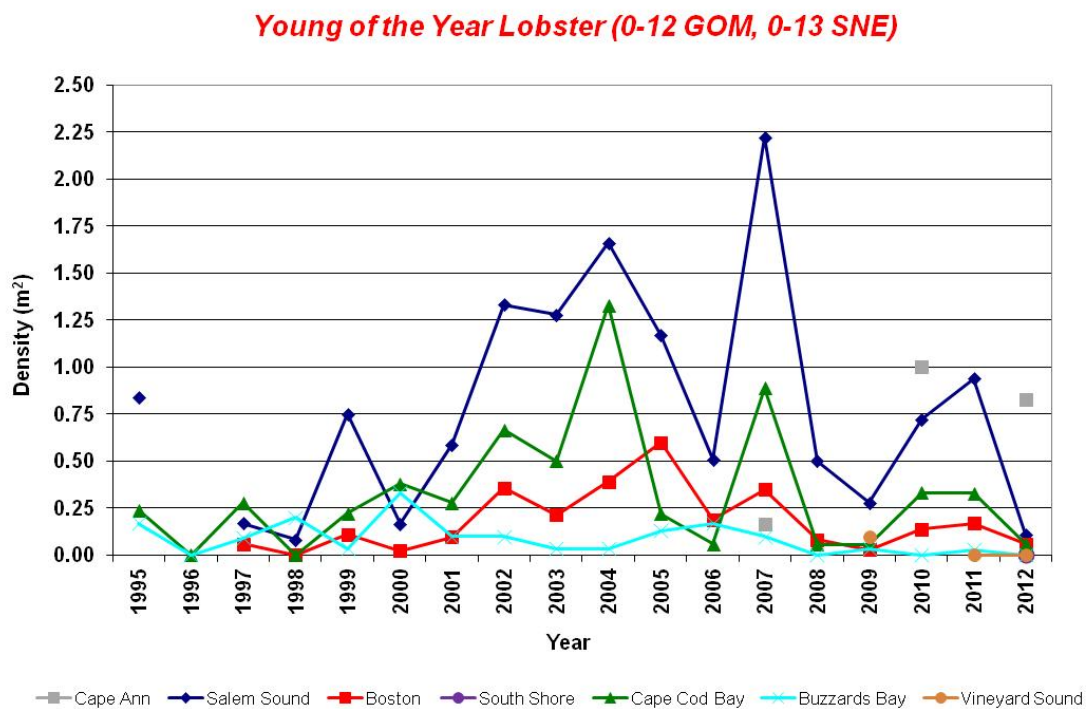
**e. Port Sampling:** NA

**f. YOY Settlement or larval:** Annual sampling for early benthic phase/juvenile (EBP) lobsters was conducted using SCUBA and airlift suction sampling equipment during August and September, 2012. Density indices of newly settled post-larval lobsters were calculated (17-year time series) and coastal habitat important to the settlement of these juveniles continues to be defined. Sampling was completed at 21 sites spanning 7 regions in Massachusetts coastal waters (6 Buzzards Bay sites, 2



Vineyard Sound sites, 3 Cape Cod Bay sites, 2 South Shore sites, 3 Boston Harbor sites, 3 Salem Sound sites, and 2 Cape Ann sites). Data for all sites were used to generate density estimates of EBP lobster and other decapod crustaceans. Densities of EBP lobsters from 1995 to 2012 are presented in Figure 1. Cape Ann, Salem Sound, Boston, South Shore, and Cape Cod Bay are all within LMA 1, while Buzzards Bay and Vineyard Sound are within LMA 2.

In 2012 densities of YOY lobsters in LMA 1 were well below median values in the three regions with long time series (Salem Sound, Boston Harbor, and Cape Cod Bay). The 2012 YOY lobster density in Buzzards Bay was zero, below the time series median for LMA 2.

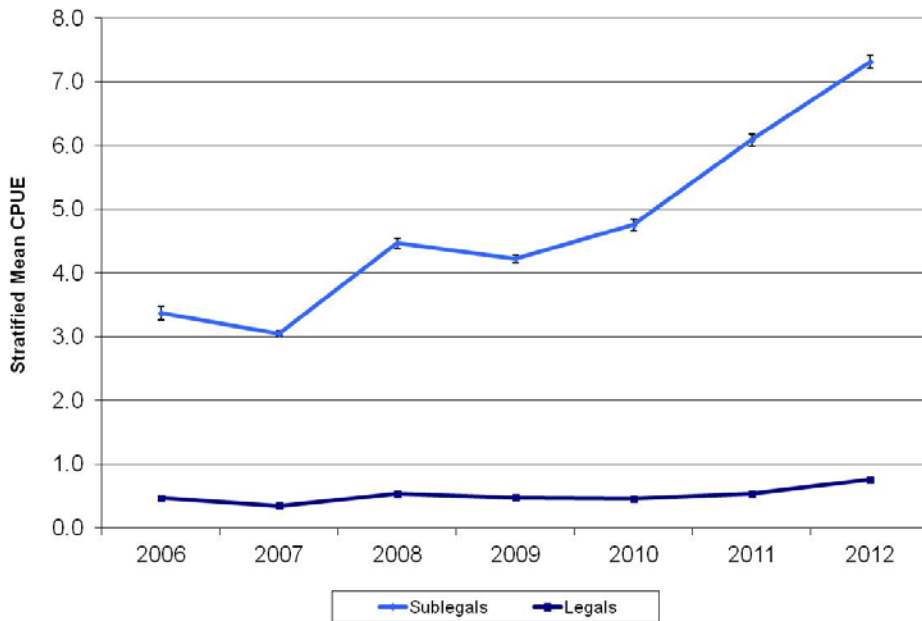


**Figure 1.** Young-of-year lobster density in seven Massachusetts regions; *LMA 1* – Cape Ann, Salem Sound, Boston, South Shore, Cape Cod Bay, *LMA 2* - Buzzards Bay, Vineyard Sound.

**g. Ventless Trap Survey:** The coast-wide ventless trap survey was initiated in 2006 and expanded in 2007 with the intention of establishing a standardized fishery-independent survey designed specifically to monitor lobster relative abundance and distribution. The survey employed a random stratified survey design, using NMFS statistical area and depth as the strata classifications. The survey design used three depth strata that span the range of depths in which lobsters are typically fished in inshore waters: 0 - 20 m, 21 - 40 m, and 41 - 60 m. A bathymetry map of the study area was overlaid with a one minute latitude/longitude grid, and each grid cell was assigned a strata based on its bathymetric attributes. A fixed number of sampling stations (grid cells) were randomly selected within each strata in each statistical area, and new stations were selected each survey year. Each station was sampled with a six pot trawl in which vented and ventless lobster traps were alternated (3 of each per trawl). The survey took place from June through September in Statistical Areas 514 and 538, and

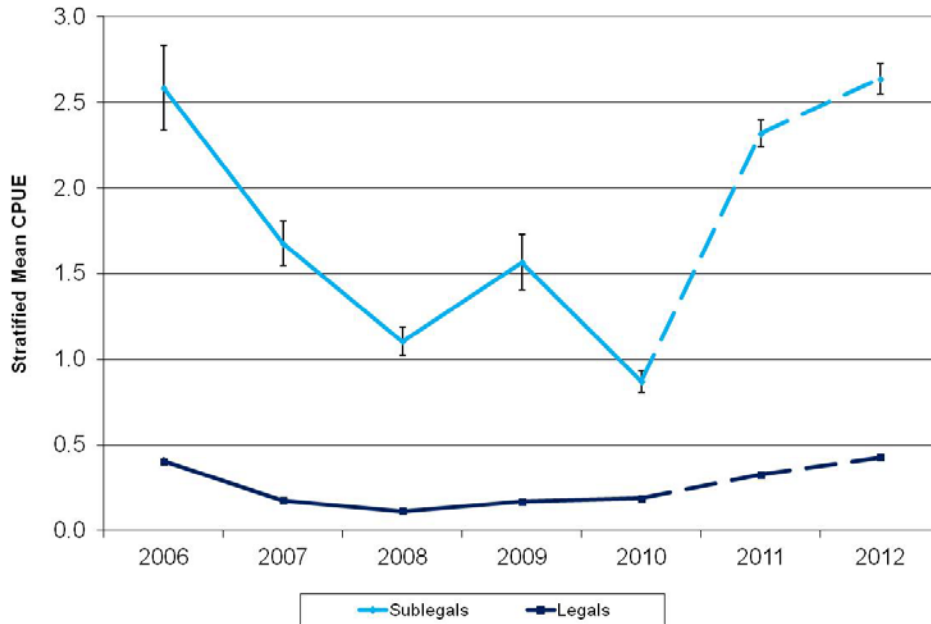
stations were sampled twice monthly. For 2011 and 2012 the Southern New England portion of the survey was expanded into Federal waters of Area 538, and into the northern-most section of Area 537.

Figure 2 shows the stratified mean CPUE for lobsters in S.A. 514 (part of LMA 1). The average catch of sublegal lobsters is much higher than the catch of legal-sized lobsters, and has shown an increasing trend since 2007, particularly in the last two years. The catch of legal-sized lobsters was slightly higher in 2012 than any other year in the time series. For most of the time series the CPUE of legal-sized lobsters has varied around the time series mean of 0.52 lobsters per trap.



**Figure 2.** Stratified mean catch per trap haul ( $\pm$ S.E.) of sublegal ( $< 83$  mm, light colored line) and legal ( $\geq 83$  mm, dark line) lobsters in Area 514.

Figure 3 shows the stratified mean CPUE for lobsters in S.A. 538 (part of LMA 2). The average catch of sublegal lobsters is again higher than the catch of legal-sized lobsters, and generally declined through 2010. In 2011 and 2012, sublegal CPUE increased, although this may in part be related to the expansion of the survey area to regions outside Buzzards Bay, where thermal conditions may be more tolerable. The legal-size CPUE has also slightly increased since 2010, but has remained below 0.5 all throughout the time series, with the lowest value observed in 2008 (0.11).



**Figure 3.** Stratified mean catch per trap haul ( $\pm$ S.E.) of sublegal ( $< 86$  mm, light colored line) and legal ( $\geq 86$  mm, dark line) lobsters in Area 538. Dashed lines represent the time period when the survey was expanded.

**h. State Trawl Surveys:** Since 1978, spring and autumn bottom trawl surveys of Massachusetts territorial waters have been conducted by the Massachusetts Division of Marine Fisheries. The objective of this survey is to obtain fishery-independent data on the distribution, relative abundance and size composition of finfish and select invertebrates. The methods for this program can be found in MADMF Technical Report TR-29

([http://www.mass.gov/dfwele/dmf/publications/tr29\\_lobster\\_monitoring.pdf](http://www.mass.gov/dfwele/dmf/publications/tr29_lobster_monitoring.pdf))

### Lobster Indices

The lobster relative abundance indices only use data collected during the autumn portion of the inshore trawl survey. The reason for this is the increased availability of lobsters to the survey due to warmer bottom water temperatures at this time of year. The Outer Cape sites (east of Cape Cod and Nantucket, Nantucket Sound) are not included in this assessment due to the inconsistent availability of lobsters resulting from the migratory nature of this stock. Since 1981, the MA GOM area has had two gauge size (minimum legal lobster size) increases which occurred in 1989 and 1990; the SNE area has had three increases occurring in 1989, 1990, and 2003. These changes are incorporated in the legal and sub-legal survey indices calculated over the time series.

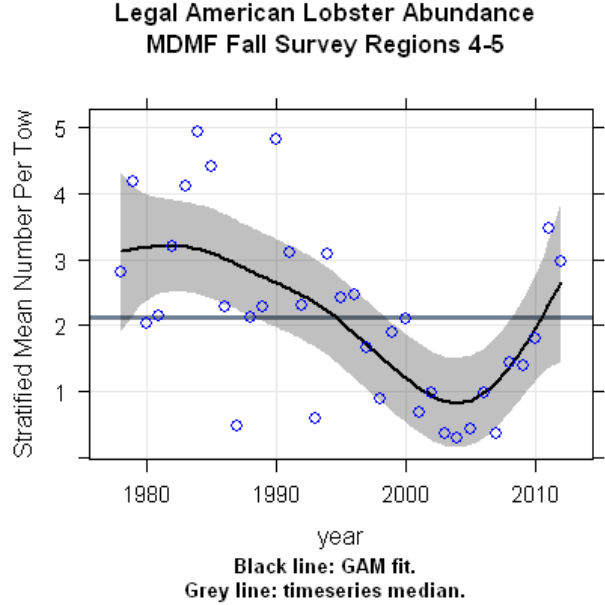
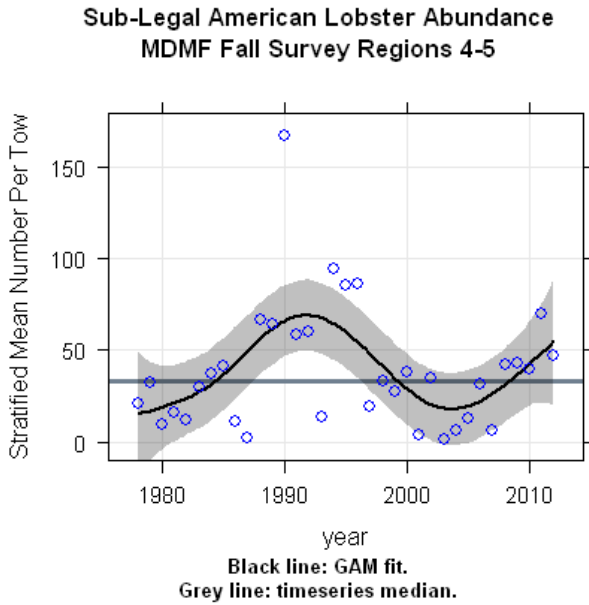


Figure 4. MADMF Fall Trawl Survey Lobster Sub-legal (a) and Legal Indices (b) 1978 to 2012 Sexes Combined for LMA1/GOM (Survey Regions 4-5).

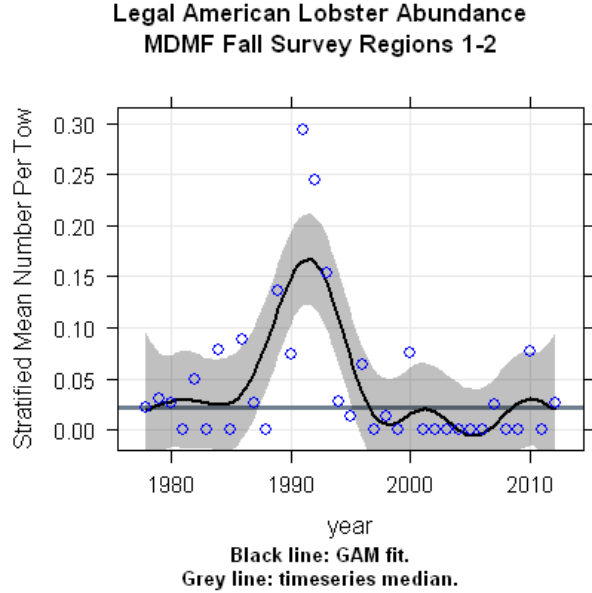
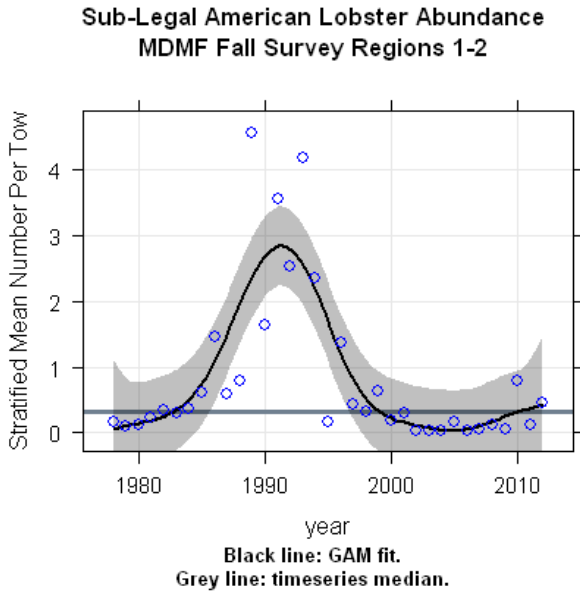


Figure 5. MADMF Fall Trawl Survey Lobster Sub-legal (a) and Legal Indices (b) 1978 to 2012 Sexes Combined for LMA2/SNE (Survey Regions 1-2).

#### **IV. Planned management programs for the current calendar year**

**a. Management:** In 2013, MADMF amended its lobster management regulations to 1) increase the minimum size for lobsters taken from LMA3 by 1/32 inch from 3 ½ inch to 3 17/32 inch; and 2) require all non-trap commercial lobster fishermen to declare the Lobster Management Areas that they intend to fish in any calendar year and comply with the most restrictive regulations of the declared areas. For 2014, MADMF intends to enact trap allocation reduction regulations for Lobster Management Area 2 to conform to the Interstate Fishery Management Plan. Additionally, DMF is considering closing certain areas of the Cape Cod Bay Critical Right Whale Habitat to the fishing of lobster gear during the period of February through April, when there is an abundance of northern right whales.

**b. Monitoring:** MADMF will continue to conduct our long standing commercial lobster sea-sampling program, early benthic phase suction sampling, bottom trawl survey, and fishery landings and effort monitoring

The MA portion of the coastwide ventless lobster trap survey covering Statistical Areas 514 and 538 **will not operate in 2013 due to lack of funding**. Future funding sources have yet to be identified, so the future of this monitoring program is in jeopardy.

## Appendix A.

### 3.07 Marking of Lobster Equipment

Rules and Regulations adopted under the provisions of M.G.L. c. 30A and St. 1969 c. 737, which is an act providing for better identification and marking of lobster buoys, pots, traps, cars and boats.

- (1) All lobster Buoys, pots, traps and cars described in M.G.L. c. 130 §. 38 shall be marked with the permit number assigned by the Director. Non-commercial lobstermen shall also add the letter "N" prior to the four-digit permit number, and a dash (-) with a single digit from 0 through 9 shall follow the four-digit permit number, indicating the sequential pot number in the series, up to ten pots. The permit numbers shall not be less than 1/2 inch in height nor less than 1/8 inch in thickness or width of line. Said numbers shall be burned or cut into a wooden lath or a plate made of durable synthetic material, which shall be permanently secured to the inside of the trap. For purposes of this regulation all lobster traps fished by commercial fishermen permitted in accordance with 322 CMR 7.01(2) may be marked solely with trap tags in accordance with 322 CMR 6.31 to meet marking requirements.
- (2) Both the air tank(s) of a diver and the floating marker described in M.G.L. c. 130, § 38A, as amended, shall be marked so as to display the permit number assigned by the Director to said diver. The permit numbers shall be not less than one inch in height nor less than one-eighth inch in thickness or width of line until December 31, 1971. As of January 1, 1972 the size of said numbers shall be not less than three inches in height nor less than 1/2 inch in thickness or width of line.

#### REGULATORY AUTHORITY

M.G.L. c. 130, §§, 17A, 38, 38A, 94 through 97, and 104.

### 4.13 Fixed Gear Marking and Maximum Length Requirements

- (1) Purpose. A vast amount of fixed gear is being fished in and outside of Massachusetts waters on fishing grounds which must be shared by fishermen using many different gear types. These fixed gear marking requirements will assist fishermen to see and avoid each other's gear thereby reducing conflicts between fixed and mobile gear fishermen fishing in waters under the jurisdiction of the Commonwealth. Fixed gear marking requirements also help identify entangled or abandoned gear. Maximum length requirements also will help fishermen identify the ends of fixed gear and will facilitate co-existence of fishermen on the same fishing grounds. The gillnet length requirement only pertains to gillnets set in waters under the jurisdiction of the Commonwealth.
- (2) Definitions.
  - East end means that part of the gillnet or pot trawl extending from 01 through 180 [degrees] magnetic.
  - Pot trawls means lobster pot trawls, fish pot trawls, and conch pot trawls and refers to single pots tied together in a series and buoyed at both ends.
  - Single Pots means individual lobster pots, fish pots, and conch pots.
  - Twin orange markers means a pair of identical orange flag-like strips of material that are clearly visible and attached to the buoy stick or high flyer.
  - West end means that part of a gillnet or pot trawl extending from 181 through 00 [degree] magnetic.
- (3) Fixed Gear Marking Requirements. The following minimum requirements apply to the marking of fixed gear within waters under the jurisdiction of the Commonwealth.
  - a. Gillnets:

- i. the east end of a gillnet shall be marked with a high flyer and standard 12-inch tetrahedral corner radar reflector; the west end shall be marked with a high flyer with flag and a standard 12-inch tetrahedral corner radar reflector.
  - ii. the buoy line shall be marked with a four inch green mark midway on the buoy line.
  - iii. all buoys shall be permanently and visibly marked or branded with the permit number of the owner.
  - iv. Exception, regarding 322 CMR 4.13(3)(a)(ii), if the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code.
- b. Pot Trawls and Single Pots: the east end of a pot trawl shall be marked with a double buoy, consisting of any combination of two 7" x 7" or 5" x 11" buoys and one or more three foot sticks. The west end of a pot trawl shall be marked with a single 7" x 7" or 5" x 11" buoy with a three foot stick and a flag. Single pots shall each be marked with a single 7" x 7" or 5" x 11" buoy. Sticks are optional, but if used, shall not have a flag attached.
- i. the east end of a pot trawl shall be marked with a double buoy, consisting of any combination of two 7" x 7" or 5" x 11" buoys and one or more three foot sticks. The west end of a pot trawl shall be marked with a single 7" x 7" or 5" x 11" buoy with a three foot stick and a flag. Single pots shall each be marked with a single 7" x 7" or 5" x 11" buoy. Sticks are optional, but if used, shall not have a flag attached.
  - ii. all buoys shall be permanently and visibly marked or branded with the permit number of the owner;
  - iii. fished or authorized to fish in LCMA 1, LCMA 2 or the Outer Cape Cod LCMA as defined in 322 CMR 6.33, the buoy line shall be marked with a four inch red mark midway on the buoy line;
  - iv. fished or authorized to fish in LCMA 3 as defined in 322 CMR 6.33, the buoy line shall be marked with a four inch black mark midway on the buoy line;
  - v. fished or authorized to fish in the Gulf of Maine, Outer Cape Cod and Southern New England Recreational Lobster Area as defined in 322 CMR 6.33, the buoy line shall be marked with a four inch red mark midway on the buoy line beginning January 1, 2010.
  - vi. Exception, regarding 322 CMR 4.13(iii)(iv)&(v), if the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code.
- c. Trawl Marking Exemptions: Within the prescribed areas below it shall be lawful to fish with trawls marked on one end with a plastic bottle attached by at least ten feet of 1/2" cotton line or similar light material, provided that said substitute buoy shall be painted with the buoy colors and permit number of the owner. A standard buoy as specified in 322 CMR 4.13(3)(b) shall be attached to the other end of the trawl, except that sticks need not be used. Single pots shall be marked with a standard buoy attached by light line in channel areas.
- Boston Harbor and Its Approaches: In waters under the jurisdiction of the Commonwealth and circumscribed by an imaginary line beginning at Point Allerton in Hull; thence in a easterly direction to the #1 buoy at Thieves Ledge; thence in a northerly direction to the BG buoy; thence in a westerly to Grovers Cliff in Winthrop.
- d. Cape Cod Bay Critical Habitat Restrictions. Lobster pots set in Cape Cod Bay Critical Habitat as defined in 322 CMR 12.10 during January through May 15 that are properly modified with those features

required in 322 CMR 12.03 designed to reduce the risk of whale entanglement must be marked as follows:

- i. Two-pot trawls or "doubles" shall be marked with a single buoy line. The buoy shall be rigged with a three-foot stick and twin orange markers visibly attached to the top of the buoy stick.
  - ii. All bouys marking either ends of a trawl shall have twin orange markers visibly attached to the buoy stick in addition to the existing marking requirements in 322 CMR 4.13(3)(b). These twin orange markers must be removed from all buoy sticks after May 15 and before June 1 and fishermen may not re-attach them until after November 30 of each year.
- e. Prohibition It shall be unlawful to mark fixed gear as required in 322 CMR 4.13(3)(d) if the lobster pots are not properly rigged with those features required in 322 CMR 12.05 to reduce risk of whale entanglement.
- (4) Gillnet Maximum Length: the total continuous length of gillnets shall not exceed 2,400 feet from end to end of an entire net set in waters under the jurisdiction of the Commonwealth.
- (5) Pot Trawl Maximum Length: The total length of pot trawls set in waters under the jurisdiction of the Commonwealth shall not exceed 2,500 feet from end to end.
- (6) All buoys used to mark all fixed gear shall be permanently and visibly marked or branded with the permit number of the owner.

#### 6.01 Lobster Maximum and Minimum Sizes

(1) Maximum & Minimum Size.

a. Commercial Fishery:

1. Commercial fishermen fishing or authorized to fish in LCMA 1 as defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 1/4 inches or larger than five inches.
2. Commercial fishermen fishing or authorized to fish in LCMA 2, 4, and 5 as defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 3/8 inches and larger than 5 1/4".
3. Commercial fishermen fishing or authorized to fish in LCMA 3 as defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 17/32 inches and larger than 6 3/4 inches.
4. Commercial fishermen fishing or authorized to fish in LCMA Outer Cape Cod as defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 3/8 inches.
5. Commercial fishermen fishing or authorized to fish in LCMA Area 6 as defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 9/32 inches and, effective July 1, 2008, larger than 5 1/4".

b. Non-Commercial Fishery:



1. Non-commercial fishermen fishing in the Gulf of Maine Recreational Area as authorized under 322 CMR 7.01(4)(b) and defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 1/4 inches or larger than five inches.
2. Non-commercial fishermen fishing in the Outer Cape Cod Recreational Area as authorized under 322 CMR 7.01(4)(b) and defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 3/8 inches.
3. Non-commercial fishermen fishing in the Southern New England Recreational Area as authorized under 322 CMR 7.01(4)(b) and defined in 322 CMR 6.33 are prohibited from possessing a lobster with a carapace length smaller than 3 3/8 inches or larger than 5 1/4 inches.

(2) Method of Measurement

- a. All lobsters shall be measured immediately. Any person diving for lobster shall measure all lobsters in possession prior to surfacing.
- b. Lobsters shall be measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell.

6.02 Taking and Possession of Lobsters in the Coastal Waters of the Commonwealth

(1) Gear Restrictions. It is unlawful for any person to take or attempt to take lobsters from waters under the jurisdiction of the Commonwealth by use of pots or traps without said pots or traps having the following features:

- a. Escape Vent: One or more unobstructed rectangular escape vents or openings or two or more unobstructed round openings in the parlor section(s) of the trap from which lobsters are normally removed by the fisherman. Separate parlors shall be vented individually, while only the outer of connected parlors must be vented.
  1. Commercial fishermen fishing or authorized to fish in LCMA 1 as defined in 322 CMR 6.33 shall rig their traps with vents that measure at least 1-15/16 inches by 5 3/4 inches or two circular vents that measure at least 2-7/16 inches.
  2. Commercial fishermen fishing, or authorized to fish in LCMA 2, 3, 4, 5, 6, or Outer Cape Cod, as defined in 322 CMR 6.33 shall rig their traps with vents that measure at least two inches by 5 3/4 inches or two circular vents that measure at least 2 5/8 inches.
  3. Non-commercial fishermen fishing in the Gulf of Maine Recreational Lobster Area as defined in 322 CMR 6.33 shall rig their traps with vents that measure at least 1-15/16 inches by 5 3/4 inches or two circular vents that measure at least 2-7/16 inches.
  4. Non-commercial fishermen fishing in the Outer Cape Cod or Southern New England Recreational Lobster Areas as defined in 322 CMR 6.33 shall rig their traps with vents that measure at least two inches by 5 3/4 inches or two circular vents that measure at least 2 5/8 inches.
- b. Ghost Panel: a panel or other mechanism which is designed to create an opening to allow the escapement of lobsters within 12 months after a trap has been abandoned or lost, the specifications of which are as follows:
  1. The opening covered by the panel or created by other approved mechanism shall be rectangular and measure at least 3 3/4 by 3 3/4 inches, shall be located in the outer parlor section(s) of the trap, and in a position which allows an unobstructed exit of lobsters from the trap.

2. The panel shall be constructed of, or fastened to the trap with, one of the following materials: wood lath; cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter; or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter.
  3. The door of the trap may serve as the ghost panel if fastened to the trap with a material specified in 322 CMR 6.02(b).
  4. The escape vent specified in 322 CMR 6.02(1) may serve as a ghost panel if incorporated into a panel constructed of, or attached to the trap with, a material specified in 322 CMR 6.02(b), and upon breakdown of the degradable materials, will create an opening for egress of lobsters at least 3 3/4 by 3 3/4 inches.
  5. For purposes of 322 CMR 6.02(2) traps constructed entirely or partially of wood shall be considered to be in compliance if constructed of wood lath to the extent that deterioration of wooden component(s) will result in an unobstructed opening as specified in 322 CMR 6.02(2)(a).
- c. Maximum Trap Size. Volume of any trap must not exceed 22,950 cubic inches.
  - d. Open and Collapsible Traps. The taking of lobster by any collapsible device constructed of wire or other material(s) that is fished in an open configuration until retrieved is prohibited. This prohibition shall not apply to the taking of edible crabs.

(2) Egg-bearing lobsters

- a. It is unlawful to remove eggs from any berried lobster.
- b. It is unlawful to land or possess any lobster:
  1. from which eggs have been removed.
  2. that has come in contact with any substance capable of removing lobster eggs.

(3) V-notched Female Lobster Protection

- a. Purpose: The purpose of 322 CMR 6.02 (3) is to protect certain female lobsters from harvest that bear a v-shaped notch or the remnant of a healed notch on a specific flipper, evidence that the lobster has been marked and released for conservation purposes. Area-specific v-notch standards regarding the possession of previously notched lobsters are created by this regulation consistent with the area-specific components of the interstate management plan. For purposes of complying with 322 CMR 6.02(3) commercial fishing areas and non-commercial fishing areas are those referenced in 322 CMR 6.33 and 322 CMR 6.01, respectively.
- b. V-notching Methods. Any commercial fishermen required by 322 CMR or authorized to mark lobsters with a v-shaped notch shall carve a v-shaped notch in the base of a specific flipper by means of a sharp bladed instrument, at least 1/4 inch and not greater than a 1/2 inch in depth and tapering to a sharp point. For purposes of 322 CMR 6.02 (3) the specific flipper is to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down.
- c. Mutilated V-notch. For purposes of complying with 322 CMR 6.02(3), it is unlawful for any person to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a v-shaped notch.
- d. LCMA Specific Requirements for Commercial Lobstermen to V-Notch

1. LCMA 1. Commercial lobster permit holders, as defined at 322 CMR 7.01(2)(a)&(b), authorized to fish in LCMA 1, as defined at 322 CMR 6.33(2)(a), must v-notch and then immediately release all egg bearing female lobsters.
  2. LCMA 2. Commercial lobster permit holders, as defined at 322 CMR 7.01(2)(a)&(b), authorized to fish in LCMA 2, as defined at 322 CMR 6.33(2)(e), must v-notch and then immediately release all egg-bearing female lobsters of legal size as defined at 322 CMR 6.01(1)(a)(2).
- d. Area-specific Restrictions on Possessing V-notched Female Lobsters
1. Commercial Fishermen in LCMA 1 and Non-commercial fishermen in the Gulf of Maine Recreational Lobster Area. It is unlawful for any commercial fisherman fishing or authorized to fish in LCMA 1 and non-commercial fishermen fishing in the Gulf of Maine Recreational Lobster Area as defined in 322 CMR 6.33 to possess any female lobster bearing a v-shaped notch of any size with or without setal hairs.
  2. Commercial Fishermen in LCMA 2. It is unlawful for any commercial fisherman fishing or authorized to fish in LCMA 2 as defined in 322 CMR 6.33 to possess any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs.
  3. Commercial Fishermen in LCMA 3, 4, 5, and 6. It is unlawful for any commercial fisherman fishing or authorized to fish in LCMA 3, 4, 5, and 6 to possess any female lobster bearing:
    - i. a v-shaped notch that is at least ¼ inch in depth and tapering to a sharp point without setal hairs, through June 30, 2008;
    - ii. a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs, from July 1, 2008 and beyond.
  4. Commercial Fishermen in the Outer Cape Cod LCMA. Non-commercial Fishermen in the Outer Cape Cod Recreational Lobster Area and Dealers. It is unlawful for any commercial fisherman fishing or authorized to fish in the Outer Cape Cod LCMA or any non-commercial fisherman fishing in the Outer Cape Cod Recreational Lobster Area as defined in 322 CMR 6.33 or any dealer to possess any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/4 inch and tapering to a sharp point without setal hairs.
  5. Non-commercial fishermen fishing in the Southern New England Recreational Lobster Area. It is unlawful for any non-commercial fisherman fishing in the Southern New England Recreational Lobster Area as defined in 322 CMR 6.33 to possess any female lobster bearing a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs.
- (4) Non-Commercial Lobster Daily Possession and Landing Limit. It shall be unlawful for any person to harvest more than 15 lobsters per calendar day for personal use, or possess more than 15 lobsters while lobster fishing in waters under the jurisdiction of the Commonwealth.
- (5) Seasonal Closures. Fishing for lobster with pots is prohibited in the:
- a. Outer Cape LCMA from January 15<sup>th</sup> through March 15<sup>th</sup> Fishermen are required to remove all lobster traps from waters of the Outer Cape LCMA as defined in 322 CMR 6.33 during this closed period. It is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster traps in the OCC LCMA during this seasonal closure.

### 6.13 Lobster Trap Limit in the Coastal Waters of the Commonwealth

(1) Definitions. For the purposes of 322 CMR 6.13 the following words shall have the following meanings.

Effective Traps Fished means a value used in

- a. The Outer Cape Cod Trap Allocation Determination that was calculated in the assessment of each eligible fisherman's annual performance for the years 2000, 2001, and 2002. For each year that traps and landings were reported, Effective Traps Fished is the lower value of the maximum number of traps reported fished for the year and the predicted number of traps that is associated with the permit holder's reported poundage of lobsters for the year. The value for predicted number of traps was calculated based on a DMF published analysis of traps fished and pounds landed for the OCCLCMA and that relationship is depicted in Figure 1.

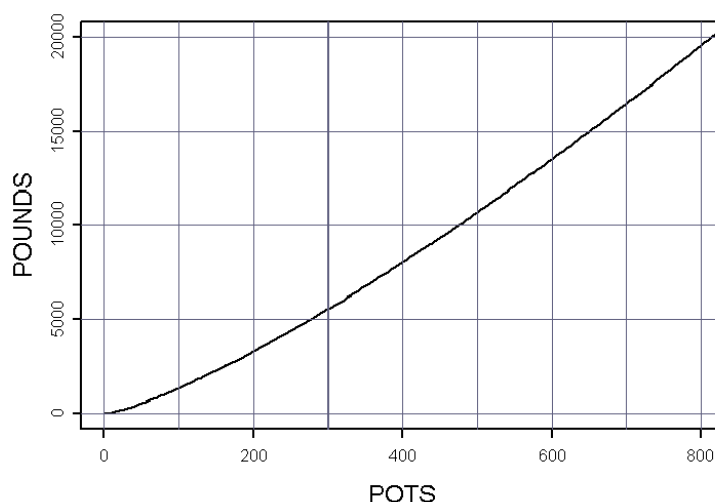


Figure 1. Relationship between pounds harvested and traps fished used to allocate Initial Trap Allocation. Data to calculate the relationship was obtained from catch reports from fishermen fishing primarily in OCCLCMA during years (1997-2001).

- b. The LCMA 2 Trap Allocation Determination that was calculated in the assessment of each eligible fisherman's annual performance for the years 2001, 2002, and 2003. For each year that traps and landings were reported, Effective Traps Fished is the lower value of the maximum number of traps reported fished for the year and the predicted number of traps that is associated with the permit holder's reported poundage of lobsters for the year. The value for predicted number of traps was calculated based on the Interstate Lobster Management Plan Addendum VII published by the Atlantic States Marine Fisheries Commission. That relationship is depicted in Figure 2.

#### IMAGE

Figure 2. Relationship between pounds harvested and traps fished used to allocate Initial Trap Allocation. Data to calculate the relationship was obtained from catch reports from fishermen fishing primarily in LCMA 2 during years (2001-2003).

- c. Exception. For coastal lobster permit holders who fished for lobster primarily by hand using SCUBA gear in a LCMA under control of an effort control plan, Effective Traps Fished means the annual predicted number of traps that is associated with the permit holder's reported poundage of lobsters during the

performance years specified for a LCMA under control of an effort control plan as defined in 322 CMR 6.13(1)(a&b). The value for predicted number of traps was calculated based on a DMF published analysis of traps fished and pounds landed for a LCMA and that relationship is depicted in Figures 1 & 2.

Fish means to set lobster traps on the ocean bottom.

LCMA 2 Trap Allocation means the number of traps assigned to a commercial lobster permit holder endorsed for LCMA 2 plus or minus any traps allocated through the trap transfer process outlined in 322 CMR 7.03.

Lobster means that species known as *Homarus americanus*.

Outer Cape Cod Trap Allocation means the number of traps assigned to a coastal permit holder endorsed for the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA) plus or minus any traps allocated through the trap transfer process outlined in 322 CMR 7.03.

(2) Eligibility for Trap Allocation.

- a. To be eligible for Trap Allocation in OCCLCMA, permit holders must have documented lawful fishing of lobster traps primarily in OCCLCMA during years 1999, 2000, or 2001. Any permit holder who held a permit endorsed for OCCLCMA during the years 1999, 2000, or 2001 but dropped OCCLCMA from their permit during a subsequent year is not eligible. Any permit holder who received their permit off the waiting list during 2001 and had no fishing performance in 2001 may appeal for an Initial Trap Allocation based on their 2002 fishing performance in OCCLCMA.
- b. To be eligible for Trap Allocation in LCMA 2, permit holders must have documented lawful fishing of lobster traps primarily in LCMA 2 during years 2001, 2002, and 2003. Any permit holder who held a permit endorsed for LCMA 2 during the years 2001, 2002, and 2003 but dropped LCMA 2 from their permit during a subsequent year is not eligible. Any permit holder who had no documented fishing performance during the years 2001-2003 due to documented medically-based inability or military service may appeal for an Initial Trap Allocation based on their 1999 and 2000 fishing performance in LCMA 2.
- c. Exception. Coastal Lobster permit holders who fished for lobster primarily by hand using SCUBA gear during the years of eligibility for a LCMA under control of an effort control plan as defined in 322 CMR 6.13(2) may be eligible for Trap Allocation in a LCMA based on documented lawful landings of lobster as provided for in 322 CMR 6.13(1)(c) & (3).

(3) Trap Allocation Determination.

a. Outer Cape Cod

1. Initial Trap Allocation shall be the highest value of Effective Traps Fished for each permit holder during the period 2000 through 2002. The Director may lower a permit holder's Initial Trap Allocation if the permit holder failed to purchase and use valid trap tags for any year used in the allocation determination or if after a DMF audit the values for traps fished or poundage are determined to be incorrect.
2. Trap Allocation shall be adjusted annually based on any Trap Allocation transfers approved by the Director pursuant to 322 CMR 7.03.

b. LCMA 2

1. Initial Trap Allocation shall be the highest value of Effective Traps Fished for each permit holder during the period 2001 through 2003. The Director may lower a permit holder's Initial Trap Allocation if the permit holder failed to purchase and use valid trap tags for any year used in the allocation determination or if after a DMF audit the values for traps fished or poundage are determined to be incorrect.

2. Trap Allocation shall be adjusted annually based on any Trap Allocation transfers approved by the Director pursuant to 322 CMR 7.03.

- (4) Trap Limitation. It is unlawful for any person with a commercial lobster permit endorsed for:
- a. LCMA 1 to fish more than 800 lobster traps at any one time in LCMA 1;
  - b. LCMA 2 to fish more than their trap allocation approved by the Director subject to trap allocation regulations established by 322 CMR 6.13;
  - c. LCMA 3 to fish more traps than their allocation approved by NOAA Fisheries and the Director consistent with the interstate plan; or
  - d. OCCLCMA to fish more than their trap allocation as approved by the Director subject to trap allocation regulations established by 322 CMR 6.13.
- (5) Vessel Limitation. The trap limit established by 322 CMR 6.13(2), shall apply to any vessel involved in the coastal commercial lobster fishery, regardless of the number of fishermen holding coastal commercial lobster permits on board said vessel.
- a. Commercial Lobster Permits Endorsed for LCMA 1, 2 or the OCCLCMA. It shall be unlawful to fish more than 800 traps aboard any vessel involved in the offshore commercial lobster fishery in LCMA 1, 2, or OCCLCMA or the coastal commercial lobster fishery, regardless of the number of fishermen holding coastal or offshore commercial lobster permits on board said vessel.
  - b. Commercial Lobster Permits Endorsed for LCMA 3. It shall be unlawful to fish more than the allocation approved by NOAA Fisheries and the Director consistent with the interstate plan aboard any vessel involved in the offshore commercial lobster fishery in LCMA 3, regardless of the number of fishermen holding offshore commercial lobster permits on board said vessel.

#### 6.14 Lobster Car Restrictions

- (1) Definition. Lobster car means any container, enclosure, crate, or any other container or contrivance designed to hold and store lobsters.
- (2) Prohibition. It is prohibited and unlawful for any person to place a buoyed or unbuoyed lobster car within waters of the Commonwealth except in inshore net areas defined in 322 CMR 4.02.

#### 6.25 Lobster Landing Window

- (1) Definition. "To land" means to transfer the catch of any lobster from any vessel onto any land or dock, pier, wharf, or other artificial structure.
- (2) It is unlawful during the period February 1 through April 30, inclusive, for commercial fishermen to land from 8:00 P.M. through 6:00 A.M. any lobsters caught with nets, pots, or any other fishing gear capable of catching lobster.

## 6.26 Bycatch Lobster Landing/Possession Limits

### (1) Definitions. For the purposes of 322 CMR 6.26:

Bottom or sink gillnet means a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Day means any 24-hour period.

1-day fishing trip means a trip 24 hours or less.

2-day fishing trip means a trip greater than 24 hours up to 48 hours.

3-day fishing trip means a trip greater than 48 hours up to 72 hours.

4-day fishing trip means a trip greater than 72 hours up to 96 hours.

5-day fishing trip means a trip greater than 96 hours up to 120 hours.

Lobster car means any container, enclosure, crate, or any other container or contrivance designed to hold and store lobster away from the vessel.

Lobster crate means a covered container with a volume equal to or less than 3.9 cubic feet.

Mobile gear means any movable or encircling fishing gear or nets which are set, towed, hauled or dragged through the water for the harvest of fish, squid, and shellfish including but not limited to otter trawls, beam trawls, mid-water trawls, bottom and mid-water pair trawls, Scottish seines, Danish seines, pair seines, purse seines, shellfish dredges, and sea scallop dredges.

Net hauler means any device capable of pulling all or portions of gillnets out of the sea for the purpose of removing catches of lobster and fish.

Rigged for netting means a vessel having a trawl net and doors on board.

Trips greater than 5-days means a trip greater than 120 hours.

### (2) Bycatch Limits in Commercial Fisheries.

- a. Non-Lobster Commercial Permit Holders. It is unlawful for any person without a commercial lobster permit to land or possess any lobsters.
- b. Mobile gear. It is unlawful for any person with either an offshore lobster permit or coastal lobster permit fishing or seen fishing with mobile gear to land or possess;
  - i. any lobsters harvested in waters under the jurisdiction of the Commonwealth; or
  - ii. more than 100-lobsters harvested from federal waters per 24-hour day, provided the vessel they are fishing aboard is properly permitted by NOAA Fisheries to take lobster from federal waters, not to exceed more than 500 lobsters for any fishing trip five days or longer. When the duration of a trip in number of hours, cannot be documented for the Office of Environmental Law Enforcement, the 100-lobster commercial limit shall apply.
- c. Bottom or sink gillnets: It is unlawful for any person with an offshore lobster permit or a coastal lobster permit to land or possess more than:
  - i. 100 lobsters per 24-hour day when fishing or seen fishing with gillnets exclusively in waters outside of the Outer Cape Cod Lobster Conservation Management Area.

- ii. an amount of lobsters exceeding the capacity of two lobster crates, not to exceed 100 lobsters, per 24-hour day when fishing or seen fishing with gillnets in waters within the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA), or authorized to fish with gillnets in the OCCLCMA. All lobsters retained in accordance with 322 CMR 6.26(2)(c)(i) shall be separated from the rest of the catch and stored in lobster crates or placed in lobster crates immediately upon request of law enforcement.
  - d. Presumption. It is a rebuttable presumption that a vessel:
    - i. rigged for netting or equipped with a net hauler, and
    - ii. having both lobster and fish in possession, caught the lobsters with gear other than pots or traps and is thereby subject to the lobster limits described in 322 CMR 6.26.
- (3) Duration of Fishing Trips. A vessel landing lobsters taken by any gear other than pots or traps during any fishing trip shall document the hourly duration of the fishing trip through vessel reports or through any other method prescribed by the Director. Such records shall be kept on board the vessel and made available for inspection by any agent of the Director.
- (4) Exception. It is lawful for a vessel possessing lobsters caught by mobile gear or gillnets to exceed the daily possession limit as defined by 322 CMR 6.26(b) and (c)(i) provided:
  - a. lobsters are held separate from the fishing vessel in holding cars in locations subject to approval of the Director;
  - b. the landing limit described in 322 CMR 6.26(2) is not exceeded for any trip;
  - c. prior to carrying lobsters, fishermen notify the Office of Environmental Law Enforcement of their intent to carry lobster and the location of the holding cars;
  - d. not more than the daily authorized landing/possession limit are in possession for each day of fishing following notification;
  - e. not more than 500 lobsters are in possession at any one time; and
  - f. fishermen provide accurate records of their daily fishing activities and amounts of lobster carried each day.
- (5) Prohibitions. It is unlawful for any commercial fisherman or vessel fishing gillnets in the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA), or authorized to fish in the OCCLCMA, to store lobster in any lobster car in waters under the jurisdiction of the Commonwealth.

### 6.31 Trap Tags

- (1) Lobster Traps.
  - a. It shall be unlawful for any commercial fisherman licensed by the Commonwealth to fish lobster traps:
    - i. In any waters under the jurisdiction of the Commonwealth without a valid state waters lobster trap tag permanently attached to the trap bridge or central cross-member.
    - ii. In the EEZ portions of Lobster Conservation Management Areas I, II and Outer Cape Cod as designated by the Atlantic States Marine Fisheries Commission Lobster Management Plan without a valid state waters trap tag or a DMF - issued EEZ lobster trap tag permanently attached to the trap bridge or central cross-member.



- b. If the trap limit established by the ASMFC Plan in any of the management areas exceeds the limit established by 322 CMR 6.13, additional EEZ tags may be purchased by federal permit holders to reach the overall limit established by the plan for each area.
- c. Fishermen licensed to fish in Lobster Conservation Management Area III shall be subject to trap limits and tagging requirements established by the ASMFC Plan.
- d. Official commercial lobster trap tags shall be purchased by permit holders directly from a manufacturer selected by the Division according to established competitive bidding procedures. New tags for the following year will be available after December 1, and must be purchased and installed in the traps before June 1 of the following year.
  - i. March 16 of the following year for traps fished in the Outer Cape Cod Lobster Conservation Management Area; and
  - ii. June 1 of the following year for traps fished in Lobster Conservation Management Areas 1, 2 and 3.
- e. In any year, the maximum number of state lobster trap tags authorized for direct purchase by each permit holder shall be the trap limit set by 322 CMR 6.13 plus an additional 10% to cover trap loss. Permit holders may purchase as many tags as needed up to the maximum. Under no circumstance shall the number of traps fished at any time exceed the established trap limit.

(2) Fish and Conch Pots.

- a. It shall be unlawful to fish in waters under the jurisdiction of the Commonwealth with any fish or conch pot without an official state trap tag permanently attached to the bridge or central cross-member of the trap.
- b. Official fish and conch pot tags shall be purchased directly from a manufacturer selected by the Division according to competitive bidding procedures. New tags for the following year will be available after December 1 and must be purchased and installed by before May 1, of the following year.
- c. In any year the maximum number of state fish or conch pot tags authorized for direct purchase by each permit holder shall be the trap limit established by 322 CMR 6.15 plus 10% to cover trap loss. Permit holders may purchase as many tags as needed up to the maximum for the authorized species plus 10%. Under no circumstances shall the number of traps fished at any time exceed the established trap limit.

(3) Replacement.

- a. In the event of trap or tag losses over and above the maximum limit established by 322 CMR 6.30(1)(h), replacement tags shall be issued to the permit holder by the Division according to the following procedure:
  - i. Gear loss shall be reported to the Division and the Division of Environmental Law Enforcement on an official form, signed by the permit holder under the pains and penalties of perjury;
  - ii. The form shall be reviewed by both Divisions and a decision reached on the number of replacement tags to be issued, if any;
  - iii. If a decision cannot be reached, a hearing will be scheduled in a Division office to examine evidence and reach a conclusion on the validity of the claim.

(4) Prohibitions

- a. It shall be unlawful for any person to set or fish a lobster, fish or conch trap in waters under the jurisdiction of the Commonwealth or the EEZ portions of Lobster Conservation Management Areas I, II

and Outer Cape Cod or have a lobster trap in possession or under control while on said waters unless said trap is tagged with an official Massachusetts trap tag issued to that person valid for the current year.

- b. It shall be a violation of 322 CMR 6.00 to file a false claim of trap or tag loss for purposes of obtaining additional tags.
- c. It shall be a violation of 322 CMR 6.00 to alter or deface a tag, or tamper with the tag(s) of another permit holder.
- d. Administrative penalty. A person found guilty of violating 322 CMR 6.31 by a court of law or pursuant to an adjudicatory proceeding shall have his or her permit suspended and shall be required to remove all gear from waters under the jurisdiction of the Commonwealth for a specified period of time.

### 6.32 Frozen Shell-on Lobster Parts

(1) Definitions. For purposes of 322 CMR 6.32 the following words shall have the following meanings:

- a. Carapace means the upper body of a lobster excluding the tail and claws.
- b. Mutilated means a lobster that has been altered in any way that affects its measurement.

(2) Processing Requirements. The processing and possession by wholesale dealers of frozen shell-on lobster parts is permitted only for distribution outside Massachusetts pursuant to M.G.L. c. 130, § 44 and c.94, § 77G and subject to the following restrictions:

- a. To conduct frozen shell-on lobster part processing:
  - 1. The processor shall be in possession of or obtain a wholesale dealer permit;
  - 2. The Department of Public Health (DPH) shall inspect and approve in writing frozen shell-on lobster part processing;
  - 3. Upon receipt of DPH approval, the Director shall endorse the Wholesale Dealer Permit to include frozen shell-on lobster part processing.
- b. All lobsters at the approved facility shall meet the minimum size requirement established by M.G.L. c. 130 § 44.
- c. All processing, freezing, packaging and labeling shall take place within the approved facility at the address appearing on the permit.
- d. All packages of frozen lobster parts shall be labeled with a description of the product and the license number and address of the facility where they are processed and the date they are processed.
- e. Packaged and labeled frozen product may be stored on the premises or off-site at a facility approved by the Department of Public Health, pending sale outside the Commonwealth, provided that accurate records of inventory and disposition are kept and made available for inspection by Environmental Police Officers and Division of Food and Drug Inspectors.

(3) Prohibitions.

- a. It shall be unlawful for any person or business to process frozen shell-on lobster parts in Massachusetts for distribution outside the Commonwealth unless the Division has endorsed frozen shell-on lobster part processing as an approved activity on the wholesale dealer permit.

- b. It shall be unlawful for any person to offer shell-on lobster tails or other shell-on body parts of a mutilated lobster for sale within the Commonwealth.
- c. It shall be a violation of 322 CMR 6.32 to:
  - 1. Utilize any lobster for frozen shell-on lobster part processing, unless said lobster, before processing, meet the minimum legal size requirements established in M.G.L. c. 130, § 44, and;
  - 2. To possess any lobster below the minimum size in the process area or freezers or at any location associated with the facility listed on the permit.
- d. It shall be a violation of 322 CMR 6.32 to freeze or offer for sale any shell-on parts of a lobster other than the tail and carapace.
- e. Use of other than live lobster for frozen shell-on lobster part processing is prohibited.

### 6.33 Lobster Management Areas

#### (1) Definitions.

Lobster Management Area means one of three Recreational Lobster Areas or one of seven Lobster Conservation Management Areas (LCMA) as specified in the Atlantic States Marine Fisheries Commission American Lobster Fishery Management Plan (FMP) and endorsed on the Massachusetts Commercial Fisherman Permit pursuant to 322 CMR 7.01.

#### (2) Area Boundaries.

- a. LCMA 1. Beginning at the Massachusetts/New Hampshire border, following the outer boundary of the territorial waters of New Hampshire and Maine to the US/Canada border, thence to the intersection of LORAN C 9960-Y-44400 with the boundary of the US Exclusive Economic Zone, thence to the intersection of 9960-Y-44400 with 70 [degrees] West Longitude, thence following the 70th meridian to its intersection with 9960-W-13700, thence following 9960-W-13700 to its intersection with 9960-Y-44120, thence following 9960-Y-44120 westerly to its intersection with 9960-W-13850, thence following 9960-W-13850 southeasterly to its intersection with 9960-Y-44110, thence following 9960-Y-44110 easterly to Race Point in Provincetown, thence following the MA shoreline back to the beginning.
- b. Outer Cape LCMA. Beginning at Race Point in Provincetown, following 9960-Y-44110 westerly to its intersection with 9960-W-13850, thence following 9960-W-13850 northwesterly to 9960-Y-44120, thence following 9960-W-44120 easterly to its intersection with 9960-W-13700, thence following 9960-W-13700 southerly to 9960-Y-43780, thence following 9960-Y-43780 westerly to its intersection with 70 [degrees] five minutes West Longitude, thence following 70 [degrees] five minutes West Longitude north through Nantucket Island to the shoreline of Harwich, thence following the shoreline of Cape Cod east and north back to the beginning.
- c. Overlap- Area 1/OCLMA. Beginning at Race Point in Provincetown, following 9960-Y-44110 westerly to its intersection with 9960-W-13850, thence following 9960-W-13850 southeasterly to its intersection with 9960-X-25330, thence following 9960-X-25330 northeasterly to the shoreline of Great Island in Wellfleet, thence following the shoreline northerly back to the beginning. Fishermen endorsed for either LCMA 1 or OCLMA may fish in the overlap zone under the rules of the area(s) endorsed on their permits. Fishermen with both areas endorsed must observe the most restrictive rules.
- d. Overlap- Area 1/Area 2. The Cape Cod Canal, from the Massachusetts Maritime Academy pier at the southern end to the end of the east breakwater on the northern end. Fishermen from either LCMA 1 or LCMA 2 may fish in the overlap zone under the rules of the area(s) endorsed on their permits. Fishermen with both areas endorsed must observe the most restrictive rules.

- e. LCMA 2. Beginning at the shoreline of Harwich, following the 70° five minutes West Longitude south through the Island of Nantucket to its intersection with 9960-Y-43780, thence following 9960-Y-43780 easterly to its intersection with 9960-W-13700, thence following 9960-W-13700 southerly to its intersection 9960-W-14610, thence following 9960-14610 northerly to the outer boundary of New York territorial waters, thence following the outer boundary of the territorial waters of New York and Rhode Island to the Massachusetts/Rhode Island boundary, thence following the Massachusetts/Rhode Island boundary to the shoreline, thence following the shoreline of Massachusetts back to the beginning.
- f. LCMA 3. All waters of the Exclusive Economic Zone (EEZ) of the United States seaward of LCMA 1, OC, 2, 4, 5, and 6.
- g. Overlap Area 2/Area 3. Fishermen from either Area 2 or Area 3 may fish in an area bounded as follows under their respective LCMA rules: Beginning at the intersection of 9960-W-13700 and 9960-Y-43700, thence westerly along the 43700 line to the intersection with 9960-W-14610, thence southwesterly along a line whose extension reaches the intersection of 9960-Y-43500 with 9960-X-26400 to 9960-Y-43600, thence easterly along the 43600 line to 9960-W-13700, thence northwesterly along the 13700 line to the beginning.
- h. LCMA 4. All waters including state and federal waters that are near-shore in the northern Mid-Atlantic area, as defined by the area bounded by straight lines connecting the following points:

Point	LATITUDE (°N)	LONGITUDE (°W)
M	40° 27.5'	72° 14'
N	40° 45.5'	71° 34'
O	41° 07'	71° 43'
P	41° 06.5'	71° 47'
S	40° 58'	72° 00'
T	41° 00.5'	72° 00'
From pt. "T", along the NY/NJ coast to pt. "W"		
W	39° 50'	74° 09'
V	39° 50'	73° 01'
U	40° 12.5'	72° 48.5'
From pt. "U" back to pt. "M".		

- i. LCMA 5. All waters including state and federal waters that are near-shore in the southern Mid-Atlantic area, as defined by the area bounded by straight lines connecting the following points, in the order stated:

Point	LATITUDE (°N)	LONGITUDE (°W)
-------	---------------	----------------

W	39° 50'	74° 09'
V	39° 50'	73° 01'
X	38° 39.5'	73° 40'
Y	38° 12'	73° 55'
Z	37° 12'	74° 44'
ZA	35° 34'	74° 51'
ZB	35° 14.5'	75° 31'
From pt "ZB", along the coasts of NC/VA/MD/DE/NJ back to pt. "W".		

- j. LCMA 6. All state waters as defined by the area bounded by straight lines connecting the following points, in the order stated:

Point	LATITUDE (°N)	LONGITUDE (°W)
T	41° 00.5'	72° 00'
S	40° 58'	72° 00'
From pt. "S", boundary follows the 3 mile limit of NY state waters as it curves around Montauk Pt. To pt. "P"		
P	41° 06.5'	71° 47'
Q	41° 18' 30"	71° 54' 30"
R	41° 11' 30"	71° 47' 15"
From pt. "R", along the maritime boundary between CT & RI to the coast; then west along the coast of CT to the western entrance of Long Island Sound; then east along the NY coast of Long Island Sound and back to		

- k. Gulf of Maine Recreational Lobster Area means those state waters north of Cape Cod Bay to the New Hampshire border including waters of the Cape Cod Canal.
- l. Outer Cape Cod Recreational Lobster Area means all state waters eastward of 70 degrees longitude off Nantucket and eastward and northward of Outer Cape Cod from Chatham to Provincetown's Race Point, including a portion of upper Cape Cod Bay as defined by a line drawn from the three nautical mileline northwest of race Point at 42 degrees 7 minutes latitude and 70 degrees 16 minutes longitude south to the Race Point Buoy then southeast to the Wood End Buoy and east to the shoreline at 42 degrees 01.32 minutes latitude and 70 degrees 05.26 minutes longitude.
- m. Southern New England Recreational Lobster Area means those state waters west of 70 degrees and south of Cape Cod.

7.01 Form, Use and Contents of Permits

- (1) Definitions. For purposes of 322 CMR 7.01, unless the context requires otherwise, the following words shall have the following meanings:

Bait means marine organisms including but not limited to fish, shellfish and seaworms exclusively used to attract and harvest other fish and shellfish.

Commercial means to harvest any fish or shellfish for purposes of sale, barter or exchange, or to keep for personal or family use any fish or shellfish taken under the authority of a commercial permit issued by the Director.

Director means the Director of the Division of Marine Fisheries.

Harvest means to catch, dig, take or attempt to catch, dig or take any fish, shellfish or bait.

Land or Landing as that term is used in 322 CMR 7.00 and in M.G.L. c. 130 § 80 means to transfer or attempt to transfer the catch of fish or shellfish from an vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish on board to tie-up to any dock, pier or other artificial structure.

Non-commercial means the harvest of fish, shellfish or bait for purposes of personal use only and not for purposes of sale, barter or exchange.

Possession or To Possess means to have custody or control of, or to handle or hold.

Registered length means that length set forth in either the U.S. Coast Guard or Massachusetts Division of Marine and Recreational Vehicles records, whichever is applicable.

Vessel means any commercial fishing vessel, boat, ship or other water craft registered under the laws of the Commonwealth (state) as that term is defined in M.G.L. c. 130, § 1, and which is used exclusively to harvest fish or shellfish for purposes of sale, barter or exchange, and shall include any vessel documented under the laws of the United States to carry passengers for hire exclusively to harvest fish or shellfish.

- (2) Commercial Fisherman Permits. In order to harvest, possess or land fish, shellfish or bait for commercial purposes, the following permits are required for the following fishing activities.

- a. Coastal Lobster. Issued to a named individual in accordance with 322 CMR 7.01 authorizing the possession and landing of lobster and fish for commercial purposes from waters within the jurisdiction and authority of the Commonwealth in accordance with M.G.L. c. 130, § 38B and 322 CMR 7.01. This permit may be endorsed for the harvest, possession and landing of shellfish and seaworms for commercial purposes.

The permit shall include a restriction that memorializes the permit holder's declaration of the ASMFC Lobster Management Areas that the permit holder will fish during a calendar year. If the permit authorizes fishing in more than one Lobster Management Area, the permit holder shall be subject to the most restrictive ASMFC lobster management regulations governing the permitted fishing area, as set forth at 322 CMR 6.01(1)(a) and 6.02(1)(a)&(3).

- b. Offshore Lobster. Authorizes the possession and landing of lobsters harvested from waters outside the jurisdiction of the Commonwealth using a vessel registered under the laws of the state and validly endorsed for FCZ fishing. This permit shall be further endorsed for gear type to enhance management, reporting, and enforcement of gear-specific trip limits by requiring a non-trap endorsement for those

permit holders fishing with non-trap gear; permits fished with trap gear will be the default category and not require a distinct endorsement. Offshore lobster permit holders or users may not also hold, use or have on board an individual non-commercial or family non-commercial lobster permit.

The permit shall include a restriction that memorializes the permit holder's declaration of the ASMFC Lobster Management Areas that the permit holder will fish during a calendar year. If the permit authorizes fishing in more than one Lobster Management Area, the permit shall be subject to the most restrictive ASMFC lobster management regulations governing the permitted fishing area, as set forth at 322 CMR 6.01(1)(a) and 6.02(1)(a)&(3).

- c. Boat 100 Feet or Greater. Authorizes the harvest, possession and landing of fish for commercial purposes using a vessel 100 feet registered length or greater. Said permit shall authorize the crew of said vessel to fish under its authority and may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
- d. Boat 60 to 99 Feet. Authorizes the harvest, possession and landing of fish for commercial purposes using a vessel from 60 to 99 feet registered length. Said permit shall authorize the crew of the vessel to fish under its authority and may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
- e. Boat 0 to 59 Feet. Authorizes the harvest, possession and landing of fish for commercial purposes using a vessel from 0 to 59 feet registered length. Said permit shall authorize the crew of said vessel to fish under its authority and may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
- f. Seasonal Lobster. Authorizes only the named individual to harvest, possess and land lobsters for commercial purposes, to be issued only to full-time students no less than 12 years of age and conditioned to authorize the harvest, possession and landing of lobsters for commercial purposes only from June 15 to September 15 of each year and further conditioned to the use of not more than 25 lobster pots.
- g. Shellfish and Seaworms. Authorizes only the named individual to harvest, possess and land shellfish and seaworms for commercial purposes, and may be endorsed for the shucking of bay scallops.
- h. Individual. Authorizes only the named individual to harvest, possess and land fish for commercial purposes. Said permit may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
- i. Shellfish/Rod and Reel. Authorizes the harvest, possession and landing of shellfish for commercial purposes and/or the harvest, possession or landing of fish by means of a rod and reel for commercial purposes subject to 322 CMR 7.01(10).
- j. Rod and Reel. Authorizes only the named individual to harvest, possess and land fish for commercial purposes by means of a rod and reel.
- k. Shellfish Transaction Card. Authorizes only the named individual holding a commercial fishermen permit endorsed for shellfish and seaworms to sell shellfish and seaworms, and shall be used in conjunction with either a Massachusetts driver's license or a Registry of Motor Vehicles identification card.

(3) Dealer Permits. The following categories of permits may be issued by the Director and are required for the following activities:

- a. Wholesale Dealer. Authorizes the wholesale possession, distribution, processing, sale or resale of raw fish and shellfish. Said permit includes authorization for the retail sale and retail resale of fish and shellfish from a fixed location approved in writing by the Massachusetts Department of Public Health.
- b. Wholesale Broker. Authorizes the wholesale brokering, directing the transport of or any commercial transaction in the sale of raw or processed fish or shellfish.

- c. Wholesale Truck. Authorizes the wholesale possession or distribution of raw or processed fish and shellfish for commercial purposes from a vehicle approved in writing by the Massachusetts Department of Public Health.  
  
Exception: Commercial Lobster Permit holders who also hold a Retail Boat Permit as defined in 7.01(3)(f) shall be exempt from the requirements to obtain this Wholesale Truck dealer's permit when transporting only live lobsters or live crabs for commercial sale.
- d. Retail Dealer. Authorizes the retail sale of raw fish and shellfish from a fixed location approved in writing by the Massachusetts Department of Public Health.
- e. Retail Truck. Authorizes the retail sale of raw fish from a vehicle approved in writing by a local or county Board of Health.
- f. Retail Boat. Authorizes a fisherman with a Massachusetts commercial fishing permit to sell from a boat to the general public, product he lawfully harvested, including the sale of live lobsters and whole raw fish from a boat. For holders of any commercial lobster permit, the authorization granted under this Retail Boat dealer's permit shall also include the transport of live lobsters or live crabs, caught aboard the holder's permitted vessel, for sale to the public including to persons and businesses that are not retail or wholesale dealers of raw or processed fish or shellfish.
- g. Bait Dealer. Authorizes the possession and sale of bait.

(4) Special Permits. The following special permits may be issued by the Director for the following activities:

- a. Regulated Fishery. Authorizes the named individual and/or a commercial fishing vessel to engage in the harvest, possession and landing of Fish or shellfish from a fishery regulated pursuant to M.G.L. c. 130, § 17A, to be issued in addition to those permits required pursuant to 322 CMR 7.01(2).
  - 1. State Waters Multispecies Groundfish Endorsement. Authorizes only the named individual and/or vessel to harvest and possess for commercial purposes from waters under the jurisdiction of the Commonwealth the following species: cod, haddock, pollock, redfish, white hake, yellowtail flounder, winter flounder, windowpane flounder, American plaice, witch flounder, monkfish, ocean pout and wolffish.
  - 2. State Waters Multispecies Groundfish Endorsement Eligibility. The Director may issue a single State Waters Multispecies Groundfish Endorsement to permit holders who held a state-issued commercial permit on November 4, 2004, renewed their permit in 2005, and are not authorized by a federal permit to take Multispecies Groundfish or monkfish. The Multispecies Groundfish Endorsement may only be issued as an endorsement on the state-issued commercial boat and lobster permits, but not the seasonal lobster permit.
  - 3. Exceptions
    - a. Limited Harvest of Multispecies Groundfish in State Waters. Notwithstanding permit prohibitions on the take of finfish described in 322 CMR, any state permitted commercial fisherman who does not hold a State Waters Multispecies Groundfish Endorsement may take, possess and sell up to 75-lbs. of cod per vessel per 24-hour day harvested from waters under the jurisdiction of the commonwealth.
    - b. Eligibility for Permit Holders Who Have Surrendered Their Federal Permits. Notwithstanding permit prohibitions on eligibility described in 322 CMR 7.01(4)(a), the Director may issue a single State Waters Multispecies Groundfish Endorsement to a state-issued commercial permit holder for a vessel that has been authorized by a federal permit to take Multispecies groundfish or monkfish if the permit holder has surrendered said federal permit to NOAA Fisheries. iv. Renewals. In 2007 and beyond, the Director may issue a State Waters Multispecies Groundfish Endorsement only to those



commercial fishermen who received a State Waters Multispecies Groundfish Endorsement in 2006 and renew their permits in accordance with 322 CMR 7.00.

- b. Non-commercial lobster. The following requirements apply to the non-commercial taking of lobsters.
  - 1. Pot. Issued to a named individual authorizing the harvest, possession and landing of lobsters by means of pots for non-commercial purposes by that individual or by members of that individual's immediate family residing in the same household.
  - 2. Diving. Issued to a named individual authorizing the harvest, possession and landing of lobsters by diving for non-commercial purposes by that individual only. A non-commercial lobster permit may not be carried on board any vessel fishing under authority of an offshore lobster permit.
- c. Striped Bass. Authorizes only the named individual to harvest and possess striped bass for either commercial or non-commercial purposes in accordance with 322 CMR 6.07.
- d. Special Project. Authorizes only the named individual to engage in a specified marine fishery project including but not limited to aquaculture, mariculture, scientific, environmental or biological collection and study, assessments or experimentation, collection and possession for educational purposes, shellfish relay and shellfish propagation.
- e. For-hire vessels. Authorizes the named individual or corporation's vessel to carry paying customers for purposes of fishing. Individuals or corporations shall obtain a for-hire permit based on the number of paying customers aboard.
  - 1. Head Boat. Issued to vessels carrying seven or more paying customers.
  - 2. Charter Boat. Issued to vessels carrying three to six paying customers.
  - 3. Guide Boat. Issued to vessels carrying up to two paying customers.
- f. Anadromous Fish Passageway. Authorizes the named individual to carry out activities related to the construction, reconstruction, repair, or alteration of any anadromous fish passageway as defined in M.G.L. c. 130, §§1 and 19.
- g. Gillnets. A regulated fishery permit shall be required to set, fish, or harvest any species by means of a gillnet.
  - 1. Sink Gillnet Permit. Authorizes only the named individual and/or vessel to use a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column. Sink gillnet permits are limited to renewals only and are not transferable. Holders of sink gillnet permits may fish surface gillnets under the authority of their sink gillnet permit.
  - 2. Surface Gillnet Permit. Authorizes only the named individual and/or vessel to use a gillnet, anchored, drifting or otherwise, that is designed to be, capable of being, or is fished in the upper two-thirds of the water column. Exemptions: No permit shall be required for fishermen using a surface gillnet less than 250 square feet.
  - 3. Catch Reports. All sink gillnet and surface gillnet permit holders shall report their catch to the Director on forms supplied by the Division.

(5) Application. Applicants for a permit shall comply with the following requirements:

- a. Forms. Applications for a permit shall be on forms supplied by the Director. A separate application shall be made for each individual, boat, vessel, plant, firm, establishment, corporation, partnership or other business entity.
- b. Information. An application for a permit required by M.G.L. c. 130 and 322 CMR 7.01 shall contain and include the following:
  - 1. the name and address of the applicant;
  - 2. the date of birth of the applicant;
  - 3. the last four digits of either the applicant's social security number or federal identification number;
  - 4. for applicants for a commercial fishermen permit endorsed for shellfish, the applicant's Massachusetts driver's license number or Registry of Motor Vehicles identification number;
  - 5. the name of the commercial fishing vessel;
  - 6. the required length of the fishing vessel;
  - 7. the Massachusetts vessel registration number;
  - 8. the homeport of the commercial fishing vessel; and
  - 9. the true and accurate signature of the applicant;
  - 10. any other information sufficient to fully identify the particular activity to be undertaken and the intended use for the permit.
- c. Conditions. The following permit applicants shall comply with the following conditions:
  - 1. Master digger permit applicants shall submit with their application a valid bond as required by 322 CMR 7.02(2)(b);
  - 2. Dealer permit applicants shall submit with their application an approved health inspection certificate validly issued by the Department of Public Health pursuant to a health inspection of the applicant's premises;
  - 3. Seasonal lobster permit applicants shall submit an affidavit supplied by the Director signed under the pains and penalties of perjury attesting to their full-time student status; and
  - 4. Shellfish and seaworm permit applicants shall, for a bay scallop endorsement, submit a certified sanitary inspection approved by the Massachusetts Department of Public Health.
- d. Multiple Applications. A separate application shall be made for each individual, boat, vessel, plant, firm, establishment, corporation, partnership or other business entity.
- e. Signature. Each applicant shall sign the application and the permit with his or her true and correct name. Except as otherwise provided for in 322 CMR 7.01(5)(f), whenever the permit is for a boat, vessel, or business entity, the permit may be signed with the true and correct name of the owner of the boat or vessel or a duly authorized officer of the business entity including the true and correct business title of the duly authorized officer.
- f. Exception. Coastal lobster permits shall be issued to and renewed by a named individual only. The permit application and the permit itself shall be signed by a named individual who shall be the holder. In no event may a coastal lobster permit be issued to or renewed by a business entity or an officer of a business entity.

- g. Effect of Signature. The applicant's signature shall constitute:
1. a declaration under the pains and penalties of perjury that all information contained in the application is true and accurate to the best belief of the applicant;
  2. a statement that the applicant and all individuals conducting the activity under authority of the permit have read and are familiar with all applicable statutes contained in M.G.L. c. 130, all applicable regulations contained in 322 CMR and agree to fully comply therewith; and
  3. an agreement to display all fish in possession of the applicant and all individuals conducting the activity under authority of the permit to any officer authorized to enforce the marine fishery laws of the Commonwealth.
- h. Fees. All fees required in accordance with M.G.L. c. 130, § 83 shall accompany each application in the form of checks or money orders made payable to the Commonwealth of Massachusetts. Cash may be used only when the application is made in person. In the event an applicant's personal check is not honored by the payor or bank, the permit issued to such applicant shall be void until such time as the required fee in the form of a bank check, certified check or postal money order is received by the Director. Any activity conducted by the applicant under the purported authority of said permit five or more days subsequent to the mailing to the applicant of a notice of the dishonored check shall constitute a violation of the applicable provisions of M.G.L. c. 130 and 322 CMR.
- (6) Issuance. Permits shall not be validly issued or of full force and effect unless they:
- a. are punched by the Director in the appropriate squares identifying the activity which is authorized or the privilege which is granted;
  - b. contain a financial transaction number;
  - c. contain a permit number;
  - d. contain the date of issuance;
  - e. contain a true and accurate copy of the Director's signature;
  - f. contain a true and accurate signature of the holder, or if a boat, vessel or business entity, the owner, master or duly authorized officer of the business entity including his or her business title.
- (7) Conditions. The Director may at any time, in his discretion, attach any written conditions or restrictions to the permit deemed necessary or appropriate for purposes of conservation and management or to protect the public health, welfare and safety.
- (8) Duplicates. Duplicate permits may be issued by the Director provided that a satisfactory affidavit signed under the pains and penalties of perjury is submitted by the person who signed the original application and permit attesting to the disposition of the original permit sought to be replaced.
- (9) Suspension and Revocation. In accordance with M.G.L. c. 30A, §§ 10, 11 and 13, and pursuant to the procedural rules of 801 CMR 1.00, any permit issued by the Director may be suspended or revoked for falsifying any application form, violation of any condition or restriction of the permit, or for violation of any provision of M.G.L. c. 130 or 322 CMR.
- (10) Alteration. Any permit validly issued by the Director which is subsequently and substantially altered, erased or mutilated is invalid.
- (11) Expiration. All permits validly issued shall expire on December 31 following the date of issuance unless otherwise provided by law, modified or extended by the Director in writing, or suspended or revoked by the Director or a court of competent jurisdiction.

- (12) Transfer. Unless otherwise provided in writing by the Director, or in accordance with 322 CMR or M.G.L. c. 130, permits may not be transferred, loaned, leased, exchanged, bartered, sold or possessed by a person other than the holder, boat, vessel, or business entity to which it was issued.
- (13) Requirement to Accommodate Sea Samplers. For the purpose of observing and acquiring information about fishing operations and sampling catches for biological information, all permit holders, as condition of their permit shall agree to take on board and provide safe access for sea samplers authorized by the Division of Marine Fisheries at a location established by the Division.
- (14) Prohibitions. It is unlawful to:
- a. conduct any marine fishery activity which is subject to a permit pursuant to M.G.L. c. 130 or 322 CMR without such permit or during a period of suspension or revocation of the permit, or five days after the mailing of a notice pursuant to 322 CMR 7.01(5)(d);
  - b. falsify any application form, documentation or letters of support in conjunction with any application form;
  - c. alter, erase, mutilate or falsify any permit issued by the Director;
  - d. violate or fail to comply with any permit condition or restriction;
  - e. transfer, loan, lease, exchange, barter or sell any permit or for any person other than the holder to possess a permit except as otherwise provided for in writing by the Director or in accordance with 322 CMR or M.G.L. c. 130;
  - f. violate any provision of M.G.L. c. 130 or 322 CMR when conducting an activity authorized by permit;
  - g. fail to produce a permit upon demand of any officer authorized to enforce the marine fishery laws of the Commonwealth;
  - h. fail to display fish harvested or possessed under authority of a permit to any officer authorized to enforce the marine fishery laws of the Commonwealth;
  - i. harass, threaten, intimidate, coerce or assault any officer authorized to enforce the marine fishery laws of the Commonwealth;
  - j. have more than one individual, boat, vessel or business entity fish or conduct business under authority of a permit, unless otherwise provided for in M.G.L. c. 130, 322 CMR or in writing by the Director;
  - k. sell or offer to sell any shellfish harvested under authority of a commercial fishermen permit endorsed for shellfish to any person without a valid Massachusetts shellfish transaction card and either a valid Massachusetts driver's license or a Registry of Motor Vehicles Identification card; or
  - l. to have a non-commercial lobster permit on board any vessel fishing under authority of an offshore lobster permit.
  - m. conduct any activity designed to construct, reconstruct, rebuild, repair, or alter any anadromous fish passageway as defined in G.L. c.130, §§1 and 19, or to construct or build any new anadromous fish passageway without a special permit issued pursuant to 322 CMR 7.01(4).
  - n. to sell or offer to sell any regulated groundfish species as defined in 322 CMR 8.12(1) harvested by persons aboard vessels that are engaged in for-hire fishing.
  - o. obtain multiple State Waters Multispecies Groundfish Endorsements for the same vessel regardless of the number of commercial permits associated with said vessel;

- p. obtain a State Waters Multispecies Groundfish Endorsement for a vessel authorized to take Multispecies Groundfish or monkfish under a federal permit;
- q. obtain a State Waters Multispecies Groundfish Endorsement for a vessel authorized on or before January 1, 2006 to take Multispecies Groundfish or monkfish under a federal permit if that federal permit has been transferred, leased or sold on or after January 1, 2006;
- r. take, possess or sell greater than 75-lbs. of cod harvested from waters under the jurisdiction of the Commonwealth without a State Waters Multispecies Groundfish Endorsement or a valid federal permit authorizing the take and/or possession of Multispecies Groundfish or monkfish.

### 7.03 Coastal Lobster Permit & Trap Allocation Transfer Programs

- (1) Purpose and Scope. The purpose of 322 CMR 7.03 is to regulate the number of lobster traps on a regional and individual basis to prevent over-fishing within each Lobster Conservation Management Area (LCMA) managed by the Commonwealth through the ASMFC, and to establish a process to enable the transfer of existing commercial lobster permits and traps pursuant to M.G.L. c. 130, § 38B, and St. 1992 c. 369.

The American lobster fishery is the state's most economically important fishery conducted within the territorial waters. To meet conservation goals of the interstate plan specific to the nearshore waters around eastern Cape Cod and southern New England, the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA) and Lobster Conservation Management Area 2 (LCMA 2) were developed, respectively. The following regulation (322 CMR 7.03) details the effort control plans for the OCCLCMA and LCMA 2 comprised of trap limit programs and transfer programs as well as the transfer regulations for the remainder of the coastal lobster fishery conducted in LCMA 1.

The transfer program for the coastal lobster fishery conducted in LCMA 1 allows permit holders to transfer their permits along with lobster related business assets under the historical transfer criteria developed for the coastal lobster fishery. Beginning in 2004, the only permit transfers allowed between LCMAs are those involving the transfer of a permit to an LCMA under management of an effort control plan. This will enable commercial fishermen to retain the maximum flexibility in the conduct of their businesses while ensuring conservation goals of any area-specific effort control plans are not compromised by increases in traps fished.

- (2) Definitions. For the purposes of 322 CMR 7.03 the following words shall have the following meanings

Actively Fished means landing and selling at least 1,000 lbs. of lobster or landing and selling lobster on at least 20 occasions, in a single year.

Allocation Transferee means the holder of a commercial lobster permit to whom a transfer of trap allocation is made.

Permit Holder means a holder of a coastal commercial lobster permit endorsed for either LCMAs 1, 2 or OCC.

Permit Transferee means the person to whom a commercial lobster permit is transferred who must document that he/she has at least one year of full-time or equivalent part-time experience in the commercial lobster trap fishery or two years of full-time or equivalent part-time experience in other commercial fisheries, according to criteria developed by the Division.

Transfer Trap Debit means the area-specific percentage of each allocation transfer transaction retained by the Division for conservation purposes as defined by the Division and subject to criteria developed by the Division, and not restricted by the Director under his authority to condition permits.

- (3) Renewals.

- a. The Director shall renew all existing Coastal Commercial Lobster Permits in accordance with M.G.L. c.130, § 38B, and 322 CMR 7.01(2)(a) and (5)(f), provided that catch reports and renewal applications are received by February 28 and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31st of any year.
  - b. Coastal Lobster Permit holders are prohibited from multiple LCMA endorsements, except those commercial lobster permits held by persons with valid federal authorization for LCMA 3 who may additionally receive authorization for either LCMA 1, 2 or Outer Cape Cod or those commercial lobster permit holders not fishing with trap gear who may additionally receive authorization for LCMA 1, 2, or Outer Cape Cod.
  - c. Those authorized for more than one LCMA as designated on their permits shall observe the most restrictive of different regulations for the areas declared as established by 322 CMR and the ASMFC Lobster Management Plan.
  - d. Coastal Lobster Permit holders are prohibited from making changes in area designations during the annual renewal period except to drop a LCMA or to add a LCMA under management of an approved effort control plan for which the permit holder has received a LCMA-specific trap allocation.
- (4) Forfeiture. All Coastal Lobster Permits which are not renewed in accordance with 322 CMR 7.03 shall be forfeited to the Division. The Director may transfer, in order, no more than 50% of the forfeited permits to waiting list applicants.
- (5) Transfer Programs.
- a. OCC Transfer Program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the allocation or permit transferee, and must be notarized prior to submission to the Division. No applications may be accepted after November 30 for the following fishing year. Commercial lobster permit holders endorsed for Outer Cape Cod may:
    - 1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
    - 2. transfer all of their trap allocation to an allocation transferee ; or
    - 3. in compliance with 322 CMR 7.03(9)(d), transfer part of their transferable allocation in multiples of 50 traps to an allocation transferee.
  - b. LCMA 2 Transfer Program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the allocation or permit transferee, and must be notarized prior to submission to the Division. No trap allocation transfer applications may be accepted after November 30 for the following fishing year. Commercial lobster permit holders endorsed for LCMA 2 may:
    - 1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
    - 2. transfer all of their trap allocation to an allocation transferee ; or
    - 3. transfer part of their transferable allocation in multiples of 50 traps to an allocation transferee.
  - c. LCMA 1 Transfer Program enables commercial lobster permit holders endorsed for LCMA 1 to transfer their permits to a permit transferee, provided the permit has been actively fished for four of the last five years, as evidenced by valid catch reports filed with the Division, subject to criteria developed by the Division, and is not restricted by the Director under his authority to prohibit transfers. The transfer program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the transferee, and must be notarized prior to submission to the Division. Commercial lobster permit holders endorsed for LCMA 1 may transfer their commercial lobster permit involving the sale or transfer of lobster related business assets to a permit transferee.

(6) Restrictions.

- a. Transfers shall involve the sale or transfer of lobster related business assets.
- b. Permit and allocation transfers may be denied if any evidence of fraud is found, or the Director determines that the transfer is not in the best interests of the Commonwealth.
- c. All lobster businesses fishing under the authority of a coastal lobster permit as defined in 322 CMR 7.01(2)(a) shall be owner-operated.
- d. Trap Allocation transfers may be subject to a transfer trap debit of 10% of the total amount of traps transferred through the trap transfer process.
- e. Any permit holder authorized to fish traps in OCCLMA or LCMA 2 who transfers a portion of their Trap Allocation resulting in the Allocation totaling less than 50 traps shall have their permit retired immediately.
- f. Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13 shall be prohibited from transferring any part of their trap allocation except when transferring their commercial lobster permit.
- g. Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13 shall be prohibited from transferring their trap allocation along with their commercial lobster permit until the permit has been actively fished for four of the last five years as evidenced by valid catch reports filed with the Division, subject to criteria developed by the Division, and not restricted by the Director under his authority to prohibit transfers. Catch history prior to the issuance of a trap allocation shall not apply towards fulfilling meeting actively fished requirements.

(7) Exceptions.

- a. Performance criteria for permit holders as established by 322 CMR 7.03(2) may be waived for the following reasons:
  1. documented disability of the permit holder, provided that the permit holder fished during at least four of the five years immediately preceding the disability as evidenced by catch reports, and provided further that a signed statement by a physician verifies the disability precludes the permit holder from fishing.
  2. for the purposes of transferring a permit to an immediate family member, including transfers involving the death of the permit holder. Immediate family member shall mean the legal father, mother, wife, husband, sister, brother, son, daughter, or grandchild of the permit holder in the direct line.
- b. Performance criteria established by 322 CMR 7.03 shall be waived for forfeited permits issued to waiting list applicants.
- c. The requirement that permit holders be owner/operators may be waived through a letter of authorization issued by the Director that is subject to annual renewal. Letters of authorization may be granted for use of the permit and associated fishing operation that includes the gear and vessel owned by the permit holder that was actively fished prior to the request. Authorizations may be issued for permit holders on active military service or for immediate family members. For the recipient of a posthumous transfer, or disabled permit holder, authorizations may be issued for up to two years, provided the disability prevents the permit holder from fishing their permit as evidenced by a signed statement from a physician.
- d. The requirement that allocation transfers involve multiples of 50 traps may be waived for permit holders who transfer all of their transferable allocation.

- (8) Waiting List. Persons on the established waiting list for Coastal Commercial Lobster Permits must reapply to hold their relative positions on the list prior to August 1, 1993, after which the list will be closed. Persons who can document, to the satisfaction of the Director, that, due to unforeseen circumstances, they were unable to reapply before the list closure date may be reinstated to the bottom of the waiting list.
- (9) Prohibitions. It shall be unlawful:
- a. To loan, lease, or sell a Coastal Commercial Lobster Permit except under the provisions of 322 CMR 7.03.
  - b. To submit false or incomplete forms or applications according to the provisions of M.G.L. c. 130, § 38B.
  - c. for the holder of a Coastal Commercial Lobster Permit to acquire an additional permit(s) through a transfer pursuant to 322 CMR 7.03 or from the established waiting list.
  - d. for a Permit Holder to retain a trap allocation equal to less than 50 traps after they have transferred part of their trap allocation to another permit holder or a trap allocation greater than 800 traps after they receive a trap allocation from another permit holder;
  - e. for allocation transfers to involve the transfer of traps outside of the specific LCMA for which the trap allocation is designated;
  - f. to transfer a commercial lobster permit endorsed for traps from one LCMA to another LCMA unless the permit is transferred to an LCMA under management of an approved effort control plan for which the permit holder has received an LCMA-specific trap allocation.

#### 7.08 Offshore Lobster Fishery Control Date and Moratorium

- (1) Purpose. The purpose of 322 CMR 7.08 is to provide the Director and the Marine Fisheries Advisory Commission with controls on the offshore lobster fishery and to prevent holders of both coastal and federal offshore permits on a single vessel from increasing the cumulative effort attributable to both permits. The implementation of the control date and moratorium will prevent increases in lobster effort to accomplish the goals and objectives of the interstate lobster management plan.
- (2) Control Date. After February 6, 2003 any person, vessel, or business entity issued a new offshore lobster permit may not be assured of future access to this fishery.
- (3) Moratorium. After February 6, 2003, the Director may not issue new offshore lobster permits for the purpose of landing lobsters taken with traps from federal waters. The Director shall renew all existing Offshore Commercial Lobster Permits in accordance with M.G.L. c. 130, § 38B, and 322 CMR 7.01(2)(b), provided that catch reports and renewal applications are received by February 28 and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31 of any year.
- a. Exception. Holders of federal permits authorized to fish traps in Lobster Conservation Management Area 3 may apply to the Director for a new offshore landing permit. The Director may issue the permit if it is determined to result in no increased trap fishing effort in waters adjacent to Massachusetts.
- (4) Forfeiture. All Offshore Lobster Permits which are not renewed in accordance with 322 CMR 7.08 shall be forfeited to the Division.



## **322 CMR 12.00: PROTECTED SPECIES**

### 12.01 Purpose

The Division of Marine Fisheries works to protect marine protected species such as endangered turtles, harbor porpoise and large whales. The Division's efforts dovetail with federal regulation of marine mammals, including, the northern right whale is the rarest of the world's great whales. Despite international protection by the International Whaling Commission established pursuant to the 1946 International Convention for the Regulation of Whaling and national protection afforded by the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973, the northern right whale is listed as endangered and its population remains dangerously low in the Atlantic.

In response to this threat the Massachusetts Legislature passed a Resolve in 1985 requesting the Department of Fisheries, Wildlife and Environmental Law Enforcement to study the right whale in Massachusetts waters and make recommendations for its conservation. That study recommended, among other measures, a 500 yard buffer zone between right whales and vessels within Massachusetts waters.

The purpose of 322 CMR 12.00 is to:

- (1) implement a 500 yard buffer zone and, in addition, prohibit activities of vessels that affect large whales, including right whales within waters under the jurisdiction of the Commonwealth. 322 CMR 12.00 exempts vessels with federal or state Right Whale scientific study permits and commercial fishing vessels in the act of hauling back or towing gear. In addition, 322 CMR 12.00 applies to both commercial and recreational fishermen, but only to waters under the jurisdiction of the Commonwealth.
- (2) minimize the risk of large whale entanglements, including right whales, in waters under the jurisdiction of the Commonwealth.
- (3) reduce interactions between harbor porpoise and commercial gillnet gear in waters under the jurisdiction of the Commonwealth.

### 12.02 Definitions

For the purposes of 322 CMR 12.00:

Bottom or Sink Gillnet means a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Buffer Zone means an area outward from a right whale a distance of 500 yards in all directions.

Cape Cod Bay means the area that encompasses the state waters portion of the Cape Cod Bay Critical Habitat plus an additional area to the west of the Critical Habitat south of a line that runs east and west at 42 [degrees] 05' and that terminates at the Brant Rock shoreline in the town of Marshfield.

Critical Habitat means those waters in Cape Cod Bay under the jurisdiction of the Commonwealth that fall within the federally designated Right Whale Cape Cod Bay Critical Habitat area listed in the federal Right Whale Recovery Plan and found in 322 CMR 12.11.

Double means a two pot string with a single line attached.

Fixed Fishing Gear means any bottom or sink gillnets or pots that are set on the ocean bottom or in the water column and are usually connected to lines that extend to the water's surface.

Gillnet means anchored, or surface or drifting vertical walls of webbing, buoyed on top and weighted at the bottom, designed to capture fish by entanglement, gilling, or wedging.

Groundlines means the lines connecting pots on a pot trawl and lines connecting gillnets to anchors.

Harass means to approach, pursue, chase, follow, interfere with, observe, threaten, harm in any fashion, turn in any manner to intercept or attempt to engage in any such conduct.

Negatively Buoyant Line means line that has a specific gravity equal to or greater than that of seawater, 1.03, and does not float up in the water column.

Positively Buoyant Line means line that has a specific gravity less than that of seawater, 1.03, and floats up in the water column.

Pot means any lobster or fish trap placed on the ocean bottom.

Pot Trawls or Strings means single pots tied together in a series and buoyed at both ends.

Right Whale means that species of marine mammal known as Eubalaena (Balaena) glacialis.

Single Pots means individual pots buoyed at the surface.

To Abandon means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods.

To Fish means to use, set, maintain, leave in the water or haul gillnets or pots to harvest, catch, or take any species of fish or lobster.

Vessel means any waterborn craft.

Weak Link means a breakable section or device that will part when subjected to specified poundage of pull pressure and after parting, will result in a knot-less end, no thicker than the diameter of the line, the so-called "bitter end" to prevent lodging in whale baleen.

#### 12.03 Prohibition on Certain Gear or Lines in Waters Under Jurisdiction of the Commonwealth.

- (1) It shall be unlawful for any person to fish fixed fishing gear with:
  - a. Lines floating at the water's surface;
  - b. Positively buoyant groundline; and
  - c. Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 of overall length of the buoy line.
- (2) It shall be unlawful to abandon any fixed gear.

#### 12.04 Seasonal Gillnet Closures & Gear Restrictions.

The following closures complement federal regulations intended to minimize gear entanglements of right whales in the Critical Habitat and Cape Cod Bay as well as harbor porpoises in Massachusetts Bay and Cape Cod South during seasonal periods when right whales and harbor porpoises are most likely to be aggregated in these areas.

- (1) Closures.
  - a. Right Whale Critical Habitat and Cape Cod Bay. It is unlawful to fish, store, or abandon gillnets in Critical Habitat and in waters of Cape Cod Bay west of the Critical Habitat south of 42 [degrees] during the period January 1 through May 15. 322 CMR 12.04 may be amended in a future rulemaking, with notice and opportunity for public comment, if gillnet specifications are developed and demonstrated that will minimize risk of entanglement to right whales

### 12.05 Fixed Gear Seasonal Gear Restrictions

- (1) Single Pots and Pot Trawls in Right Whale Critical Habitat. To minimize the number of vertical buoy lines during the period January 1 through May 15, in the Critical Habitat, fishermen may fish them in either multiple pot trawls of four pots or more with vertical buoy lines on each end or may set doubles. It is unlawful to fish, store, or abandon:
  - a. single pots, or
  - b. a trawl with less than four pots with vertical lines on the first and last pot of the trawl.
  - c. a trawl with four or more pots having other than a single vertical line attached to the first and last pot of the trawl.
  - d. a double with more than one vertical buoy line.
- (2) Modifications. The Director may amend by emergency authority the gear time and area restrictions in response to changes in right whale migrations and distributions. The Director may suspend the fixed gear rules if whales depart the Bay early in the season. If at least three full surveys of Cape Cod Bay are successfully completed after April 1 yielding no right whale sightings, and if corroborating evidence supports whales' departure from the Critical Habitat, the Director may suspend the fixed gear restrictions beginning on April 21 or thereafter.
- (3) Experimental Fishery Permits for Gear Testing. The Director may issue experimental fishery permits to authorize a person to fish fixed gear that does not conform with the specifications set in 322 CMR 12.00 for the purposes of developing and testing new gear designs to minimize risk of right whale entanglement in Critical Habitat.

### 12.06 Year-round Gear Restrictions

- (1) Gillnets. It is unlawful to fish any gillnet in any waters under the jurisdiction of the Commonwealth unless the net is rigged with the following breakaway features:
  - a. Knot-less weak link at the buoy with a breaking strength of 600 lbs.
  - b. Weak links with a breaking strength of up to 1,100 lbs. are installed in the float rope between net panels.
  - c. Anchoring system for the gillnets must anchor with the holding power of at least 22 pound Danforth anchor.
- (2) Trap/Pot Gear. It is unlawful to fish any traps or pots in any waters under the jurisdiction of the Commonwealth unless all buoy lines are equipped with a Weak Link that will part when subjected to 600-lbs. or less of pull pressure along the buoy line.
- (3) Exceptions.
  - a. During January 1 through May 15, all buoy lines attached to traps or pots fished in the Right Whale Critical Habitat shall be equipped with a Weak Buoy Link that will part when subjected to 500-lbs. or less of pull pressure along the buoy line.
  - b. Weak link requirements shall not apply to buoy lines attached to non-commercial lobster traps or pots until January 1, 2010.
- (4) A list of DMF approved weak links is available from DMF and furnished to fishermen upon request.

### 12.07 Buffer Zone

Except as otherwise provided for in 322 CMR 12.09, it is unlawful:

- (1) for any vessel to enter a right whale buffer zone,
- (2) for any vessel to approach or intercept a right whale within a buffer zone;
- (3) for any vessel not to depart immediately from a buffer zone, or;
- (4) for any commercial fishing vessel which has completed a haul back, a tow of its gear or otherwise completed its fishing operation and is no longer at anchor not to depart immediately from a buffer zone;

### 12.08 Harassment and Harm

It is unlawful for any vessel to harass or to harm any right whale at any time or place.

### 12.09 Entanglement Reporting

It is unlawful for any commercial or recreational vessel to fail to report the entanglement of a right whale in its gear or lines.

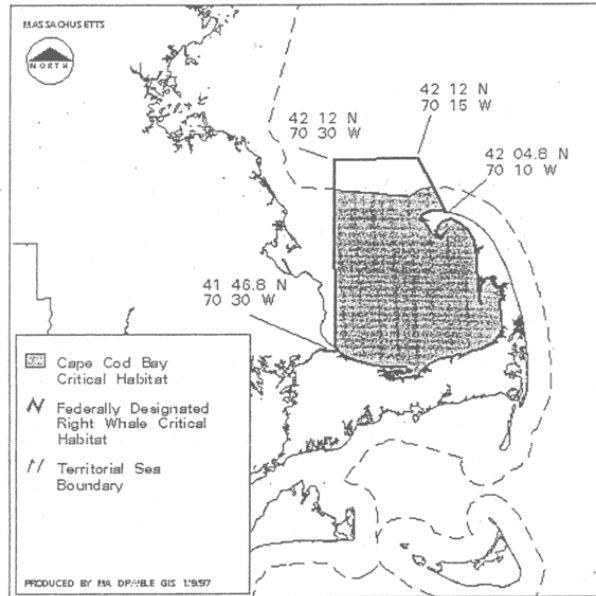
### 12.10 Exceptions

- (1) Federal Permit. Any person issued a permit from any federal department, agency or instrumentality having authority to issue permits for the scientific research, observation, or management of the right whale, may conduct the activity authorized by such permit.
- (2) State Permit. Any person issued a permit in accordance with 322 CMR 7.01(4)(d) for the scientific research, observation, or management of the right whale may conduct the activity authorized by such permit.
- (3) Commercial Fishing. Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations within a buffer zone created by the surfacing of a right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow or fishing operation. In no event may 322 CMR 12.09(3) be construed to authorize a commercial fishing vessel to begin to haul, tow or conduct its fishing operation in or into a buffer zone.
- (4) Disentanglement.
  - a. To assist federally approved disentanglement efforts for whales, any vessel that reports to the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled whale may operate in the buffer zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.
  - b. Any vessel operating in the buffer zone under 322 CMR 12.06(4) shall: 1. operate so as to minimize disruption to the right whale, and 2. immediately depart the buffer zone once the disentanglement effort begins, or when requested to do so by the agencies or their designees.
  - c. When conducting activities within the scope of 322 CMR 12.06(4), vessels shall make every effort to comply with 322 CMR 12.00.

12.11 Protected Species (Reserved)

12.12 Right Whale Cape Cod Bay Critical Habitat Map

The following map depicts the Cape Cod Bay Critical Habitat and its coordinates.



REGULATORY AUTHORITY

M.G.L. c. 130, § 17(11); c. 30A.

## I. **Introduction**

### Monitoring

The State of Rhode Island Department of Environmental Management, Division of Fish and Wildlife conducts a monthly commercial lobster trap sea sampling program, a monthly Offshore Port Sampling program, a monthly/seasonal trawl survey program, a seasonal Ventless Trap Survey, and a seasonal Lobster Settlement Survey (suction sampling).

The only changes in monitoring during 2012 were to the commercial trap sea and port sampling program (Rhode Island Lobster Research and Management Project) began in November 1990. The project previously consisted of a minimum of 3 sea samples per month in Lobster Conservation Management Area 2 (LCMA 2; Narragansett Bay and Rhode Island / Block Island Sounds). Due to decreased funding from the National Marine Fisheries Service the number of sea samples was reduced to two per month for the first half of the year. Federal funding for the program was entirely dropped in May 2012 but state funds were used to continue sampling from June through the end of the year.

The Offshore Port Sampling was also modified slightly with three samples attempted to be collected monthly instead of four. Sampling was targeted to cover all of the NMFS statistical areas where the bulk of RI's LCMA 3 lobster landings emanate (NMFS Statistical Areas 525, 526, 537, 616). Some statistical areas in some months were unable to be sampled due to vessel maintenance, poor weather conditions that prevented fishing activity, or reduced fishing activity.

There have been no other changes made to the monitoring program during 2012.

### Regulations

A new regulation was adopted on 5/11/12. This action amends the regulations governing the Lobster Management Plan for mandatory v-notching of all egg bearing female legal-sized lobsters in **LCMA 2** and establishes a minimum gauge size of 3-17/32 inches (89.69 mm) for **LCMA 3** as conservation equivalency methods for complying with Addendum XVII to Amendment 3 of the ASMFC Interstate Fishery Management Plan. This regulation became effective May 31, 2012.

### Harvest

Harvest in 2012 was up 17% from 2011 to 2,932,388 lbs of lobster. Despite this small uptick, the landings from 2012 still equate to the second lowest total yearly catch since 1983.

II. **Request for *de minimis*, where applicable.** The State of Rhode Island is not requesting *de minimis* status relative to the American lobster fishery.

III. **Previous calendar year's fishery and management program**

a. Commercial Harvests:

**Table 1A.** Total harvest statistics for the Rhode Island fishery. Harvest values in pounds (lbs) of lobster

<b>Year</b>	<b>Total State Harvest</b>	<b>Total Trap Harvest</b>	<b>Total Non-Trap Harvest</b>	<b>Total Traps Fished</b>	<b>Licenses</b>
1981	1,871,067	1,809,518	61,549		
1982	2,254,930	2,218,968	35,962		
1983	5,020,895	4,983,956	36,939		
1984	5,064,760	5,020,137	44,623	322,138	
1985	5,080,163	5,029,764	50,399	311,904	
1986	5,513,831	5,438,853	74,978	243,193	
1987	5,217,300	5,128,266	89,034	270,729	
1988	4,758,990	4,556,920	202,070	268,587	
1989	5,725,641	5,577,249	148,392	247,853	
1990	7,258,175	7,182,481	75,694	283,428	
1991	7,445,170	7,350,459	94,713	315,502	
1992	6,763,085	6,665,892	97,195	348,047	
1993	6,230,855	6,164,388	66,467		
1994	6,474,399	6,362,039	112,360		
1995	5,363,810	5,195,231	166,833		
1996	5,579,874	5,211,155	84,642		
1997	5,766,534	5,718,556	79,973		
1998	5,618,440	5,547,490	70,383		
1999	8,155,947	8,005,071	150,876	246,895	
2000	6,907,504	6,774,151	135,104	225,786	
2001	4,452,358	4,395,740	56,613	207,589	
2002	3,835,050	3,738,553	96,500	173,842	
2003	3,474,509	3,361,030	101,721	158,529	1,302
2004	3,064,412	2,965,864	92,431	132,844	1,239
2005	4,343,736	3,058,593	116,257	131,378	1,168
2006	3,749,432	3,594,592	154,840	141,199	1,103
2007	3,268,075	3,123,865	144,210	136,248	1,050
2008	3,528,445	3,425,048	103,397	119,957	1,010
2009	3,174,618	3,102,048	72,570	120,262	979
2010	3,258,221	3,193,008	65,213	108,567	948
2011	2,513,255	2,466,638	46,617	83,193	922
2012	2,932,388	2,922,938	9,450	84,658	905

**Table 1B.** Harvest by LCMA in pounds (lbs) of lobster

<b>Year</b>	<b>LCMA 1</b>	<b>LCMA 2</b>	<b>LCMA 3</b>	<b>LCMA 4</b>	<b>LCMA 5</b>	<b>LCMA 6</b>
1981	0					0
1982	0					0
1983	0					0
1984	767					0
1985	0					0
1986	0					0
1987	0					0
1988	0					0
1989	0					0
1990	150					0
1991	28,161					0
1992	0					0
1993	0					0
1994	0					0
1995	0					0
1996	0					0
1997	0					0
1998	0				0	0
1999	0				0	0
2000	0				0	0
2001	0				0	0
2002	0				0	0
2003	0				0	0
2004	500				0	0
2005	0				0	0
2006	0				0	0
2007	3				0	0
2008	0	1,297,765	2,230,317	363	0	0
2009	0	1,123,398	2,051,091	129	0	0
2010	0	1,035,983	2,222,182	56	0	0
2011	0	706,044	1,806,742	70	146	22
2012	2,782	635,794	2,293,707	105	0	0



**Table 1C.** Harvest by Stock in pounds (lbs) of lobster

<b>Year</b>	<b>GOM</b>	<b>GBK</b>	<b>SNE</b>
1981	0	1,197,226	750,484
1982	0	1,565,375	1,738,274
1983	0	1,878,643	3,142,252
1984	767	1,647,484	3,416,509
1985	0	1,631,258	3,448,905
1986	0	1,358,125	4,155,706
1987	0	1,075,325	4,141,975
1988	0	861,559	3,897,431
1989	0	797,681	4,927,960
1990	2	875,462	6,382,563
1991	28,161	1,419,246	5,997,763
1992	0	1,260,872	5,502,213
1993	1,155	718,496	5,511,204
1994	0	393,623	6,080,776
1995	0	367,378	5,627,777
1996	0	362,830	5,558,208
1997	0	397,280	6,085,849
1998	0	384,901	5,896,240
1999	0	499,790	7,656,157
2000	0	423,285	6,484,219
2001	0	272,840	4,179,518
2002	0	235,010	3,600,040
2003	17,108	780,268	2,677,133
2004	75,840	734,367	2,254,205
2005	98,909	1,175,397	3,069,430
2006	182,760	799,509	2,767,163
2007	151,693	792,704	2,323,678
2008	148,210	672,827	2,707,408
2009	182,434	657,068	2,335,117
2010	842,378	185,451	2,230,392
2011	166,330	741,656	1,605,269
2012	260,124	827,209	1,845,056

b. Total Recreational Harvest

For 2012, a total of 721 recreational lobster licenses were issued (252 diver and 469 trap). The voluntary recreational lobster fishery catch/effort logbook report was discontinued after 2010.

c. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

The following is a summary reference to the Rhode Island Marine Fisheries Statutes and Regulations that address the compliance criteria as mandated in the fishery management plan amendment(s) and addenda.

- Prohibition on possession of berried or scrubbed lobster: 15.7(a),(4); 15.8(a),(4); 15.11(b)
- Prohibition on possession of lobster meats, detached tails or claws, or other parts of lobster: 15.7(a),(3); 15.8(a),(3); 15.11(a)
- Prohibition on spearing lobsters: 15.4; 15.20.1
- Prohibition on possession of V-notched female lobsters: 15.20.2; 15.20.3,1(E); 15.20.3,2(E); 15.20.3,2(F); 15.20.3,3(E); 15.20.3,4(E); 15.20.3,5(E); 15.20.3,6(F); 15.20.3,7(E)
- Requirement for biodegradable “Ghost” panel for traps: 15.13.1-6(a-d)
- Minimum Gauge Size: 15.11(a); 15.11.1(a); 15.20.3,1(A); 15.20.3,2(A),(H); 15.20.3,3(A); 15.20.3,4(A); 15.20.3,5(A); 15.20.3,6(A); 15.20.3,7(A)
- Limits on Landings by fishermen using gear or methods other than traps: 15.18; 15.20.3,1(G); 15.20.3,2(G); 15.20.3,3(G); 15.20.3,4(G); 15.20.3,5(G); 15.20.3,6(H); 15.20.3,7(G)
- Permits and Licensing: 15.1; 15.2
- Escape Vent on Traps: 15.12; 15.13.1-1
- Maximum Trap Size: 15.12.2; 15.20.3,1(D); 15.20.3,2(D); 15.20.3,3(D); 15.20.3,4(D); 15.20.3,5(D); 15.20.3,6(E); 15.20.3,7(D)
- Limits on the number of traps per vessel: 15.12.3; 15.14.1-12; 15.20.3,3(H); 15.20.3,3(I)
- Monitoring and Reporting: 11.10; 19.14
- Trap Tag System: 15.12.1(c); 15.14.1 (inclusive)
- Most Restrictive Rule: 15.14.1-1(a),6
- No new Area 2 permits after December 31, 2003: Not governed by regulation; recommendation for no new lobster fishery licenses made annually by RIDFW to the RI General Assembly
- Area 2 Effort Control: 15.14.2 (inclusive)
- Trap Levels and Fishery Performance: To be included in annual Lobster Compliance report
- Maximum Gauge Size: 15.11.1(b)
- Escape Vent Size: 15.13.1-1; 15.20.3,1(C); 15.20.3,2(C); 15.20.3,3(C); 15.20.3,4(C); 15.20.3,5(C); 15.20.3,(H)(5); 15.20.3,4(C); 15.20.3,5(C); 15.20.3,6(D); 15.20.3,7(C)

d. Monitoring Programs

- i. **Sea Sampling:** For 2012, the commercial lobster trap sea sampling program (Rhode Island Lobster Research and Management Project) conducted a total of 16 sampling trips all in LCMA 2, NMFS Statistical Area 539. Data collected includes carapace length (to the nearest 1.0 mm to define legal size), sex, shell hardness, cull status, other shell/body

damage, mortality, incidence and severity of shell disease, catch in pounds and number of lobster, number of trap hauls, CPUE, set-over-days, trap and bait type, depth, bottom type, surface water temperature, and trap locations.

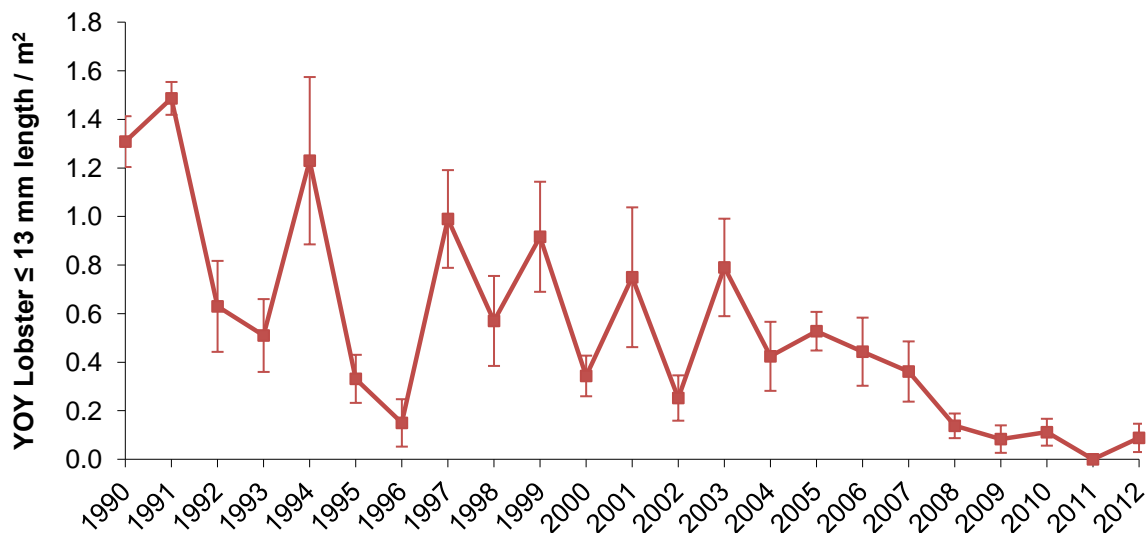
- ii. **Port Sampling:** For 2012, the offshore port sampling program (Rhode Island Lobster Research and Management Project) conducted a total of 31 port samples from Rhode Island commercial lobster vessels. Four different NMFS statistical areas were sampled (SA 525, 526, 537, and 616). Data collected includes carapace length, sex, shell hardness, cull status, other shell/body damage, mortality, incidence and severity of shell disease, catch in pounds and number of lobster, number of trap hauls, CPUE, set-over-days, trap and bait type, depth, and bottom type.

**Table 2.** Port Samples by Stat Area

Stat Area	Vessels	Samples
<b>525</b>	1	8
<b>526</b>	2	12
<b>537</b>	2	4
<b>616</b>	2	7

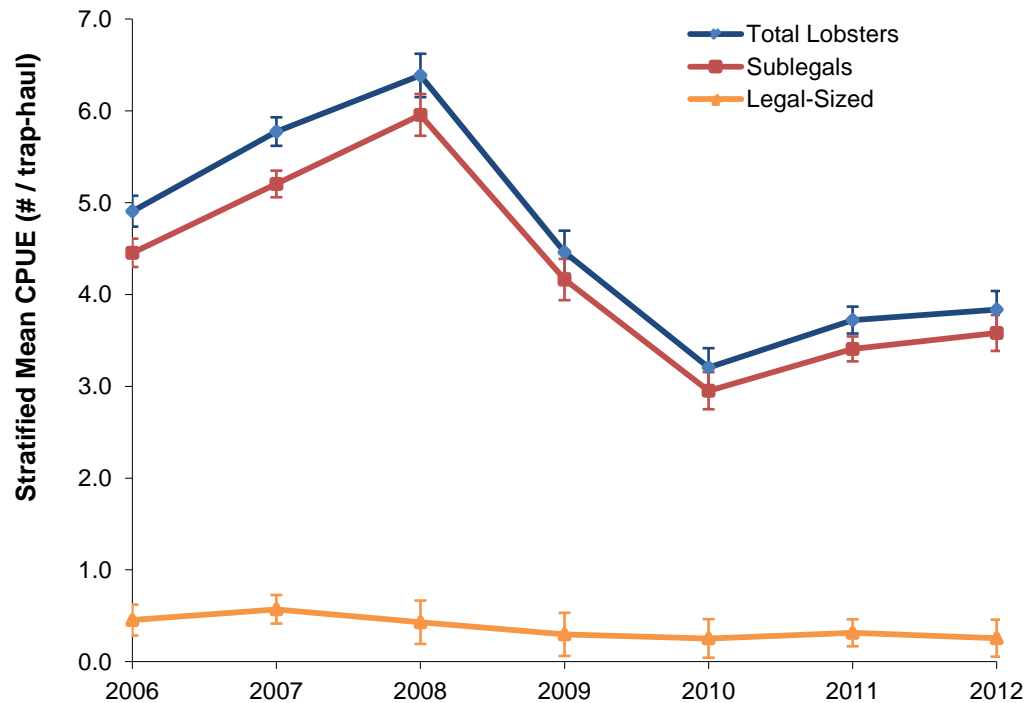
- iii. **YOY Settlement or larval:** For 2012, the YOY Settlement Survey (Suction Sampling) was conducted at a total of six fixed stations with twelve randomly selected 0.5-meter quadrats sampled at each survey station, for a total of 72 samples. The survey stations are located outside of Narragansett Bay along the southern Rhode Island coast, from Sachuest Point (east) to Point Judith (west). The 2012 YOY Settlement Survey index was **0.09** YOY lobster/m<sup>2</sup>.

**Figure 1.** RI YOY settlement index (+/- SE) for 1990-2012.



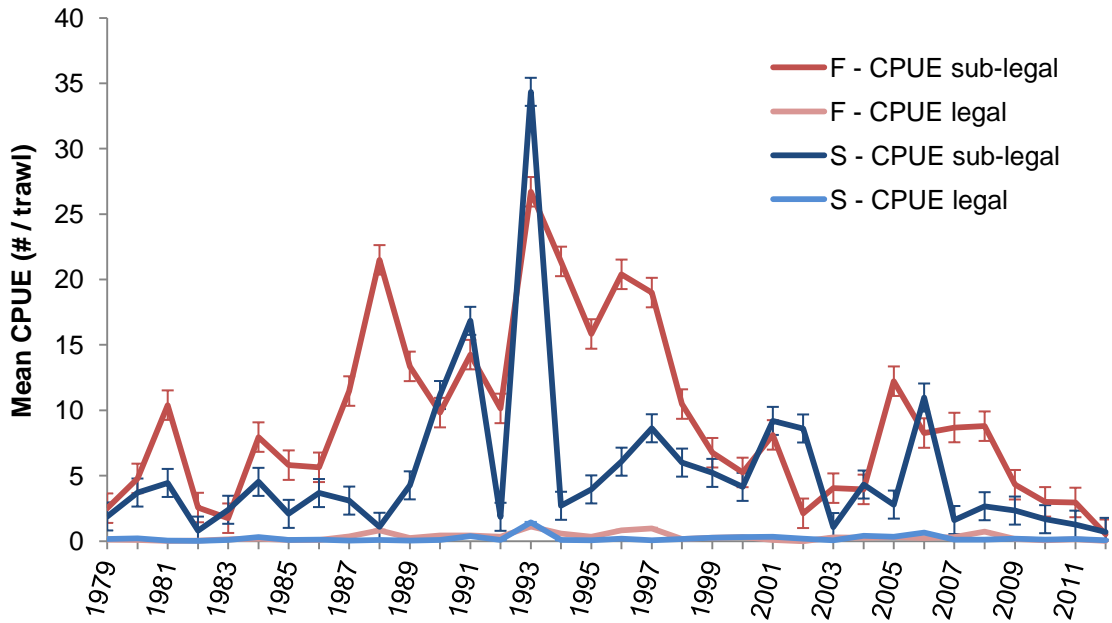
- iv. **Ventless Trap Survey:** For 2012, the Ventless Trap Survey was conducted during the months of June-August, completed a total of 18 survey sampling trips, and sampled a total of 3,616 lobsters from 834 trap-hauls. All sampling was conducted in LCMA 2, NMFS Statistical Area 539.

**Figure 2.** Stratified mean catch (#) per trap-haul (+/- SE) for sublegal ( $\leq 85$ mm CL), legal-sized ( $\geq 86$ mm CL), and all lobsters.

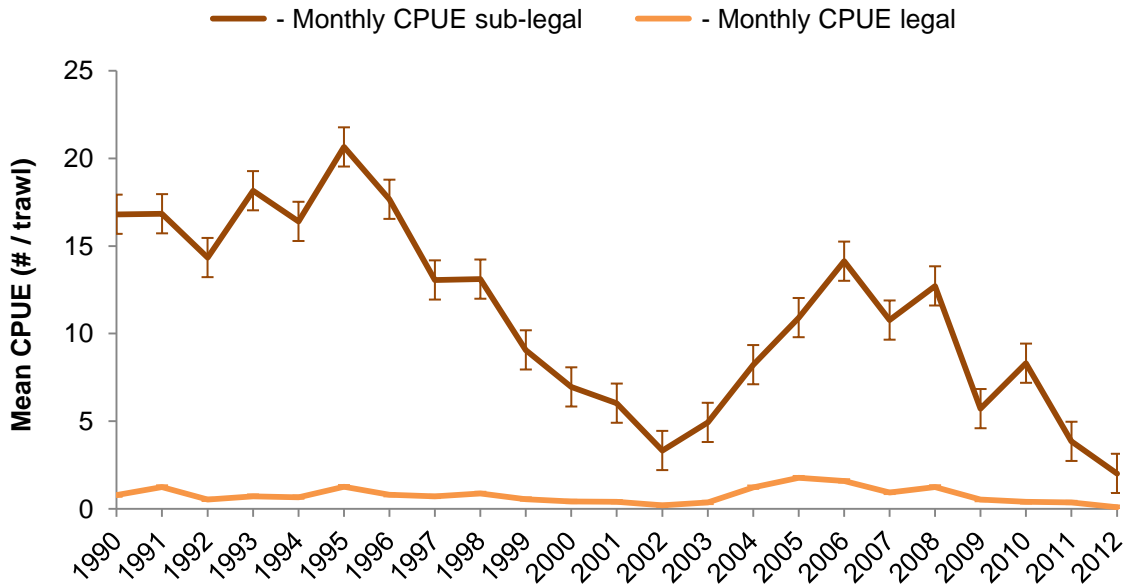


- v. **State Trawl Surveys:** For 2012, the RIDFW Trawl Survey program conducted a total of 88 seasonal survey tows and a total of 129 monthly survey tows all within statistical area 539. The 2012 Spring Trawl Survey conducted a total of 44 survey tows and the abundance of sub-legals was 0.705 lobsters/tow and 0.068 legal-sized lobsters/tow. The Fall Trawl Survey abundance was 0.523 sub-legal lobsters/tow and 0.023 legal-sized lobsters/tow. The Monthly Trawl Survey abundance was 0.614 sub-legal lobsters/tow and 0.012 legal-sized lobsters/tow. Sub-legal sized lobsters are at a time-series low for all categories (Spring, Fall, & Monthly) and legal sized lobsters are at or near time series lows.

**Figure 3.** Mean catch (#) per trawl (+S.E.) for sublegal ( $\leq 85$ mm CL), legal-sized ( $\geq 86$ mm CL) grouped by Fall (F) and Spring (S) seasonal trawls.



**Figure 4.** Mean catch (#) per trawl (+S.E.) for sublegal ( $\leq 85$ mm CL), legal-sized ( $\geq 86$ mm CL) for monthly trawls.



#### **IV. Planned management programs for the current calendar year**

**d. Summarize regulations that will be in effect. (copy of current regulations if different from III c.)**

Please refer to the 2012 Rhode Island Marine Fisheries regulations packet file (RIMF15\_2013.pdf). Currently, only one addition to the regulations was made in 2013 as noted below.

*Adopted 1/16/13*

*15.20.3(4) and 15.20.3(5) - This emergency filing adopts regulatory Amendments via emergency rule making in order to come into compliance with federal requirements for mandatory v-notching of certain female lobsters in LCMA 4 and LCMA 5 along with establishing season closures for the landing of lobsters in these areas from February 1 through March 31.*

The following management plan issues are currently under development for implementation during the 2013 fishing year.

*Public Hearing Filing 11/12/13*

*15.20.3 - A season closure to the landing of lobsters from September 8 – November 28 annually is required for any person or vessel permitted and declared to fish in LCMA 6. The season closure applies to all Long Island Sound waters (LMA 6), extends from September 8 through November 28, inclusive, and applies to both recreational and commercial fisheries and all gears. Between those dates possession of lobsters taken from LMA 6 or from traps with LMA 6 trap tags is prohibited. During the September 8 – November 28 closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season. Traps cannot be baited until one week prior to reopening (November 22).*

Addendum XVIII proposed to scale the size of the SNE fishery to the size of the resource with an initial goal of reducing qualified lobster trap allocations by at least 50% over a 6 year period and also to develop a trap allocation transferability program. It is anticipated that the Lobster Trap Allocation Transferability program will be implemented during the 2013 fishing season.

**e. Summarize monitoring programs that will be performed.**

The State of Rhode Island Department of Environmental Management, Division of Fish and Wildlife has conducted a monthly commercial lobster trap sea sampling program, a monthly Offshore Port Sampling program, a monthly and seasonal trawl survey program, a seasonal Ventless Trap Survey, and a seasonal Lobster Settlement Survey.

Due to significant cuts in funding, the number of samples taken in 2012 as part of the federally-funded commercial trap sea & port sampling program was reduced and will be entirely discontinued at the start of 2013 due to a lack of federal funding.

The Trawl Survey program began in 1979, with Spring and Fall ("seasonal") surveys being conducted in Narragansett Bay, Rhode Island Sound and Block Island Sound, based on a stratified-random / stratified-fixed design. In 1990, the trawl survey program expanded with monthly sampling in Narragansett Bay at a series of fixed stations based on a stratified-random design. There are no anticipated changes to be made to this monitoring program during 2013.

The Ventless Trap Survey was initiated during 2006 and is random-stratified ventless trap survey designed to generate accurate estimates of lobster relative abundance and recruitment, while attempting to minimize or eliminate the biases identified in conventional surveys. Since 2006, the ventless trap survey has been conducted during either the months of June-August (2007-2008) or July-September (2006, and 2009-2011) and consists of 24 randomly-selected sampling stations, with 12 sampling stations being randomly-selected in each of two (2) depth strata (0-20 meters and 21-40 meters). Funding for 2013 is tentative for this survey but there are no anticipated changes to be made to this monitoring program during 2013.

The Lobster Settlement Survey was initiated in 1989 by Dr. Richard Wahle of Bigelow Laboratory and Darling Marine Center, Maine. The Rhode Island lobster Settlement Survey is part of a larger New England lobster settlement index. The goal of the survey is to identify lobster year classes and, specifically, newly-settled young-of-the-year (YOY) lobsters as they arrive by larval settlement in near-shore coastal waters. A total of six (6) fixed stations are surveyed with twelve (12) randomly-selected 0.5 m<sup>2</sup> quadrats, totaling 72 samples. Lobster captured are measured (carapace length in mm), sexed, and enumerated to generate relative densities (number/m<sup>2</sup>). There are no anticipated changes to be made to this monitoring program during 2013.

**f. Highlight any changes from the previous year (note if you are canceling or suspending a program)**

As stated above, the federally-funded commercial trap sea sampling program (Rhode Island Lobster Research and Management Project) was discontinued at the start of 2013 as federal funds were cut. Partial federal funding (50% of original funding amount) was reinstated in June 2013 and a reduced sea sampling regimen for LCMA 2 will be adopted.

**State of Connecticut  
Compliance Report for American Lobster  
July 1, 2013**

**I. Introduction**

- a. Summary of the year highlighting any significant changes in monitoring or harvest.

Connecticut's lobster fishery has been monitored consistently since 1984 with the exception of research trawl monitoring in fall 2010. In 2012 Commerce Department interjurisdictional funding to support CT fisheries monitoring was so severely cut that commercial sea sampling will be minimized and the larval monitoring program will be discontinued after this year. All monitoring activities completed in 2012 are summarized in section III below.

**II. Request for *de minimus*, where applicable.**

Not applicable.

**III. Previous calendar years' fishery and management program.**

- a. **Commercial Harvest, 2009-2012 (pounds):**

Year	Total State Harvest	Total Trap Harvest	Total Non-Trap Harvest	Total Harvest by LCMA	Total Harvest by Stock	Total Traps Fished*
2009	451,156	440,429	10,727	<b>CONFIDENTIAL DATA</b>		65,581
2010	432,491	419,626	12,865			57,323
2011	191,594	186,640	4,954			37,085
2012	236,846	234,822	2,024			29,940

\*annual maximum per trip reported for all license holders

- b. **Recreational Harvest:**

Recreational landings have not been finalized for 2012. These have declined in a trend similar to commercial landings, varying from 1-4% of the annual total for the last decade, and 1-6% of the



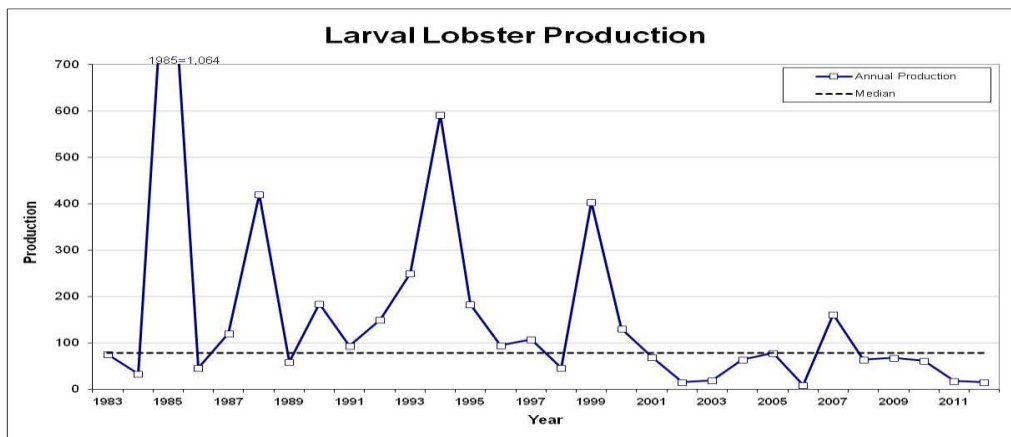
total since 1983. Participation declined from 875 license holders in 2009 to 505 and 377 in 2010 and 2011, respectively, due to declining lobster abundance and a large increase in the price of the license. Despite the decline in total numbers, the proportion of license holders who actually fished has increased from 60% in 2006 to 72-78% in 2009-2011. The proportion of the catch taken by traps versus divers has remained steady at 90-98%

Year	Total Harvest (numbers)	Harvest by Traps	Harvest by divers	Total Traps Fished
2009	8,915	8,307	608	3,474
2010	12,695	12,405	290	2,299
2011	5,053	4,923	130	1,740

c. Copy of regulations that were in effect: Attached as appendix.

### Monitoring Programs

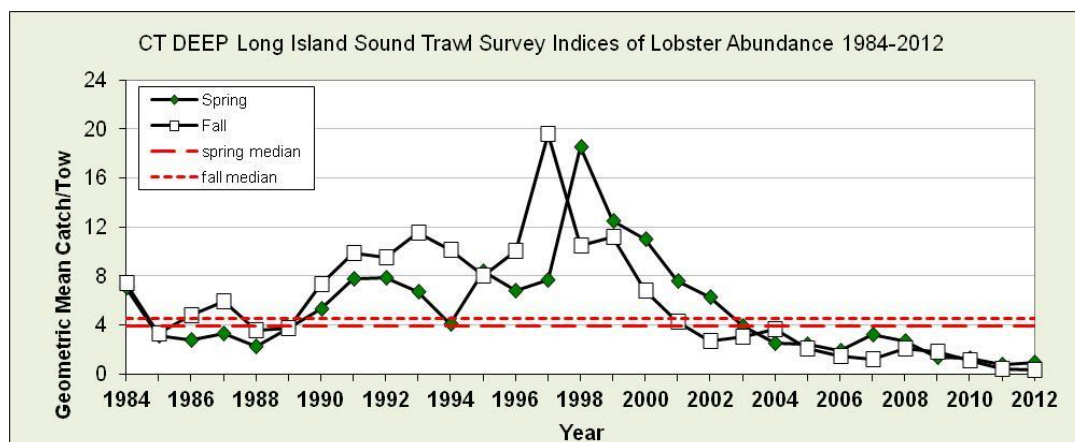
- d. **Sea Sampling:** During 2012, 16 sea-sampling trips on commercial lobster boats were taken. Biological data were recorded from 5,064 legal and sub-legal size lobsters captured during these trips.
- e. **Port sampling:** not applicable
- f. **Recruitment Monitoring:** The CT DEEP Larval Lobster Survey is conducted each summer to provide an index of zero-class recruitment in western Long Island Sound. Annual production in 2012 (15.2 larvae per 1000 m<sup>3</sup> water sampled) remained below the long-term median value (78.6) and ranked 28th in the 30-year time series (1983-2012). The median value has been exceeded only once, in 2007, since 2000 with the other 11 years' production below the median value. The lowest value in the time series was recorded in 2006 (9.1 larvae/1000 m<sup>3</sup>), followed by 2002 (15.0 larvae/1000 m<sup>3</sup>, see figure below). The larval program will not be continued after 2012.



- g. **Research Trawl Survey:** Juvenile and adult abundance are monitored through the Long Island Sound Trawl Survey (LISTS) during spring (April, May, June) and fall (September and October) cruises. The Survey employs a stratified-random sampling strategy, selecting 40 sites each month in four depth and three sediment-type strata proportioned by their area in the CT and NY waters of the Sound. Mechanical breakdown of the research vessel late in the spring 2010 prevented the completion of sampling and caused the loss of all sampling in fall 2010. Sampling resumed in spring 2011 and continued on its previous schedule.

The spring 2012 lobster abundance index (geometric mean = 0.95 lobster/tow) was slightly higher than the 2011 index (0.79) but substantially lower than the 2009 and 2010 indices (1.39 and 1.30 respectively), ranking 28th in the 29-year time series. Spring 2012 was second only to 2011 as a record low for total lobsters caught in the spring survey since its onset. All indices from 2003-2012 are below the time series median (4.0, see figure below).

The fall 2012 index (0.29) also ranked 29<sup>th</sup> or lowest in the time series, joining all indices since 2005 as collectively the lowest in the 29-year time series. The fall time series median (4.5, see figure below) has not been exceeded since 2000.



The magnitude of non-harvest losses (i.e. discard mortality) is unknown but believed to be very low as the fishery is predominately a trap fishery. However, there is rising concern for mortality caused by the large number of derelict wire traps which are a vestige of the contracting fishery.

#### IV. Planned management programs for the current calendar year.

- a. Summarize regulations that will be in effect (provide copy if different from IIIc).

In accordance with Amendment 3, a lobster trap cap and tag system regulation was adopted on December 28, 1999 and implemented in 2000. In Connecticut the number of traps a license holder may fish was capped based on his fishing history established during the reference period of January 1, 1995 to June 8, 1998. Trap tags have been required since June 1, 2000. Note that annual totals

have been updated to include state-water replacement tags but exclude catastrophic loss tags. Federal tags designated to be used in LCMA 6 are included in the ‘state waters’ total. The general trend of fewer tags purchased each year continued, declining by 40% from 2010 to 2012, and 71% from 2001 to 2012, as shown below:

**Total Lobster Trap Tags Purchased, 2000-2012.**

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
State waters	193,433	180,751	170,389	134,343	139,965	130,072	132,075	128,545	99,728
Federal waters	*	4,840	8,280	9,550	5,890	4,820	4,445	880	3,520
Total	193,433	185,591	178,669	143,493	145,855	134,892	136,520	129,425	103,248

Year	2009	2010	2011	2012
State waters	83,883	83,846	60,434	47,807
Federal waters	4,480	4,800	5,530	5,580
Total	88,363	88,646	65,964	53,387

\*number of federal tags not available

b. Summarize monitoring programs that will be performed.

**Sea sampling of the commercial catch will continue on a limited basis due to lack of staff funding; the previous effort target of 15-24 trips annually will be reduced to 4, focused on the effect of the newly instituted fall closed season. Larval lobster abundance monitoring will be discontinued in 2013 because funding to continue this 30-year program was not secured.** The Long Island Sound Trawl Survey will continue using standard sampling protocols.

c. Highlight any changes from the previous year.

The Management Board voted in 2011 to reduce landings by 10% from the 2003-2007 average through a season closure. In 2012 public hearings were held to discuss regulation changes to institute a fall closed season, matching regulations passed for New York waters in Long Island Sound (LCMA 6) from September 8 through November 28, to begin in 2013.

## **Appendix: Connecticut state regulations pertaining to lobster harvest.**

### **CT DEP Marine Fisheries Regulations Revised 01.01.2011**

## **26-157C - TAKING OF LOBSTER**

### **26-157c-1. Taking lobsters – general.**

(a) Definitions

- (1) “ASMFC” or “Atlantic States Marine Fisheries Commission” has the same meaning as provided in section 26-142a-16 of the Regulations of Connecticut State Agencies.
- (2) “American Lobster Fishery Management Plan” or “FMP” means the plan and its amendments and addendums approved and published by the ASMFC to manage the interstate lobster fishery.
- (3) “Carapace length” means the length of a lobster as measured along the length of the carapace (body shell) parallel to the centerline from the rear end of the eye socket to the rear end of the carapace.
- (4) “LMA” means any lobster management area as defined in the FMP.
- (5) “LMA 6 maximum length” means a carapace length of 5-1/4 inches.
- (6) “LMA 6 minimum length” means a carapace length of 3-3/8 inches.
- (7) “LMA 6 v-notch” means a v-notch, with or without setal hairs, at least one-eighth inch in depth.
- (8) “Lobster” means American lobster (*Homarus americanus*).
- (9) “V-Notch” means a notch or indentation in the flipper next to and to the right of the center flipper as viewed from the dorsal surface with the tail oriented toward the observer. Such a mark is applied to protect certain lobsters from harvest for conservation purposes.

(b) Lobsters may be taken only by lobster pots, traps, trawls or similar devices or by skin diving, including the use of self-contained underwater breathing apparatus, or by hand. The use of spears or hooks of any kind to take lobsters and the possession of lobsters taken by any method that pierces the shell is prohibited.

(c) No person shall buy, sell, give away, offer for sale or possess, regardless where taken:

- (1) any female lobster with ova or spawn attached or from which the ova or spawn has been removed; or
- (2) any female lobster bearing a LMA-6 v-notch or any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark; or
- (3) any lobster with a carapace length less than the LMA 6 minimum length, except as provided in section 26-157j of the Connecticut General Statutes; or
- (4) any lobster with a carapace length greater than the LMA 6 maximum length, except that a person may buy, sell, give away, offer for sale or possess a lobster with a carapace length greater than the LMA 6 maximum length provided:
  - (A) such lobsters are not taken from LMA 6 waters; and
  - (B) such lobsters are not greater than the maximum legal length in effect for the waters of the LMA or nation of origin; and
  - (C) any seafood dealer, wholesaler or shipper in possession of such lobsters possesses a manifest, bill of lading, invoice, purchase order, seafood dealer report or other written documentation identifying the vessel, state, lobster management area or nation of origin, as applicable, where such lobsters were received, the number of such lobsters received that are greater than LMA 6 maximum length and the date such lobsters were received. Such documentation shall be retained by the seafood dealer, wholesaler or shipper for a period of six months from the date such lobsters were received and shall be made available to law enforcement officers upon request; and

(D) any vessel possessing or landing lobster greater than the LMA 6 maximum length shall have a valid federal limited access American lobster permit issued pursuant to 50 CFR 697.4.

(d) When caught, any lobster specified in subdivisions (1) to (4), inclusive, of subsection (c) of this section or subdivisions (1) or (3) of subsection (e) of this section shall, without avoidable injury, be immediately returned to the waters from which taken.

(e) No person authorized to take lobsters from any LMA in other than or in addition to LMA 6, as defined in the current FMP, shall possess on the waters or shores of this state:

- (1) any lobster with a carapace length that is less than the largest minimum length or greater than the smallest maximum length specified in the FMP for any LMA for which the licensee has elected to engage in lobster fishing activity;
- (2) any lobster pot with an escape vent as defined in subsection (a) of section 26-157c-2 of the Regulations of Connecticut State Agencies with an unobstructed opening less than the largest dimension specified in the FMP for any LMA for which the licensee has elected to engage in lobster fishing activity; or
- (3) any female lobster that does not meet the most restrictive LMA-specific v-notch definition specified in the FMP for any LMA for which the licensee has elected to engage in lobster fishing activity, or any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark.

(f) Any licensee authorized to take lobsters from an LMA in which the FMP requires a v-notch to be applied to all egg-bearing female lobsters shall, as specified in the FMP, apply such v-notch to all such lobsters taken when fishing in that LMA.

Effective January 1, 1992, amended October 30, 1998. Amended January 28, 2002 to prohibit possession of male as well as female v-notched lobsters. Amended March 31, 2003 prohibit the possession of lobsters not in compliance with any length limits in effect in any LMA they elect to fish. Amended 2/27/04 changed v-notching for females only. Amended 3/1/2007 defined LMA 6 v-notch (1/8"), minimum length increased to 3-5/16". Amended 12/22/2008 technical corrections, established LMA 6 maximum length (5-1/4"), and revised v-notch definition..

### **26-157c-2. Taking lobsters - pots and traps.**

(a) All lobster pots, traps and similar devices used for the taking of lobsters shall be constructed so as to contain in the catch compartment (parlor) one of the following:

- (1) A horizontal, rectangular escape vent with an unobstructed opening not less than 2 inches by 3/4 inches; or
- (2) two circular escape vents each with an unobstructed opening not less than 2-5/8 inches in diameter.

All lobster pots, traps or similar devices in use which do not contain such escape vents may be seized by any authorized representative of the department and disposed of as determined by the commissioner.

(b) All lobster pots and traps made of material other than wood used for the taking of lobsters shall be constructed so as to contain, on any side of the catch compartment (parlor), an escapement panel which, when open, will provide an unobstructed orifice not less than 3-3/4 inches by 3-3/4 inches. Said escapement panel may be hinged and shall be held in the closed position with uncoated, ferrous wire, the stock of which is not more than 3/32 of an inch in diameter or with untreated natural fiber such as cotton, sisal, hemp, or manila. For all pots and traps constructed of wood used for the taking of lobsters, the escapement panel shall incorporate a rectangular escape vent with an inside

measurement not less than 2 inches by 5-3/4 inches and, on the longitudinal axis, be composed of lath not thicker than 3/8 of an inch. All such pots and traps in use which do not contain such escapement panels may be seized by any authorized representative of department and disposed of as determined by the commissioner.

(c) No person shall use in the waters of this state a lobster pot, trap or similar device with a volume larger than 22,950 cubic inches.

(d) From one-half hour after sunset to one-half hour before sunrise, no person shall set, tend or assist in setting or tending any lobster pot, trap or similar device for the catching of lobsters or any live car or other device in which lobsters are kept in the water after having been removed from the pots, traps or trawls in which they were caught.

(e) All lobster pot buoys used in the waters of this state shall be of uniform color or uniform pattern of coloration, such color or pattern to be determined by the license holder. Any person engaged in lobstering shall maintain, in a position visible from all directions, a buoy displaying such person's color or pattern of coloration.

(f) All lobster pots used in the waters of this state shall be identified as required in subsection (b) of section 26-157a of the General Statutes and, upon transfer of ownership of said pots, any previous identification shall not be removed or obliterated. Any lobster pot, trap or similar device found to contain a defaced or obliterated license number may be seized by any authorized representative of the department and either used by the department for purposes of marine research or destroyed.

Effective May 19, 1995. Amended October 23, 1997. Amended October 30, 1998 to implement maximum pot size.

**26-157c-3. Taking lobsters - otter trawls, beam trawls and similar devices.**

(a) In any waters of this state on any vessel having on board an otter trawl net, beam trawl net or similar device capable of taking lobsters, there shall be a possession limit of 100 lobsters per day or per trip whichever is the longer period of time, except that with respect to any vessel using methods other than pots and landing lobsters taken outside the waters of this state, said limit shall be 100 lobsters per day provided that, if a trip exceeds five days, such limit shall be 500 lobsters per trip. Said limits shall apply to the aggregate of all persons on board such vessel. For the purposes of this subsection, "day" shall be from 12:01am until midnight, and "trip" shall be from the time the vessel departs from shore to begin fishing until the time that the vessel first returns to shore for the purpose of landing the catch.

(b) The transfer by any person of any lobster from any vessel having on board an otter trawl, beam trawl or similar device to any other vessel is prohibited.

Effective January 1, 1986. Amended October 30, 1998 to implement the 100/500 piece lobster limit for trawlers.

**26-157c-4. Management of the Lobster Pot Fishery.**

(a) The purpose of this section is to implement requirements of the Atlantic States Marine Fisheries Commission's American Lobster Fishery Management Plan by establishing the number of lobster pots authorized to be set each year by licensees of the department and the provisions by which lobster pot tags will be issued to licensees. This section may be amended in the future in accordance with the provisions of chapter 54 of the Connecticut General Statutes.

(b) **Definitions.**

- (1) "ASMFC" means the Atlantic States Marine Fisheries Commission, created under the terms of an interstate compact ratified by the State of Connecticut (Section 26-295 of the General Statutes) and approved by the U. S. Congress (Public Law 539, Chapter 283, Second Session, 77<sup>th</sup> Congress; 56 Stat. 267, approved May 4, 1942, as amended by Public Law 721, 81<sup>st</sup> Congress, approved August 19, 1950).
- (2) "American Lobster Fishery Management Plan" means the plan and its amendments and addendums approved and published by the ASMFC to manage the interstate lobster fishery.
- (3) "Catastrophic pot loss" means the loss, between June 1 of a given year through May 31 of the following year, of:
  - (A) with respect to a personal use licensee, 10 pots; and
  - (B) with respect to a commercial licensee, more pots than the number of tags issued to such licensee under subdivision (e)(1) of this section, if such loss is due to one or more events beyond the licensee's control such as an act of God, theft or vandalism.
- (4) "Commercial licensee" means any person to whom the Commissioner has issued a commercial license under section 26-142a of the General Statutes.
- (5) "Commissioner" shall mean the Commissioner of Energy and Environmental Protection.
- (6) "Effective pots fished" means, for a given calendar year, the smaller value of:
  - (A) the maximum calculated number of pots derived from LMA 2 qualifying catch records, or
  - (B) the predicted pots fished derived from LMA 2 qualifying catch records, or
  - (C) if provided on reports submitted to the National Marine Fisheries Service, MADMF, the NYSDEC or the RIDEM, the maximum number of pots fished in LMA 2 during a year.
- (7) "Federal lobster permit" means a federal fisheries permit issued by the U. S. Department of Commerce pursuant to 50 CFR 697.4 for a vessel for taking American lobster by pots from a specified LMA.
- (8) "Fish" and "fished" means setting, tending, or hauling a pot, or leaving a pot in the water after setting, tending or hauling it.
- (9) "Fishing week" means any calendar week within the qualifying period.
- (10) "Fishing year" means the period from June 1 of a given year through May 31, inclusive, of the following year.
- (11) "FMP" means the American Lobster Fishery Management Plan.
- (12) "Haul" means to lift a pot from the water for the purpose of taking lobsters.
- (13) "License" means a license to take lobster issued by the Commissioner under section 26-142a of the Connecticut General Statutes.
- (14) "Licensee" means a person to whom the Commissioner has issued a license.
- (15) "LMA" means any of the several lobster management areas defined in the FMP.
- (16) "LMA 2" means Lobster Management Area 2 as defined in the FMP.
- (17) "LMA 2 qualifying catch records" means those records that:
  - (A) are complete and accurate records of lobster catch, landings, pots hauled, and the soak-time associated with those pots, reported to the Commissioner in accordance of the provisions of section 26-157b of the Regulations of Connecticut State Agencies, or similar such data submitted to the National Marine Fisheries Service, the MADMF, the NYSDEC or the RIDEM, and
  - (B) represent fishing activity that occurred aboard a vessel that held a federal or applicable state lobster permit for LMA 2 and was conducted between the effective date and expiration date, inclusive, of said permit, and
  - (C) represent fishing activity that occurred aboard a vessel for which pot tags bearing the LMA 2 designation were purchased for the fishing year in which that activity occurred, and
  - (D) represent fishing activity that resulted in landings of lobster in Connecticut, Massachusetts, Rhode Island or New York, and

- (E) represent fishing activity from any statistical area provided that at least one trip was reported in catch records for the same calendar year that meets the requirements of subparagraphs (A) through (D), inclusive, of this subdivision and that indicates fishing activity in a statistical area that lies in whole or in part within LMA 2 or the LMA 2/3 overlap.
- (18) "LMA 2 qualifying period" means the calendar years 2001, 2002, and 2003 or, if applied under reconsideration granted by the Commissioner pursuant to subsection (g)(4)(B) of this section, the years 1999 and 2000.
- (19) "LMA 2/3 overlap" means the overlap area between LMA 2 and LMA 3 as defined in the FMP.
- (20) "LMA 6" means Lobster Management Area 6 as defined in the FMP, namely those waters of Long Island Sound and any New York territorial waters of Long Island Sound and Fishers Island Sound in which Connecticut residents are authorized by the Commissioner or by the NYSDEC to take lobsters but excluding New York waters on the south shore of Long Island west of 72° west longitude. Unless otherwise specified in this section, LMA 6 includes LMA 6A and the Race.
- (21) "LMA 6 qualifying catch record" means a complete and accurate record of pots hauled, and the soak-time associated with those pots, submitted to the Commissioner in accordance of the provisions of section 26-157b of the Regulations of Connecticut State Agencies, covering any portion of the qualifying period.
- (22) "LMA 6 qualifying period" means the period from January 1, 1995 through June 8, 1998, inclusive.
- (23) "LMA 6A" means a portion of LMA 6 comprising the Connecticut waters of Long Island Sound west of the Lorán C 26740 line.
- (24) "MADMF" means the Massachusetts Division of Marine Fisheries.
- (25) "Material incapacity" means an event determined by the commissioner to be beyond the control of a license holder that results in a significant reduction in fishing performance by that license holder. A material incapacity shall include, but not be limited to, a significant medical condition or active military service, but shall not include the decision of the license holder to pursue others interests.
- (26) "Maximum calculated number of pots" means the larger of the following calculated number of pots:
- (A) the number of pot-days from the LMA-specific qualifying catch records attributable to a fishing week divided by seven, or
  - (B) the largest value for pots hauled on any one day from the LMA-specific qualifying catch records within that fishing week.
- (27) "NYSDEC" means the New York State Department of Environmental Conservation.
- (28) "Permanent transfer" means the sale, barter, trade or gifting of some portion of the number of pots authorized to be fished by a commercial licensee.
- (29) "Personal use licensee" means any person to whom the Commissioner has issued a license under section 26-142a of the Connecticut General Statutes to take lobsters for personal use.
- (30) "Pot" means any lobster pot, trap or similar device used to take lobsters.
- (31) "Pot-day" means the reported number of pots hauled during a day, times the reported soak-time for those same pots.
- (32) "Predicted pots fished" means the number of pots, not to exceed 800 pots, calculated using the formula derived for LMA 2 in Addendum VII to the FMP,  $P=e^{(a(\ln(L))+b+(R/2))}$ , where P is the predicted pots fished, L is the total annual landings, e is the base of the natural logarithm and ln is the natural logarithm. The values for a, b, and R are dependent on the calendar year of the total annual landings and are:
- (A) for 2001, 2002 and 2003,  $a=0.6473$ ,  $b=0.4782$  and  $R=0.6525$ , and
  - (B) for 1999 and 2000,  $a=0.6221$ ,  $b=0.6163$  and  $R=0.5295$ .
- (33) "Qualifying license application" means the application for a license which the Commissioner issued between December 19, 1994 and June 8, 1998, inclusive, and which application was effective for any of the calendar years 1995, 1996, 1997 or 1998.



(34) "Race" means a portion of LMA 6 comprising commercial fishery statistical areas 6 and 147 as referred to on the forms which the Commissioner provides for submission of fishing reports pursuant to section 26-157b of the Regulations of Connecticut State Agencies.

(35) "Report" or "Reported" means to submit or to have submitted to the Commissioner a complete and accurate qualifying catch record.

(36) "Resident licensee" means a commercial licensee who is a resident of Connecticut.

(37) "RIDEM" means the Rhode Island Department of Environmental Management.

(38) "Soak-time" means the number of days from the date a pot is set in the water until the date it is next hauled.

(39) "Tag" means a tag sold or authorized to be sold by the Commissioner or another state or the National Marine Fisheries Service, to be used to satisfy the requirements of this section.

(40) "Vendor" means a person authorized by the Commissioner or another state or the National Marine Fisheries Service to sell tags.

**(c) Lobster Pot Limits.**

(1) On and after June 1, 2000, no resident licensee shall fish any more than the following number of pots:

(A) Whichever of the following three numbers is the greatest:

(i) The number of pots such licensee specified on any one of such licensee's qualifying license applications as the maximum number of pots such licensee intended to fish, or

(ii) the maximum calculated number of pots that such licensee fished during the qualifying period, or

(iii) 200 pots, or

(B) the smallest number of pots which the commissioner has determined a licensee is authorized under the FMP to fish in any LMA other than LMA 6,

(C) provided that if the number of pots determined under subparagraph (A) differs from the number of pots determined under subparagraph (B), the lesser of those two numbers shall be the maximum number of pots which such licensee may fish, and

(D) provided further that such licensee may not fish more than 200 pots if such licensee did not report the fishing of any pots during the qualifying period but such licensee:

(i) Specified on any one of such licensee's qualifying license applications that such licensee intended to fish one or more pots, or

(ii) reported landing lobsters from LMA 6 during the qualifying period, and

(E) provided further that such licensee may not fish any pots if such licensee did not report the fishing of any pots during the qualifying period and such licensee did not specify on any one of such licensee's qualifying license applications that such licensee intended to fish one or more pots and he did not report landing lobsters from LMA 6 during the qualifying period, and

(F) provided further that the number of pots that a licensee qualifies to fish in LMA 6 according to subparagraphs (A) and (D) of this subdivision shall be reduced by the number of pots such licensee relinquished, if any, via "Lobster Trap Allocation Buy-Back Program Application" forms signed and acknowledged by such licensee and approved by the department from 2001 to 2003, inclusive.

(2) No commercial licensee may fish in LMA 6A more than 800 pots.

(3) The Commissioner may authorize a commercial licensee to fish in LMA 6 the maximum calculated number of pots he would have qualified to fish under subsection (c) based on the period January 1, 1992 through December 31, 1994, inclusive, provided that:

(A) he held a commercial license during any of the years 1992, 1993 or 1994, and

(B) he did not fish during the qualifying period due to his own verified and substantiated medical circumstances, and provided further that he may not transfer any of said pots under the provisions of subsection (f)(2) of this section.

(4) No personal use licensee may fish more than 10 pots. Said pots may be used in LMA 6 and in LMA 6A.

(5) A licensee may fish pots with the tags of another licensee for as many as 30 fishing trips in a year without the commissioner's approval. A licensee may fish pots with the tags of another licensee for more than 30 fishing trips in a year only with the Commissioner's written approval, provided not more than one such approval shall be issued to a licensee at any one time. The Commissioner shall deny such written approval unless the licensee applying therefore demonstrates that he is a partner, employer, employee or family member of the other licensee or he is assisting a licensee who cannot fish his own pots due to his own verified and substantiated medical condition.

(6) Under no circumstances may a licensee fish pots with the tags of more than one other licensee.

(7) A licensee may not fish pots with the tags of another licensee unless he carries on his person the written permission of such other licensee.

**(d) Tags.**

(1) Except as provided in subsection (c)(5), no licensee shall fish any pot unless it is affixed with a tag issued to him that is valid for the period from June 1 of a given year through May 31, inclusive, of the following year. Tags shall only be fished in LMAs for which they are designated. Possession of untagged pots on any waters of any LMA is prohibited. The Commissioner shall make available the name and address of any vendor authorized to provide tags to licensees.

(2) The fee for a tag shall be the total of the costs of manufacturing, shipping and handling the tag up to a maximum of \$0.20 for commercial licensees and \$0.25 for personal use licensees, plus an additional \$0.03.

(3) The licensee shall affix the tag to the top of the pot, provided he may not affix the tag to any portion of the door or to any cut wire mesh and may not reuse a tag once removed from a pot to which it was originally affixed.

(4) The Commissioner shall authorize for each licensee a number of tags equal to the maximum number of pots the licensee is authorized under this section to fish plus any overages for routine loss as determined according to subsection (e)(1) of this section, all rounded up to the next multiple of 10 tags. The Commissioner shall authorize for use in LMA 6A the number of such tags which is equal to the maximum number of pots the licensee is authorized under this section to fish in LMA 6A, provided the licensee may use in any portion of LMA 6 any of his tags designated for use in LMA 6A. No licensee may use in LMA 6A any of his tags unless such tag is designated for use in LMA 6A.

(5) No person that is authorized to fish lobster pots in more than one LMA shall be authorized to purchase pot tags in excess of the smallest numbers of pots said person is allowed to fish in each LMA authorized, as specified in the "most restrictive rule" in Addendum IV to Amendment 3 to the FMP.

(6) Residents of Connecticut shall not obtain tags from any source other than the Commissioner, the National Marine Fisheries Service or a vendor as defined in this section.

(7) Resident licensees holding a federal lobster permit to fish in a LMA other than LMA 2 or LMA 6 shall not be authorized to purchase pot tags in excess of the number allowed under the FMP.

**(e) Tag Replacement.**

(1) The Commissioner shall authorize for each commercial licensee an additional number of tags equal to 10% of the number of tags issued under subdivision (d)(4) for use in LMA 6 or authorized under subsection (g)(3) of this section for use in LMA 2. The Commissioner may also issue to a commercial licensee an additional number of tags, solely for use in the Race, equal to 15% of the number of tags authorized under subdivision (d)(4) of this section for use in LMA 6.

(2) A licensee may request in writing that the Commissioner authorize the replacement of tags for pots such licensee has lost due to catastrophic pot loss. If the Commissioner approves such request in

writing, the licensee may purchase, as replacement tags, the total number of tags authorized in subdivisions (d)(4), (e)(1) and (g)(3) of this section. During the time between the date a licensee requests replacement tags under this subdivision and the date the Commissioner approves such request and the Commissioner or vendor issues such replacement tags, such licensee may, if the Commissioner so allows, fish pots without tags, provided the number of such pots does not exceed the number authorized under subsection (c) and (g) of this section. The licensee shall affix all such replacement tags to his pots within 10 days after issuance and shall remove all original tags from his pots. After said 10-day period, all original tags that were initially issued under subdivisions (d)(4), (e)(1) and (g)(3) shall no longer be valid.

(3) If a commercial licensee makes a request for replacement of tags and returns to the Commissioner the tags to be replaced, the Commissioner shall authorize the licensee to purchase tags to replace tags issued under subdivision (d)(4) and (g)(3) of this section.

**(f) Transferability.**

- (1) If pursuant to section 26-142b of the Connecticut General Statutes, the Commissioner authorizes the transfer of a license from a commercial licensee to another person, such other person shall be authorized to fish only the number of pots authorized by section 26-142b of the Connecticut General Statutes.
- (2) The Commissioner may authorize the permanent transfer of LMA-specific lobster pot allocations, in part or in whole, from one fisherman to another pursuant to the provisions of the FMP adopted by the ASMFC that define the specific terms and conditions of such transfers.

**(g) LMA 2 Lobster Pot Limits.**

(1) No person licensed by and no commercial fishing vessel permitted by the Commissioner under section 26-142b of the Connecticut General Statutes shall fish lobster pots in LMA 2 or land lobsters taken from pots fished in LMA 2 unless such person and vessel combination has been issued an LMA 2 pot allocation by the Commissioner or by any other state that is in compliance with Addendum VII to Amendment 3 to the FMP.

(3) Eligibility. The Commissioner shall issue initial LMA 2 lobster pot allocations only to resident commercial license holders in combination with the vessel or vessels designated by such license holders, provided:

- (A) said vessel had a federal lobster permit or applicable state permit for LMA 2 during any year of the LMA 2 qualifying period; and
- (B) pot tags bearing the LMA 2 designation were purchased for use by said vessel during any year of the LMA 2 qualifying period; and
- (C) said vessel does not have an approved or pending LMA 2 pot allocation in combination with any other person or from any other state; and
- (D) LMA 2 qualifying catch records for said vessel were reported for the LMA 2 qualifying period; and
- (E) such LMA 2 qualifying catch records shall only be used to qualify a single license holder and vessel and shall not have been used to qualify any other person or vessel for an LMA 2 pot allocation by the Commissioner or any other state; and
- (F) for vessels that presently have a federal lobster permit or had a federal lobster permit during the qualifying period, the rules regarding qualification restriction, consolidation restriction, change of ownership, confirmation of permit history and restriction on permit splitting contained in 50 CFP 697.4(a) shall apply.

(4) Allocation. The initial LMA 2 allocation for each resident license holder and vessel combination shall be the largest of the annual values for effective pots fished as determined by

the Commissioner for each license holder and vessel combination for each of the years of the LMA 2 qualifying period, provided such values shall not exceed 800 pots.

(5) Reconsideration. Any resident license holder seeking a reconsideration of their LMA 2 pot allocation shall do so in writing to the Commissioner. Such written request for reconsideration shall be delivered to the Department or postmarked by May 31, 2007. The only grounds for reconsideration that shall be considered by the Commissioner are:

- (A) that the Commissioner erred in determining eligibility or in calculating the initial pot allocation, provided the Commissioner shall not consider supplemental catch, effort or landings data submitted with a request for reconsideration or that was received by the Department, National Marine Fisheries Service, or reporting authority of another state more than 60 days after the due date for the last reporting period that occurred in the LMA 2 qualifying period; or
- (B) that the license holder had no, or had substantially reduced, fishing performance during the years 2001, 2002, and 2003 due to material incapacity. Such a request for reconsideration is subject to the following requirements and conditions:
  - (i) the license holder must present to the Commissioner written documentation of the material incapacity, with such documentation circa the date of the incapacity and notarized at the time the request for reconsideration is presented; and
  - (ii) the years 1999 and 2000 will be used as the LMA 2 qualifying period for determining eligibility for, and the value of, the initial pot allocation according to subdivisions (2) and (3) of this subsection; and
  - (iii) the license holder must have reported LMS 2 qualifying catch records for the vessel for which he is seeking an allocation for any year from 1999 through 2003, inclusive.

(5) Limitations.

(A) No person shall land lobster from LMA 2 in Connecticut if they have purchased pot tags in excess of the number of tags authorized by their allocating state under Addendum VII to Amendment 3 of the FMP.

(B) No single person or company shall own, or share ownership of, more than two vessels with LMA 2 pot allocations, except that a person or company that concurrently owned more than two vessels with federal lobster permits for LMA 2 during December of 2003 may retain allocations for that number of permitted vessels.

(6) Allocation adjustments. Addendum VII to Amendment 3 of the FMP specifies the LMA 2 will be managed under the LMA-wide overall pot allocation cap. This cap constitutes the maximum number of pots allocated among all LMA 2 allocation holders. If an FMP amendment or addendum specifies an adjustment to this cap, initial LMA 2 pot allocations shall be increased or reduced consistent with such FMP amendment or addendum.

Effective June 28, 2000. Amended January 28, 2002 to implement lobster pot buyback program with federal disaster relief funds. Amended December 18, 2002 by emergency to increase the compensation from \$4 & \$12 to \$16 and \$24. Amended likewise again 12/2003. Amended 03/01/2007 implemented LMA 2 trap allocations. Amended 09/27/2007 allocations in a license transfer defer to the statutes, LMA 6 allocation transfer language eliminated, authorizes Commissioner to execute LMA 2 allocation transfers. Amended 12/22/2008 generalized transfers in (f)(2) to all LMAs with transfer provisions in the FMP.



March 6, 2014

## New York 2012 American Lobster Compliance Report

### I. Introduction

During 2012 New York (NY) lobster permit holders harvested 269,506 lobsters (Table 1). This preliminary estimate is a 22% decrease in harvest compared to 2011. NY has revised the harvest estimation method. Starting in 2012, the department discontinued collecting lobster harvest data using an annual recall survey; all landings are based on reconciliation of State and Federal VTR and dealer reporting. We believe relying on reconciliation of VTR and dealer data will produce the most accurate harvest estimates. In the past the annual recall survey was used to estimate landings by gear. For 2012 and moving forward, State and Federal VTR data will be used to estimate the proportion of landings by gear which will be applied to the total estimated landings. Based on State and Federal VTR the proportion of non-trap landings declined in 2012 from approximately 4% to 0.4% (Table 1). The change in estimation method could have had some effect on the decrease. The number of state trap tags ordered declined by 33% compared to 2011. The number of traps reported fished during 2012 in LCMA 6 decreased by 43% compared to 2011, while the number of traps reported fished in LCMA 4 increased by almost 18% (Table 1).

In accordance with Addendum XVII, New York instituted a closed season for LMA 4 through emergency rule on January 31, 2013. The department instituted the LCMA 4 closed season from February 1 through March 31, and the most restrictive rule for LCMA 1, 2, 3, 4, 5, 6, and OCC through Emergency Action on January 31, 2013. The final rule was adopted June 12, 2013. The LCMA 6 closed season was adopted August 8, 2013 through legislation. The LCMA 6 season is closed from September 8 through November 28.

Due to lack of funds, NY has been unable to conduct the NMFS Statistical Area (Area) 611 portion of the Coastwide Ventless Trap Survey since 2010. Two thousand eleven was the last year of funding for offshore lobster harvest port sampling. NY was also unable to conduct our traditional multispecies port sampling during 2012 due to a delay in contract development. The port sampling contract was executed in 2013. NY continues to have problems getting sea sample trips due to industry distrust and decreased lobster fishing, especially in LCMA 6.

### Request for *de minimis*, where applicable. NA

### II. Previous calendar year's fishery and management program

- a. **Commercial Harvests:** Total Harvest, Total Trap and non-trap, Total harvest by LCMA, and Total Harvest by Biological Stock, total traps fished
- b.

Table 1. 2008 – 2012 New York Commercial Lobster Landings

Year	Total State Harvest	Total Trap Harvest	Total Non-Trap Harvest**	Total Harvest by LCMA***	Total Harvest by Stock	Traps Fished by LCMA***	Trap Tags Ordered by LCMA
2008	712,075	669,350	28,483	1 - █ # 2 - █ # 3 - 115,218 4 - 66,822 5 - █ # 6 - 511,216	GOM - █ #  GBK - █ #  SNE- 706,843	1 - █ # 2 - █ # 3 - █ # 4 - 4,491 5 - █ # 6 - 73,988	4 - 580 4&6 - 1,320 6 - 94,051

				OCC - #		OCC - #	
2009	731,811	687,903	29,272	1 - # 2 - # 3 - 165,242 4 - 80,659 5 - # 6 - 474,624 OCC - #	GOM - #  GBK - #  SNE- 730,539	1 - # 2 - # 3 - # 4 - 7,738 5 - # 6 - 43,739 OCC - #	4 - 430 4&6 - 3,410 6 - 84,066
2010	813,513	772,837	32,541	1 - # 2 - # 3 - 138,646 4 - 81,427 5 - # 6 - 548,035 OCC - #	GOM - #  GBK - #  SNE- 811,729	1 - # 2 - # 3 - # 4 - 7,477 5 - # 6 - 61,552 OCC - #	4 - 377 4&6 - 2,175 6 - 69,129
2011	344,232	313,251	30,981	1 - # 2 - # 3 - 142,443 4 - 69,723 5 - # 6 - 109,699 OCC - #	GOM - #  GBK - #  SNE- 343,072	1 - # 2 - # 3 - # 4 - 6,163 5 - # 6 - 34,781 OCC - #	4 - # 4&6 - 2,810 6 - 47,742
2012*	269,506	262,739	6,767	1 - # 2 - # 3 - 146,896 4 - 62,465 5 - # 6 - 50,796 OCC - #	GOM - #  GBK - #  SNE- 269,372	1 - # 2 - # 3 - 3,769 4 - 7,250 5 - # 6 - 19,793 OCC - #	4 - # 4&6 - 2,030 6 - 31,840

\* - 2012 estimates are preliminary

\*\* - 2008-2011 harvest by gear estimated from NY Annual Recall Survey. 2012 estimate via State and federal VTRs

\*\*\* - LCMA estimated from NMFS Statistical Areas

# - Confidential

c. Total **Recreational** Harvest, recreational harvest by traps, and recreational harvest by divers

Table 2. 2008 - 2012 New York Recreational Lobster Landings

Year	Total Harvest	Harvest by Traps	Harvest by divers	Total Traps Fished
2008	7636	5562	1872	1079
2009	9051	6333	2029	855
2010	7391	5534	1697	883
2011	5184	3160	1433	780
2012*	3455	2,015	1,245	460

\* 2012 Numbers are preliminary

d. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

New York's (NY) current Lobster laws and regulations are attached in Appendix A. NYS Environmental Conservation Law (ECL) 13-0329 (17) specifies the LCMA 6 closed season from September 8 through November 28. New York State's Lobster Rules and Regulations 6 NYCRR Section 44.1 (h) specifies the LCMA 4 closed season from February 1 through March 31 including the most restrictive rule.

### III. Monitoring Programs

#### a. **Sea Sampling:**

NY lobster sea sampling program is jointly funded through NMFS Interjurisdictional Act (IJ) and State funds. The proposed 2011/2012 sea sampling program is presented below (Table 3). Staff was unable to meet the proposed number of sea sample trips in all years from 2008 – 2012 (tables 4A – 4E). The proportion of proposed trips sampled ranged from 4% - 58% for Area 611 and 0 – 16% for Areas 612 and 613 combined. The number of lobsters sampled is presented in tables 5A – 5E. NY's port sampling program has helped to fill sampling gaps for lobsters harvested in LMAs 3 and 4 while the program was funded (see below and Tables 6 and 7 A through D).

Cooperators and trips have continued to be difficult to obtain for a myriad of reasons. The adoption of Addendum XVII to the ASMFC lobster plan has caused some previously cooperative fisherman to refuse requests for bio-sampling. This addendum resulted in closed seasons in Lobster Conservation Management Areas (LCMA) 4 and 6 and a mandatory V-notch program in LCMA 4. Poor catches in Long Island Sound have caused many lobstermen to limit their fishing effort, especially in the fall, winter, and spring. Due to the poor lobster catches and the high market value of whelk, many permit holders are now focusing their harvest on whelk. Many of the lobstermen that fish the ocean waters do not lobster during the winter months as the weather often prohibits the tending of the gear in a safe and efficient manner. In addition IJ funding was cut by approximately 40% in 2011/2012 and no funding was available for the 2012/2013 season. This impacted staffing. For 2011 and 2012 sampling, we compiled a full list of potential cooperators. This list was comprised of 19 fishermen who have cooperated in the past, or who expressed interest in the program at any of our fishery management meetings in the past 2 years.

Table 3. 2012 Proposed Lobster Biological Sampling Program

	Western LIS	Eastern LIS	East End	South Shore
Jan. – April	1	1	1	0
May - June	1	1	1	1
July – Aug.	3	3	3	2
Sept. - Oct	2	2	2	2
Nov. – Dec.	1	1	1	1
<b>Total</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>6</b>

TABLE 4A. 2008 NUMBER OF SEA SAMPLING TRIPS BY STAT AREA

MONTH	611	612	613
JANUARY			
FEBRUARY	1		
MARCH			
APRIL	1		
MAY	1		
JUNE	1		
JULY	1		
AUGUST	1	1	
SEPTEMBER			

TABLE 5A. 2008 TOTAL LOBSTERS MEASURED BY STAT AREA AND MONTH

MONTH	611	612	613
JANUARY			
FEBRUARY	47		
MARCH			
APRIL	100		
MAY	391		
JUNE	157		
JULY	729		
AUGUST	1097	45	
SEPTEMBER			

OCTOBER	1		
NOVEMBER			
DECEMBER			

OCTOBER	383		
NOVEMBER			
DECEMBER			

TABLE 4B. 2009 NUMBER OF SEA SAMPLING TRIPS BY STAT AREA

TABLE 5B. 2009 TOTAL LOBSTERS MEASURED BY STAT AREA AND MONTH

MONTH	611	612	613
JANUARY			
FEBRUARY	1		
MARCH			
APRIL	2		
MAY	2		
JUNE			
JULY	5		
AUGUST	3		1
SEPTEMBER			
OCTOBER	1		
NOVEMBER			
DECEMBER			

MONTH	611	612	613
JANUARY			
FEBRUARY	143		
MARCH			
APRIL	933		
MAY	799		
JUNE			
JULY	2087		
AUGUST	1483		61
SEPTEMBER			
OCTOBER	66		
NOVEMBER			
DECEMBER			

TABLE 4C. 2010 NUMBER OF SEA SAMPLING TRIPS BY STAT AREA

TABLE 5C. 2010 TOTAL LOBSTERS MEASURED BY STAT AREA AND MONTH

MONTH	611	612	613
JANUARY			
FEBRUARY			
MARCH			
APRIL	1		
MAY	3		
JUNE	1		1
JULY	3		
AUGUST	4		
SEPTEMBER			
OCTOBER	1		
NOVEMBER			
DECEMBER	1		

MONTH	611	612	613
JANUARY			
FEBRUARY			
MARCH			
APRIL	523		
MAY	1153		
JUNE	117		45
JULY	1701		
AUGUST	3121		
SEPTEMBER			
OCTOBER	53		
NOVEMBER			
DECEMBER	134		

TABLE 4D. 2011 NUMBER OF SEA SAMPLING TRIPS BY STAT AREA

TABLE 5D. 2011 TOTAL LOBSTERS MEASURED BY STAT AREA AND MONTH

MONTH	611	612	613
JANUARY			
FEBRUARY			
MARCH	1		
APRIL			
MAY			

MONTH	611	612	613
JANUARY			
FEBRUARY			
MARCH	133		
APRIL			
MAY			



JUNE	1		
JULY	1		
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER	2		
DECEMBER	1		

TABLE 4E. 2012 NUMBER OF SEA SAMPLING TRIPS BY STAT AREA

MONTH	611	612	613
JANUARY			
FEBRUARY			
MARCH			
APRIL			
MAY			
JUNE			
JULY	1		
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			

JUNE	99		
JULY	387		
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER	16		
DECEMBER	7		

TABLE 5E. 2012 TOTAL LOBSTERS MEASURED BY STAT AREA AND MONTH

MONTH	611	612	613
JANUARY			
FEBRUARY			
MARCH			
APRIL			
MAY			
JUNE			
JULY	180		
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			

**b. Port Sampling:**

Port and Market sampling trips focused on lobster harvested offshore in LCMA's 3 and 4 were conducted through a contract with Cornell Cooperative Extension (CCE). This project was funded through ASMFC from 2007 through 2011. The project collected biological information from lobsters landed in NY. The number of trips conducted by LMA and month are presented in tables 6A – 6D for 2008 through 2011. The number of trips ranged from 3 in 2008 to 15 in 2009 and 2010. Port sampling was not conducted with regular frequency due to staff and funding limitations. The number of lobsters sampled ranged from 660 (2008) to 1,490 (2009) (tables 7A – 7D). These samples help to fill the data gaps due to lack of sea sampling in Areas 612 and 613. Due to delay in contract implementation, no port sampling was conducted during 2012. The department's contract with CCE was executed in 2013.

TABLE 6A. 2008 NUMBER OF CAPTAINS/VESSELS SAMPLED BY LMA

MONTH	3	4	6
JANUARY			
FEBRUARY			
MARCH			
APRIL		1	
MAY			
JUNE			
JULY			
AUGUST			
SEPTEMBER		1	

TABLE 7A. 2008 TOTAL LOBSTERS MEASURED BY LMA AND MONTH

MONTH	3	4	6
JANUARY			
FEBRUARY			
MARCH			
APRIL		21	
MAY			
JUNE			
JULY			
AUGUST			
SEPTEMBER		84	

OCTOBER			
NOVEMBER	1		
DECEMBER			

OCTOBER			
NOVEMBER	555		
DECEMBER			

TABLE 6B. 2009 NUMBER OF CAPTAINS/VESSELS SAMPLED BY LMA

MONTH	3	4	6
JANUARY			
FEBRUARY			
MARCH			
APRIL			
MAY			1
JUNE	1	1	
JULY	1	1	1
AUGUST	2	3	
SEPTEMBER	1	1	
OCTOBER	1	1	
NOVEMBER		1	
DECEMBER			

TABLE 7B. 2009 TOTAL LOBSTERS MEASURED BY LMA AND MONTH

MONTH	3	4	6
JANUARY			
FEBRUARY			
MARCH			
APRIL			
MAY		25	
JUNE	75	111	
JULY	89	265	56
AUGUST	292	305	
SEPTEMBER	17	36	
OCTOBER	125	73	
NOVEMBER		21	
DECEMBER			

TABLE 6C. 2010 NUMBER OF CAPTAINS/VESSELS SAMPLED BY LMA

MONTH	3	4	6
JANUARY		1	
FEBRUARY			
MARCH			
APRIL			
MAY			
JUNE	2	1	
JULY	1	1	
AUGUST	3	1	
SEPTEMBER		1	
OCTOBER		1	
NOVEMBER	2	1	
DECEMBER			

TABLE 7C. 2010 TOTAL LOBSTERS MEASURED BY LMA AND MONTH

MONTH	3	4	6
JANUARY		70	
FEBRUARY			
MARCH			
APRIL			
MAY			
JUNE	269	14	
JULY	33	95	
AUGUST	412	276	
SEPTEMBER		36	
OCTOBER		14	
NOVEMBER	263	6	
DECEMBER			

TABLE 6D. 2011 NUMBER OF CAPTAINS/VESSELS SAMPLED BY LMA

MONTH	3	4	6
JANUARY			
FEBRUARY			
MARCH			
APRIL			

TABLE 7D. 2011 TOTAL LOBSTERS MEASURED BY LMA AND MONTH

MONTH	3	4	6
JANUARY			
FEBRUARY			
MARCH			
APRIL			

MAY	1		
JUNE	1		
JULY		4	
AUGUST		2	
SEPTEMBER	3		
OCTOBER			
NOVEMBER	1		
DECEMBER	1		

MAY	161		
JUNE	114		
JULY		88	
AUGUST		23	
SEPTEMBER	234		
OCTOBER			
NOVEMBER	147		
DECEMBER	145		

**c. Marine Debris Removal Project**

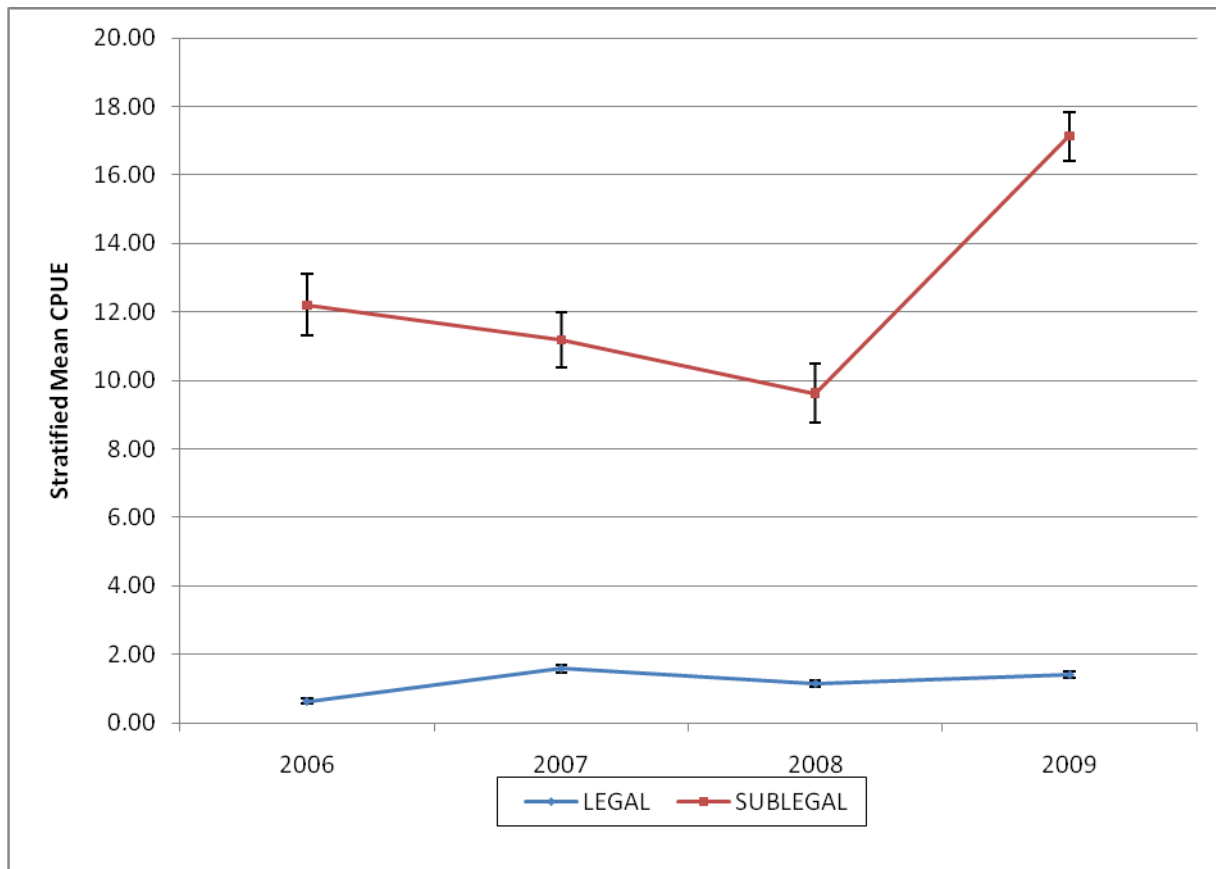
CCE developed a program to remove marine debris (mainly lobster gear) from Long Island Sound. The program was initiated in 2010 with National Fish and Wildlife Foundation (NFWF) funding and was continued during 2011 and 2012 using additional funds from NFWF and NOAA. The project hires lobster permit holders to grapple for lost lobster gear. Gear is returned to the owner if they can be identified and if they want it returned. Otherwise the gear is either recycled or converted to energy in collaboration with Covanta’s energy from waste program. Information collected includes the number of trips taken, number of traps recovered and the shape they are in, and the number of lobsters and other organisms found in the traps, their status, and biological information. This information is available if needed for the assessment.

**d. Settlement or larval: NA**

**e. Ventless Trap Survey:**

(NMFS Area 611)

NY received funding from ASMFC from 2006 through 2009 to conduct the Area 611 portion of the Coastwide Ventless trap survey. The relative abundance of sublegal lobsters was decreasing in the first three survey years, then increased by roughly 56% in 2009. The relative abundance of legal lobsters increased slightly in 2007 with no substantial increase or decrease in the last two years of the survey (Figure 1). Sublegal-sized lobsters were 7 – 19 times more abundant than legal-sized lobsters in this survey.



**Figure 1.** Stratified mean catch per trap haul ( $\pm$ SE) of sublegal and legal lobsters from 2006 – 2009. This represents an index of relative abundance for sublegal (<84mm CL) and legal ( $\geq$ 84 mm CL) lobsters in Area 611.

**f. State Trawl Surveys: NA**

**IV. Planned management programs for the current calendar year**

- a. Summarize regulations that will be in effect.  
New York lobster management will remain status quo for 2014. The minimum size is 3 3/8 “and maximum size is 5 1/4” CL. LCMA 6 has a closed season from September 8 through November 28. LCMA 4 has a closed season from February 1 through March 31 and a mandatory V-notch program. The V-notch definition is 1/8” with or with/out setal hairs.
- b. Summarize monitoring programs that will be performed.

**Sea Sample:**

Below is New York’s 2014/2015 proposed lobster sea sampling program  
Due to the decline of the lobster stock and decreased fishing effort in LIS, the closed season during the fall, and decreased funding, the number of sea sampling days in LIS will be decreased to the level of the south shore sampling. Monthly allocation of sea days was determined based on the 2012 percentage of landings by month and stat area (611 or 612 and 613 combined).

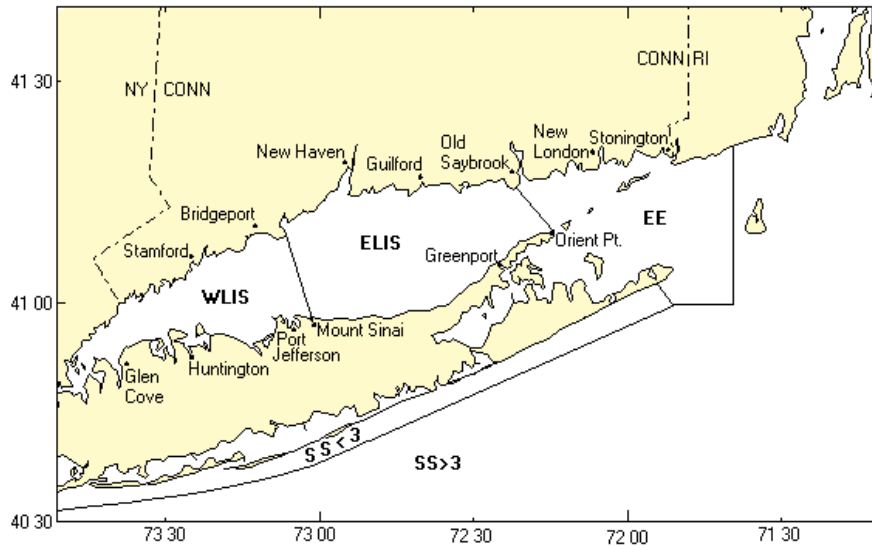
**Proposed Lobster Biological Sampling Program**

	LIS	South Shore
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Jan. – April	0	0
May - June	2	2
July – Aug.	3	2
Sept. - Oct	0	1
Nov. – Dec.	0	1
<b>Total</b>	<b>5</b>	<b>6</b>

Areas are shown in the following Map (south shore includes both SS < 3 and SS > 3)

Long Island Sound and Vicinity Fishing Area Chart.



The following biological information will be collected for each lobster sample (or two samples if necessary) during each sampling trip:

Parameter	Classification
Size	Carapace length measured in mm
Sex	Male, Female
Ovigerousness	External eggs present, absent
Egg color	Black, green, brown, aqua, other
Egg Complement	100, 75, 50, 25, <10 (percent egg cover)
Shell Condition	Hard, Soft
Shell Disease Index	0 = no shell disease symptoms 1 = symptoms on 1-10% of shell surface 2 = symptoms on 11-50% of shell surface 3 = symptoms on >50% of the shell surface 4 = New shell shows scars of a shell erosion
Cull Condition	Number and location of regenerated or missing claws
Other Damage (location)	Eye, claw, tail, rostrum, abdomen, carapace
Status (health)	Live, Dead
Keepers	Kept, Returned
Tag Recapture	Tag Information

If sub-sampling is necessary, a total count of the catch will be made. In addition, location and gear information will be collected if possible. For sampling trips as much of the following information will be collected as possible, the first three parameters must be collected for all trips:

<b>Parameter</b>	<b>Classification</b>
Date	Date caught or landed
Sampling Method	Sea sample, port sample, market sample
Area Fished	GPS coordinates for each trawl, or general location
Port	Harbor where boat is docked
Set Days (Soak time)	Number of days between trap hauls
Bait Type	Species of bait used
Pot Type	Wood, wire, single or double parlor
Pot Number	Number of pots pulled/sampled
Set Type	Single pots, trawls, number of pots per trawl
Vent Size	Opening in inches: round, rectangular
Vent Number	Number of vents in the parlor
Bait Holder	Spike, string, bag, none

**Port Sample:**

Port and Market sampling trips will be conducted through a contract with Cornell Cooperative Extension. This project is funded through NY Oceans and Great Lakes Program. The project will collect biological information from fish and crustacean landed in NY.

c. Highlight any changes from the previous year.

**Regulatory:**

In accordance with Addendum XVII, New York instituted closed seasons for LCMA 6 from September 8 through November 28 and LCMA 4 from February 1 through March 31.

**Ventless Trap Survey:**

NY has been unable to conduct the ventless trap survey since 2009 due to lack of funding.

**Port Sample:**

ASMFC funding for NY's offshore lobster port sample program ended in 2011. NY has received State funding for port and market sampling for all species including lobsters. Contract development is in process. The contract was executed during 2013.

## COMMERCIAL LOBSTER PERMIT HOLDERS

### New York Environmental Conservation Law (11/14/2013)

<http://public.leginfo.state.ny.us/menugtf.cgi?COMMONQUERY=LAWS>

#### § 13-0329. Lobsters; permit to take; prohibited acts.

1. Any person domiciled within the state may take and land lobsters (*Homarus americanus*) from the waters of the state or land lobsters in the state taken elsewhere upon first obtaining a permit from the department. There shall be two classes of permits: a non-commercial permit, the fee for which shall be ten dollars, and a commercial permit, the fee for which shall be one hundred fifty dollars. A non-commercial permit shall allow the holder to set no more than five lobster pots and to take or land in any one day no more than six legal lobsters by this or any other legal method for the holder's own or family use. Holders of non-commercial permits shall not sell, offer for sale, trade or barter, or otherwise traffic in lobsters so taken. A commercial permit shall allow the holder to set any number of pots and use any other legal method for taking lobsters with no restriction on the number of legal lobsters that may be taken, landed or possessed except that on the waters of Long Island Sound and its adjoining bays, harbors and estuaries (herein defined as all waters of the state north of the northern shore lines of Long Island, Plum Island, Little Gull Island, Great Gull Island and Fishers Island and all the waters of the state north of the waters that separate those islands from each other) a person holding a commercial permit who is a person operating or owning or on board a dragger or any vessel used to operate any net defined as a trawl in section 13-0341 shall not take, land nor possess any lobsters or parts thereof unless there are no such nets on board, attached to in any way, or being used by such vessel. This prohibition on the taking of lobsters by the use of a trawl shall not allow the use of a trawl in any waters where it is prohibited by sections 13-0341 and 13-0343. The department shall furnish forms for application for both classes of permits. A non-commercial permit shall be issued to an individual. A commercial permit shall be issued to an individual and it may be endorsed for use on a fishing vessel, in which case it shall cover all persons on board such vessel. The holder of a commercial permit shall be liable for all violations that occur on the vessel for which the holder's permit is endorsed. The holder of a permit shall carry on his or her person or post on his or her vessel such permit at all times when fishing for lobsters. Except as provided in subdivision six of this section, the permit holder must be present at all times while the privileges of such permit are being exercised and while lobster fishing gear owned by the permit holder is being set out or retrieved. The holder of a commercial permit may endorse such permit to only one vessel at any one time and shall be on board such vessel at all times when it is used for fishing for lobsters.

2. a. A person not domiciled within the state but who is domiciled in a state that provides reciprocal permits or licenses to persons domiciled in New York state may, upon first obtaining a permit from the department, take and land lobsters only from the waters of the state westerly and southerly of a straight line drawn from the Flashing Green Light Number 9 Whistle Buoy at Cerebus Shoals (located approximately seven miles northwesterly to Montauk Point) northwesterly to Race Rock and thence due north to the New York-Connecticut interstate boundary line; and may land lobsters taken outside New York state waters.

b. The fee for such lobster permit shall be two hundred twenty-five dollars. The permit shall be issued to an individual and may be endorsed for use on a fishing vessel in which case it shall cover all persons on board such vessel. Except as provided in subdivision six of this section, the permit holder must be present at all times while the privileges of such permit are being exercised and while lobster fishing gear owned by the permit holder is being set out or retrieved. The holder of such permit shall be liable for all violations that occur on any vessel for which the permit may be endorsed. The holder of such permit shall carry on his or her person or post on his or her vessel such permit at all times when fishing for lobsters. The holder of a commercial permit may endorse such permit to only one vessel at any one time and shall be on board such vessel at all times when it is used for fishing for lobsters.

c. On the waters of Long Island Sound and its adjoining bays, harbors and estuaries (as defined in subdivision 1 of this section) a person

holding such permit who is a person operating or owning or on board a dragger or any vessel used to operate a trawl as defined in section 13-0341 shall not take, land nor possess any lobsters or parts thereof unless there are no such nets on board, attached to in any way, or being used by such vessel. This prohibition on the taking of lobsters by the use of a trawl shall not allow the use of a trawl in any waters where it is prohibited by sections 13-0341 and 13-0343.

d. A person not domiciled in the state who is not qualified to hold a lobster permit under paragraph a of this subdivision, or person domiciled within the state who is not eligible to obtain a commercial lobster permit under subdivision one of this section, may obtain a permit to land lobsters in the state which have been legally taken outside the state. The fee for a lobster landing permit shall be three hundred dollars.

e. The department shall prescribe and furnish forms for such permits.

3. a. Lobster permits shall be non transferable and shall expire on December 31 of the year of issue. If it appears in the public interest, the department may suspend or cancel any such permit on ten days' written notice to the holder thereof.

b. No person who has had any such permit suspended or revoked shall take or land lobsters or aid in the taking or landing of lobsters until such permit has been reinstated or a new permit is issued.

c. A person who holds a permit to take or land lobsters shall notify the department of any change of address within thirty days of such change.

4. Buoys or markers of prescribed design may be used in designating the location of licensed lobster pots or traps in such manner as shall be required by the department.

5. a. Except as provided in subdivisions 13, 16 and 18 of this section, only lobsters measuring three and three-eighths inches or more and five and one-quarter inches or less may be taken, possessed, bought, sold, imported and exported. All measurements are from the rear end of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace).

b. A lobster that has been damaged or mutilated to the extent that its length from the rear end of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace) cannot be determined shall not be possessed, sold or offered for sale, trade or barter.

c. Lobsters in spawn shall not be taken or possessed at any time. Eggs shall not be removed from such lobsters.

d. The landing or possession, in the marine district, of lobster, or parts thereof, not in the shell, detached lobster tails or claws, or any other part of a lobster that has been separated from the lobster by any person who has a lobster permit issued by the state is prohibited.

e. The landing or possession of any V-notched female lobster is prohibited. This prohibition applies to all persons other than a final purchaser or consumer. V-notched female lobster shall mean any female lobster bearing a V-shaped notch (i.e. a straight-sided triangular cut without setal hairs, at least one-quarter inch in depth and tapering to a sharp point) in the flipper next to the right of the center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination; however, the department shall have the authority to adopt by rule or regulation a modified definition of "V-notched female lobster" to reflect any changes to the definition the Atlantic States Marine Fisheries Commission may adopt.

6. No person other than the licensee shall set out, tend, haul or unduly disturb, or take or remove lobsters from, a lobster pot or trap or other commercial gear, or damage, take, remove or possess such gear. Possession of such gear without the consent of the licensee shall be considered prima facie evidence of violation of this subdivision. Provided, however, that in the event of a temporary emergency, a licensee may provide written authorization for a different licensee to haul and remove lobster from the licensee's pots or traps. A copy of such written authorization shall be filed with the department and the department shall determine what constitutes a temporary emergency and the appropriate maximum duration of a temporary emergency for the purposes of this subdivision.



7. a. Lobsters may be taken only by lobster pots, traps, otter trawls or similar devices, or by skin diving, including the use of self-contained underwater breathing apparatus (SCUBA), or by hand. The use of spears, gigs, gaffs, or other penetrating devices to take lobsters is prohibited.

b. The landing of more than one hundred lobsters per twenty-four hour period by gear or methods other than lobster traps or pots is prohibited. The landing of more than five hundred lobsters by gear or methods other than lobster traps or pots during a trip lasting five days or longer is prohibited.

8. A person shall not be issued a permit to take or land lobsters in New York state if said person had a license or permit to take or land lobsters in another state which has been suspended or revoked for an illegal act which is also an illegal act in New York state until such suspension or revocation has been terminated. Upon receipt of information from another state that a license or permit of a person to take or land lobsters has been suspended or revoked for an illegal act which is also an illegal act in New York state, said person, if he holds such a permit in New York state, shall have his New York permit suspended or revoked until such suspension or revocation by another state has been terminated.

9. On the waters of Long Island Sound and its adjoining bays, harbors and estuaries (as defined in subdivision one of this section) lobsters shall not be taken by any method from one hour after sunset to one hour before sunrise. The provisions of this subdivision shall not apply to the taking of lobsters by skin diving, including the use of self-contained underwater breathing apparatus (SCUBA), by holders of a valid resident non-commercial lobster permit.

10. A holder of a commercial lobster license may apply for a permit to fish a gill net as permitted in paragraph (b) of subdivision fifteen of section 13-0343 of this chapter. This permit is to be used for the purposes of obtaining bait fish to be used solely by the permittee to pursue his lobster fishery. Bait so taken shall not be sold.

11. In order to reduce mortality of lobster due to lost traps and pots, the department may adopt regulations requiring escape panels and vents in such traps and pots and describing their design, configuration, composition, size and any other necessary characteristics. Any such regulations shall be consistent with the Interstate Management Plan for American Lobster prepared by the Atlantic States Marine Fisheries Commission.

12. Lobsters shall not be transferred from one vessel to another vessel on the waters of Long Island Sound or its adjacent bays, harbors and estuaries, except that nothing in this section shall prohibit the unloading of lobsters, lawfully taken and possessed, in harbor at a vessel's permanent mooring to a transfer vessel for the purpose of transporting such lawfully taken and possessed lobsters to land.

13. The department may issue a permit, revocable at pleasure, to any person to import, possess, buy or sell lobsters of less than the size permitted to be taken and possessed pursuant to this section for scientific and educational purposes only.

14. Possession of a lobster trap or pot with a volume larger than twenty-two thousand nine hundred fifty cubic inches is prohibited.

15. (a) The department shall adopt regulations to implement and administer a lobster trap tag program. Such regulations shall be consistent with the specific requirements of the lobster fishery management plan adopted by the Atlantic States Marine Fisheries Commission and any other applicable federal lobster trap tag regulations. Lobster trap tags shall be issued by the department or an agent authorized by the department. The cost to affected permittees for each tag shall not be more than the cost of production and distribution of each tag and shall not exceed the sum of twenty cents.

(b) If the department administers a lobster trap tag program, any funds derived from such program and received by the department shall be deposited into the marine resource account established pursuant to subparagraph (i) of paragraph three of subdivision (a) of section eighty-three of the state finance law.

16. The department may, until December thirty-first, two thousand fifteen, adopt regulations for Atlantic States Marine Fisheries Commission Areas One, Two, Three, Four, Five, and Outer Cape Cod, to implement conservation measures that affect landings of lobsters, pursuant to the recommendations of the respective Area's Lobster Conservation Management Team as required by the Interstate Fishery Plan for Lobsters adopted by the Atlantic States Marine Fisheries Commission.

\* 17. a. No lobster may be taken from Atlantic States Marine Fisheries Commission Area Six from September eighth through November twenty-eighth pursuant to the recommendations of the Area's Lobster Conservation Management Team as required by the Interstate Fishery Plan for Lobsters adopted by the Atlantic States Marine Fisheries Commission.

b. During the September eighth through November twenty-eighth closure, lobster permit holders who use lobster traps or pots shall remove lobster traps and pots from the water by September twenty-second.

c. No lobster trap or pot may be in the water from September twenty-second until November fourteenth unless the lobster permit holder also holds a permit or license that authorizes them to harvest other species from their lobster traps or pots.

d. Lobster permit holders may set unbaited lobster traps or pots beginning November fourteenth.

e. Lobster permit holders may set baited lobster traps or pots beginning November twenty-first.

\* NB Repealed December 31, 2016

18. a. Lobsters greater in length than provided in subdivision 5 of this section may be imported into the state and possessed for exportation provided that:

i. The lobsters were legally taken in the state or country where the lobsters were landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken;

ii. The lobsters were placed in containers and sealed with tamper proof seals acceptable to the department in the state or country where the lobsters were landed;

iii. The lobsters remain in the sealed containers at all times while the lobsters are possessed in the state, including the placement of the sealed containers in holding tanks in the state;

iv. Each sealed container is accompanied with a label, invoice, bill of lading, purchase order or manifest identifying the state or country where the lobsters were landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken, the number of lobsters contained therein, and the date the container was sealed; and

v. The lobsters are imported, possessed and exported to or by a person licensed pursuant to section 13-0334 of this title.

b. Lobsters greater in length than provided in subdivision 5 of this section may be imported, possessed, sold or offered for sale in the state provided that:

i. The lobsters were legally taken in the state or country where the lobsters were landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken;

ii. Each lobster is tagged in the state or country where the lobster was landed with a tamper resistant tag acceptable to the department. The tag shall be attached to the lobster and identify the state or country where the lobster was landed and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobster was taken;

iii. The tag must remain on the lobster until it is sold to the end consumer in the state, including while in a holding tank in a restaurant or retail outlet;

iv. Each shipment of tagged lobsters is accompanied with a label, invoice, bill of lading, purchase order or manifest identifying the state or country and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken, the number of lobsters contained therein, and the date or dates the lobsters were harvested; and

v. The lobsters are imported, possessed and sold or offered for sale in the state by a person licensed pursuant to section 13-0334 of this title.

c. The department may promulgate regulations necessary to implement this subdivision.

19. Lobsters, or parts thereof, not in the shell, detached lobster tails or claws, or any other part of a lobster that has been separated from the lobster may only be possessed, purchased, offered for sale, trade or barter, imported, or exported, provided:

a. The lobster was legally taken in the state or country where the lobster was landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobster was taken;

b. The lobster parts are packaged with labels identifying the state, or country where the lobster was taken and if applicable, the Atlantic States Marine Fisheries Commission Area. Lobster parts must be packaged and properly labeled prior to being possessed, sold, purchased or imported in the state.

**EXCERPTS FROM NYSDEC RULES AND REGULATIONS AS OF 10/2/2013**

<http://www.dec.ny.gov/regs/2494.html>

**Part 44: Lobsters and Crabs**

(Statutory authority: Environmental Conservation Law, §§ 11-0303, 11-1303, 13-0105, 13-0329, 13-0331, 13-0343-a, 13-0371)

*[Last amended June 12, 2013]*

**§44.1 Lobsters.**

(a) Definitions.

(1) A *lobster pot or trap* is any box-like or cage-like device that is made of any material, has an entrance or entrances from the outside into a compartment (sometimes called the kitchen) which has a further entrance to a second compartment (sometimes called the parlor), both compartments being on the same level, and is capable of catching lobsters.

(2) *Catastrophic loss* is the loss of lobster pots or traps or trap tags that exceeds the initial additional allocation of trap tags provided for in paragraph 44.1(d)(2) for routine loss.

(3) *Fishing Vessel Trip Report* means the reporting forms prescribed by the department.

(4) *Historical level of pots or traps fished* is the number of pots or traps that the department determines, pursuant to the provisions of this section, were fished by an individual lobster permit holder, during the qualifying period identified by the department, based on data required by the department and supplied by the permit holder.

(5) *Lobster Management Area (LMA) 2* is defined as the nearshore area, including State and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the alphabetical order stated:

Point	Latitude	Longitude	Point	Latitude	Longitude
H	41° 40' N	70° 00' W	N	40° 45.5' N	71° 34' W
I	41° 15' N	70° 00' W	O	41° 07' N	71° 43' W
J	41° 21.5' N	69° 16' W	P	41° 06.5' N	71° 47' W
K	41° 10' N	69° 06.5' W	Q	41° 11'30" N	71° 47'15" W

L	40° 55' N	68° 54' W	R	41° 18'30" N	71° 54'30" W
M	40° 27.5' N	72° 14' W			

(6) *Lobster Management Area (LMA) 3* is defined as the area comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the alphabetical order stated:

Point	Latitude	Longitude	Point	Latitude	Longitude
A	43° 58'N	67° 22'W	U	42° 12.5'N	72° 48.5'W
B	43° 41' N	68° 00' W	V	39° 50' N	73° 01' W
C	43° 12' N	69° 00' W	X	38° 39.5' N	73° 40' W
D	42° 49' N	69° 40' W	Y	38° 12' N	73° 55' W
E	42° 15.5'N	69° 40' W	Z	37° 12' N	74° 44' W
F	42° 10' N	69° 56' W	ZA	35° 34' N	74° 51' W
K	41° 10' N	69° 06.5'W	ZB	35° 14.5'N	75° 31' W
N	40° 45.5'N	71° 34' W	ZC	35° 14.5'N	71° 24' W
M	40° 27.5'N	72° 14' W			

(7) *Lobster Management Area (LMA) 4* is defined as the area, including State and Federal waters that are nearshore in the northern Mid-Atlantic, bounded by straight lines connecting the following points, in the alphabetical order stated:

Point	Latitude	Longitude	Point	Latitude	Longitude
M	40° 27.5'N	72° 14' W	P	41° 06.5' N	71° 47' W
N	40° 45.5'N	71° 34' W	S	40° 58' N	72° 00' W
O	41° 07' N	71° 43' W	T	41° 00.5'N	72° 00'W

From Point T along the New York/New Jersey coast to Point W.

Point	Latitude	Longitude
W	39° 50'N	74° 09'W
V	39° 50'N	73° 09'W
U	40° 12.5'N	72° 48.5'W

From Point U back to Point M.

(8) *Lobster Management Area (LMA) 6* is defined as the area, including New York and Connecticut State waters, bounded by straight lines connecting the following points, in the alphabetical order stated:

Point	Latitude	Longitude
T	41° 00.5'N	72° 00'W
S	40° 58'N	72° 00'W

From Point S, boundary follows the 3 mile limit of New York as it curves around Montauk Point to Point P.

Point	Latitude	Longitude
P	41° 06.5'N	71° 47'W
Q	41° 11'30"N	71° 47'15"W
R	41° 18'30"N	71° 54'30"W

From Point R, along the maritime boundary between Connecticut and Rhode Island to the coast; then west along the coast of Connecticut to the western entrance of Long Island Sound; then east along the New York coast of Long Island Sound back to Point T.

(9) *Lobster Management Area (LMA) 6B* means a portion of LMA 6 referred to as the "Race" which is the area south of the New York-Connecticut State line, north of 41° 10' north latitude, east of 72° 10' west longitude and west of 71° 54' west longitude.

(10) *Trap tag* means a tag sold by the department or by a vendor or another State or Federal agency recognized by the department to be used to identify legal lobster pots or traps.

(11) *Trap tag year* means the period from June 1 of a given year through the following May 31st.

(12) *Replacement trap tags* are those tags which will be issued to a permit holder when a catastrophic loss has occurred within a given year and will bear the same information as the original trap tags but will be distinguished from the original tags in a manner acceptable to the department.

(13) *Routine loss* is the loss of pots or traps or trap tags equal to the additional allocation of trap tags provided for in paragraph 44.1(d)(2) based on the historical level of pots or traps fished by an individual lobster permit holder.

(14) *Dredge* means any rectangular or oblong frame device, with or without teeth on the bottom bar or scrape, to which is attached a bag-like or cage-like net or device either flexible or rigid of either metal rings or wire netting or wire cage or a natural or manufactured fiber webbing or any combination of these materials and which is fished by being pulled or towed or dragged along the bottom of a body of water from a boat or vessel.

(15) *Carapace length* means a measurement from the rear end of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace).

(16) *Land or landed* means the bringing of crabs and lobsters to any shore or the transfer of the catch of crabs and lobsters taken from a vessel to any other vessel or in-water storage facility or to the land or to any pier, wharf, dock or other similar structure. When a vessel bearing crabs and lobsters has been tied, moored, or made fast to land, to another vessel, to an in-water storage facility or to any pier, wharf, dock or similar structure, such crabs and lobsters shall be deemed as landed.

(17) *Designated navigation channels* means the Long Island Intracoastal Waterway and natural or dredged paths through otherwise shoal waters that are used for entering or leaving ports and harbors, the boundaries of which are marked by maintained aids to navigation. Designated navigation channels do not include the main west/east shipping fairway through the center of Long Island Sound.

(18) *V-notched lobster* is defined as any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. *V-notched lobster* also means any female lobster which is mutilated in a manner which could hide, obscure, or obliterate such a mark.

(b) Identification of gear used in taking of lobsters

Gear used in taking lobsters must be identified as follows:

(1) All lobster pots or traps, while in operation, must have attached to them a floating buoy or identification marker which must be constructed and placed as to be clearly visible on the surface of the water. Plastic containers, bottles or jugs originally designed to contain liquids must not be used as buoys or markers to identify the location of lobster pots or traps.

(2) Each buoy or marker attached to a lobster pot or trap must be of a distinctive color. The number, including any letters, assigned the holder of a lobster permit for the current year at the time he or she obtains a lobster permit must be painted or otherwise affixed on each buoy or marker in a contrasting color, or branded on each buoy or marker, in clearly visible characters not less than two inches in height. The same color or combination of colors must be used on all buoys or markers bearing the same permit number.

(3) The same number appearing on a buoy or marker shall also be marked or branded, in characters not less than three-fourths inch in height, on all pots or traps identified by that buoy or marker. If the construction of a pot or trap does not allow it to be marked by branding, that pot or trap shall be marked by a tag or other device bearing, in clearly visible and legible characters, the same number appearing on a buoy or marker used to identify that pot or trap. This tag or other device shall be of a material that is not deteriorated by sea water and shall be firmly attached to the pot or trap it identifies. A valid trap tag is an acceptable identifying marker as long as it contains the fishermen's New York State commercial lobster harvester's permit number.

(4) Lobster pots shall not be placed within 25 feet of designated navigation channels, and all floating buoys or identification markers and lines attached to such pots shall remain outside designated navigation channels at all times.

(5) Violations of any provision of this subdivision shall subject the violator to the penalties fixed by the Environmental Conservation Law and may result in the suspension or revocation of any lobster permit.

(c) Construction of escape vents and panels in lobster pots or traps.

(1) Effective June 1, 2000 all lobster pots or traps in use shall contain in the parlor section (that part of a pot or trap farthest from the entrance or entrances which holds the lobsters until they are removed by the permit holder) either one or more unobstructed rectangular openings not less than five and three quarter inches by not less than two inches or two or more unobstructed circular openings not less than two and five-eighths inches in diameter each. These openings, called escape vents, shall be placed so that they are on a side, but not at the bottom or top, of the parlor section of the pot or trap.

(2) In addition to the requirements set forth in paragraph (1) of this subdivision, lobster pots or traps made of any material other than untreated natural wood shall contain on a side, but not the bottom, of the parlor section an escape panel, which when open, will provide an unobstructed opening of not less than three and three-fourths inches by three and three-fourths inches in length and height. The panel may incorporate escape vents having the dimensions described in paragraph (1) of this subdivision. If this panel is constructed of wood, it shall be untreated natural wood not more than three-eighths of an inch thick. If the panel is constructed of any material other than untreated natural wood, it shall be hinged to open. Effective July 19, 2006, the panel shall be hinged in such a manner that upon degradation of the material keeping the panel closed, the panel is released to produce an opening which is not blocked or otherwise obstructed by the panel material. Hinged panels shall be held in the closed position with either untreated, uncoated ferrous wire not more than three thirty-seconds of an inch in diameter or an untreated natural fiber such as cotton, sisal, hemp or manila not more than three-sixteenths of an inch in diameter. If the pot or trap is constructed of nylon, polypropylene, or any other synthetic fiber mesh netting placed over the frame, the escape panel may be made by having a section of the mesh netting on the outside of the parlor section comprised of an untreated natural fiber which when rotted out or deteriorated will leave an opening of at least the size specified for an escape panel in this subdivision.

(3) The sizes specified for escape vents and panels in paragraphs (1) and (2) of this subdivision are minimum sizes and no penalty will be assessed if a person uses a lobster pot or trap with larger escape vents or panels.

(d) Lobster trap tags.

(1) Effective June 1, 2000, all lobster pots or traps in use or on board any vessel must be marked by a color coded trap tag, issued by the department of Environmental Conservation or by a vendor or another state or federal agency recognized by the department for this purpose. Such tag must be firmly attached to the pot or

trap and must indicate, for commercial permit holders, the State issuing the tag, the Lobster Management Area for which the tag is valid, the year issued, and the permit number of the individual issued the New York lobster permit applicable to that pot or trap. For non-commercial permit holders, the tag must indicate the State issuing the tag, the year issued, and a recreational designation. New tags will be issued annually and must be affixed to each pot or trap in use not later than June 1 of each calendar year.

(2) Lobster Management Area Qualifying Criteria. Lobster trap tag applicants shall identify in their annual lobster license application all Lobster Management Areas, as established by the Atlantic States Marine Fisheries Commission, in which they intend to set their pots or traps. The department shall issue trap tags to New York lobster permit holders who intend to fish in Lobster Management Areas 2, 3, 4, and/or 6 only. In addition, the following restrictions shall apply:

(i) Applicants for LMAs 2, 3, and 4 shall be allocated trap tags in accordance with criteria established by the Atlantic States Marine Fisheries Commission and applicable federal regulations.

(ii) Applicants for LMA 6 shall present proof to the department, in accordance with this section, of their participation in the lobster fishery in Area 6 between January 1, 1995 and June 8, 1998 to qualify for the historical trap tag allocation. Initial trap tag allocation shall be based on the historical level of the maximum number of pots or traps fished during the period January 1, 1995 through June 8, 1998.

(iii) Applicants for more than one LMA shall abide by the trap tag allocation for the LMA with the most restrictive trap tag limit of those identified on the lobster license application.

(iv) Applicants for lobster trap tags shall stipulate in their application that they have not applied for nor received trap tags from any other lobster trap tag issuing jurisdiction.

(3) In years following the initial allocation, trap tags will be issued to a permit holder in an amount requested up to the initial year's allocation. However the number of trap tags allocated to a permittee shall be permanently reduced by the number of such trap tags initially allocated to the permittee which was sold to the New York State Empire State Development Corporation and which the Empire State Development Corporation has certified to the department.

(i) There shall be an additional 10 per cent routine loss allowance added to this amount to provide for lost or damaged gear during the trap tag year.

(ii) For license holders identifying LMA 6B as their primary fishing area, an additional 15 per cent routine loss allowance will be granted upon request. This additional allocation shall be solely for use in LMA 6B and shall be so indicated.

(iii) If the routine loss allowance is completely used without a catastrophic loss having occurred, a permit holder may obtain a replacement number of tags equal to the number of unusable tags turned in to the department.



- (iv) Tags turned in for such replacement will be reissued with the same identifying information as on those tags being replaced.
- (4) The historical level of pots or traps fished for the initial allocation will be determined by the department based on the following:
- (i) A Federal Fishing Vessel Trip Report form for the qualifying period, if available, and
  - (ii) A signed affidavit form, supplied by the department, from the permit holder attesting to the number of pots or traps and areas fished during any one year of the qualifying periods but no more than:
    - (a) The number of pots or traps indicated on the 1998 lobster permit application form or
    - (b) The greater number of pots which can be verified during the qualifying period by:
      - (1) A license application form for an earlier year in the qualifying period and/or
      - (2) If requested by the department, receipts or canceled checks for the sale of lobsters, the purchase of bait for lobster pots or traps, and the purchase of actual pots or traps, and forms for Income Tax and observer trips made for lobster on an applicant's vessel, which provide verification for the number of pots or traps being claimed in the affidavit or
      - (3) An allocation by the department of 50 pots provided that the permit holder reported landing lobsters during the qualifying period.
- (5) The historical level of pots or traps fished, as determined by the department, may be appealed by any person on the basis of verifiable information supplied by the appellant. The department may publish a notice providing a 30 day public comment period on both the lobster trap allocations requested by the commercial lobster permit holders, and the department's initial determinations.
- (6) The department or an agent authorized by the department will issue the trap tags to an individual lobster permit holder based on the department's determination of historical participation for commercial lobster permit holders pursuant to paragraph (4) or (5) of this subdivision and on application for up to five tags by a non-commercial lobster permit holder. The fee for such trap tags will be established annually by the department and shall be paid in full before the permittee receives their tag allocation for the current year.
- (7) Annual trap tags will be issued from January 1 to May 31 of each year and must be firmly attached to any lobster pot or trap in use by June 1. Tags issued under this section will be non-transferable and must be permanently attached to the lobster pot or trap frame, clearly visible for inspection.
- (8) If there is a catastrophic loss of trap tags due to unexpected conditions in the fishery during a year, a permit holder will, upon application to the department, be issued a new allotment of trap tags for the remainder of that year which will be distinguished from the original tags (i.e. color).

(i) Replacement trap tags must be placed on all pots or traps within 10 days after issuance.

(ii) Original tags will not be valid after a period of 10 days following issuance of replacement tags.

(iii) Should there be extensive, area wide catastrophic losses or should replacement tags not be immediately available, the department may issue an exemption notice suspending trap tag requirements for appropriate permit holders for a period not to exceed two months.

(9) In the event that a lobster license is reissued to an immediate family member pursuant to Section 13-0328 of the Environmental Conservation Law, the new license holder (i.e., transferee) shall be eligible to receive the trap tag allocation of the former license holder (i.e., transferor). This trap tag allocation shall only be used in the approved Lobster Management Area (LMA) of the former license holder.

(10) The Director, Bureau of Marine Resources of the Division of Fish, Wildlife and Marine Resources, is authorized to implement and administer the policies and procedures set forth in this subdivision, on behalf of the department, which are necessary for the issuance of lobster trap tags pursuant to E.C.L. Section 13-0329.

(e) Temporary Emergency Authorization to Tend Gear.

(1) In the event that a lobster license holder experiences a temporary medical emergency which renders the license holder incapable of operating an endorsed vessel or conducting fishing operations on a non-endorsed vessel, the license holder may apply to the department in writing for permission to authorize another lobster license holder to tend the applicant's lobster gear. If the department approves such application, the department shall issue a letter of authorization which shall be carried by the party authorized to tend the applicant's gear at all times while conducting activities authorized by such letter.

(i) A temporary medical emergency shall only be approved for 30 days, and may be extended in 30 day increments. No more than twelve such 30 day extensions shall be granted for a specific temporary medical emergency

(ii) A doctor's evaluation shall accompany each request for authorization under this section and each 30 day extension thereof. The medical evaluation shall be specific as to why the disability is temporary and why the licensee cannot perform the functions needed to comply with the law without the requested relief. If the medical evaluation calls for additional evaluation or treatment, the licensee shall provide evidence to the department that the licensee made good faith efforts to pursue such further evaluation or treatment during the 30 day period, in order to qualify for an extension pursuant to this subdivision.

(iii) The Director, Bureau of Marine Resources, is authorized to grant approvals and authorizations pursuant to this subdivision.

(f) Lobster size limits.

(1) After January 1, 2004, no person shall possess or land any lobster with a carapace less than three and three eighths inches in length while on or in the New York State waters of LMA 4.

(2) No person shall possess or land, in New York State waters of LMA 4, any lobster with a carapace which exceeds five and one quarter inches in length.

(3) All applicants for a New York State commercial lobster permit or New York State lobster landing license shall designate which of the lobster management areas they chose to fish in for the time period in which the permit is valid. Designated LMAs cannot be changed until the following permit year. Applicants will only be allowed to designate LMAs that they are qualified to fish in according to the criteria specified in paragraph 44.1(d)(2). Permittees who designate more than one LMA in their application shall abide by the lobster size and possession limits of the most restrictive of the designated LMAs, regardless of where they are fishing. Any person who possesses more than one commercial lobster permit shall abide by the lobster size and possession limits of the most restrictive of the LMAs designated on all of their permits, regardless of where they are fishing. Any permittee who fails to designate an LMA on their application shall abide by the most restrictive of the LMA 1, 2, 3, 4, 5, 6, and OCC lobster size and possession limits. The department shall provide license holders written notice of the current lobster size and possession limits of LMA 1, 2, 3, 4, 5, and 6 annually.

(g) Mandatory V-notching.

(1) All legal size egg-bearing female lobsters captured in LMA 4 must be V-notched and immediately released back in the water. V-notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The V-notch should be made by means of a sharp bladed instrument, at least one quarter inch in depth and not greater than one half inch in depth and tapering to a sharp point.

(2) Permittees who designate more than one LMA in their lobster permit application shall abide by the V-notching rules of the most restrictive of the designated LMAs, regardless of where they are fishing. Any person who possesses more than one commercial lobster permit shall abide by the V-notching rules of the most restrictive of the LMAs designated on all of their permits, regardless of where they are fishing. Any permittee who fails to designate an LMA on their application shall abide by the most restrictive of the LMAs 1, 2, 3, 4, 5, 6, and Outer Cape Cod (OCC) V-notching rules. The department shall provide license holders written notice of the current V-notching rules of LMAs 1, 2, 3, 4, 5, 6 and OCC annually.

(3) The landing or possession of any V-notched female lobster is prohibited. This prohibition applies to all persons other than a final purchaser or consumer.

(h) Season closure.

(1) The harvest and landing of lobsters from LMA 4 is prohibited from February 1 through March 31.

(2) During the February 1 through March 31 closure, lobster permit holders who use lobster traps or pots will have a two week period to remove lobster pots from the water after the closed season begins. No lobster trap or pot may be in the water from February 15 to March 24, unless the lobster permit holder also holds appropriate license(s) to harvest other species from their traps or pots. Lobster permit holders may set un-baited lobster traps or pots one week prior to the end of the closed season.

(3) Permittees who designate more than one LMA in their lobster permit application shall abide by the closed seasons rules in all designated LMAs, regardless of where they are fishing. Any person who possesses more than one commercial lobster permit shall abide by the closed season rules of the LMAs designated on all of their permits, regardless of where they are fishing. Any permittee who fails to designate an LMA on their application shall abide by all the closed season rules of the LMAs 1, 2, 3, 4, 5, 6, and Outer Cape Cod (OCC). The department shall provide license holders written notice of the current closed season rules of LMAs 1, 2, 3, 4, 5, 6 and OCC annually.

(4) These regulations apply to both commercial and recreational lobstermen.

#### **§44.4 Reporting Requirements.**

(a) Marine commercial lobster, lobster landing, lobster bait gill net, horseshoe crab and crab permit holders.

(1) Any person who is the holder of a marine commercial lobster, lobster landing or lobster bait gill net permit issued pursuant to section 13-0329 of the Environmental Conservation Law, a marine commercial crab permit issued pursuant to section 13-0331 of the Environmental Conservation Law, or a horseshoe crab permit issued pursuant to 6 NYCRR 44.3(c), shall complete and submit an accurate fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. The permit holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in writing. Fishing Vessel Trip Reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted for that month stating no trips were made. Incomplete fishing Vessel Trip Reports or unsigned reports will not satisfy these reporting requirements. Any New York permit holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead meet the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York permit holders who also hold federal fishing permits shall submit to the department the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.

(2) The fishing Vessel Trip Report must be completed with all required information, except for information not yet ascertainable, and signed before the vessel arrives at the dock or lands the catch. Information that may be considered unascertainable before arriving at the dock or landing includes dealer name, dealer number, and date sold.

(b) Food fish and crustacea dealers and shippers licenses. Any person who is the holder of a marine and coastal district food fish and crustacea dealers and shippers license issued pursuant to section 13-0334 of the Environmental Conservation Law shall: (1) Complete and sign an accurate Purchases From Fishing Vessels and/or Fishermen report detailing each purchase of marine food fish, crustacea, horseshoe crabs, and whelks from harvesters on a form prescribed by the department. The license holder must submit these reports to the department within 3 days after the end of each week, or at a frequency specified by the department in writing. A Purchases From Fishing Vessels and/or Fishermen report shall be completed, signed and submitted to the department each week; if no purchases of food fish, crustacea, horseshoe crabs or whelks were made during that week, a report must be submitted stating no purchases were made for the week. Incomplete Purchases From Fishing Vessels and/or Fishermen reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal dealers permit issued by NOAA Fisheries Service must instead satisfy the reporting requirements specified by NOAA Fisheries Service. (2) Effective January 1, 2012, submit complete and accurate purchases from fishing vessels and/or fishermen reports to the Atlantic Coastal Cooperative Statistics Program (ACCSP) through its website at [www.accsp.org](http://www.accsp.org). Any New York license holder who is also the holder of a federal dealers permit issued by NOAA Fisheries Service must instead meet the reporting requirements specified by NOAA Fisheries Service.

(c) License holders subject to the provisions of this subdivision shall present their fishing Vessel Trip Reports or Purchases From Fishing Vessel Reports and/or Fishermen and make them available for inspection upon the request of an authorized agent of the department or NOAA Fisheries Service. Reports shall be submitted to the department at the following address: NYSDEC, Bureau of Marine Resources, 205 N. Belle Mead Road, Suite # 1, East Setauket, New York 11733. Reports may be mailed, faxed, emailed or submitted by any other method approved by the department.

(d) In fulfillment of these reporting requirements, license holders subject to the provisions of this subdivision may choose to submit purchases from fishing vessels data or fishing trip data online at the Atlantic Coastal Cooperative Statistics Program website, [www.accsp.org](http://www.accsp.org). Complete and accurate fishing trip and purchase data submissions to this website will satisfy the reporting requirements specified in this subdivision. License holders who submit fishing data electronically must maintain a dated logbook, on board the specific fishing vessel, that details all fishing activities for each fishing trip. Data to be recorded in this logbook must include the vessel name, date sailed and date landed, species and weight of the species taken during the dated trip, and other information required by the department. Entries must be entered into the logbook before the vessel arrives at the dock or lands the catch.

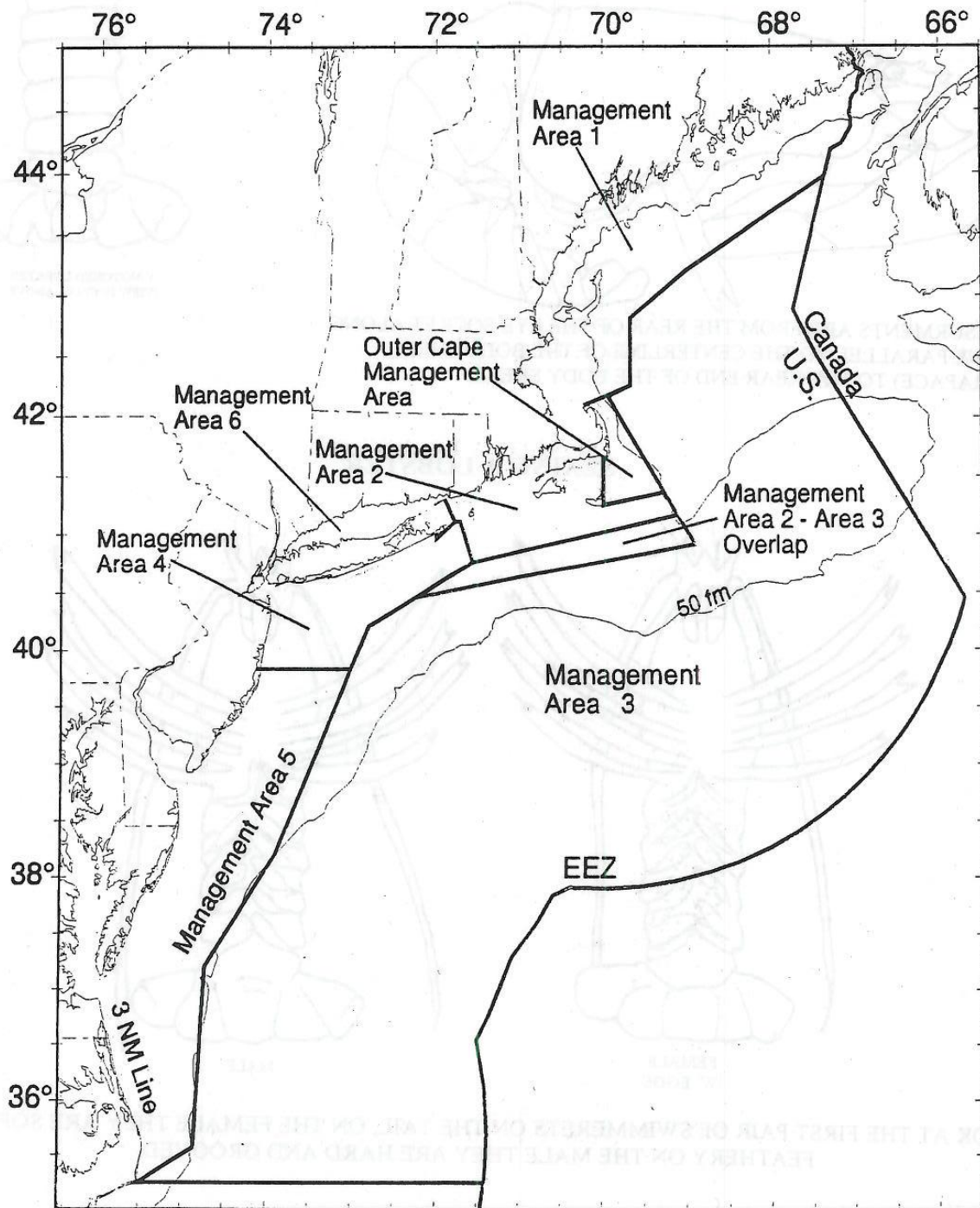
(e) Failure to file fishing Vessel Trip Reports or Purchases From Fishing Vessel and/or Fishermen Reports as required may disqualify the owner or operator from receiving future licenses or permits pursuant to Part 175 of this title. Any person who falsifies any fishing Vessel Trip Report or Purchases from Fishing Vessel and/or

Fishermen Report shall be subject to the penalties established pursuant to the provisions of Article 71 of Environmental Conservation Law and may be subject to permit revocation pursuant to Part 175 of this Chapter.

#### **§44.5 Confidentiality of Fisheries Data**

Fisheries data, statistics or other information collected from individual permit or license holders by the department or available to the department from other states or the federal government shall be confidential and shall not be disclosed except to an authorized user or when required under court order; provided, however, that the department may release or make public any statistics in an aggregate or summary form (with no less than three submitters contributing to that statistic) which does not directly or indirectly disclose the identity of any person who submits such statistics. For the purposes of these regulations an authorized user is any person that is employed by or under contract to the department or who is employed by or is under contract to the NOAA Fisheries Service, the U.S. Fish and Wildlife Service, the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia or Florida, and who has been designated by such agency or state, under the auspices of the Atlantic Coastal Cooperative Statistics Program to require confidential data as a means to fulfill their job and their job is related to fisheries management and conservation.

*American lobster Management Areas established for the purpose of regional lobster management.*



## American Lobster Area by Area Management Measures Updated December 2012

Management Measure	Area 1	Area 2	Area 3	Area 4	Area 5	Area 6	OCC
Min Gauge Size	3-1/4"	3-3/8"	3-1/2"	3-3/8"	3-3/8"	3-3/8"	3-3/8"
Vent Rect.	1-15/16x 5-3/4"	2 x 5-3/4"	2-1/16 x 5-3/4"	2 x 5-3/4"	2 x 5-3/4"	2 x 5-3/4"	2 x 5-3/4"
Vent Cir.	2-7/16"	2-5/8"	2-11/16"	2-5/8"	2-5/8"	2-5/8"	2-5/8"
V-notch requirement	Mandatory for all eggers	Mandatory for all legal size eggers June 1, 2012	Mandatory for all eggers above 42°30'	Mandatory for all eggers July 1, 2012	None	None	None
V-Notch Definition (possession)	Zero Tolerance	1/8" with or w/out setal hairs <sup>1</sup>	1/8" with or w/out setal hairs <sup>1</sup>	1/8" with or w/out setal hairs <sup>1</sup>	1/8" with or w/out setal hairs <sup>1</sup>	1/8" with or w/out setal hairs <sup>1</sup>	<hr/> State Permitted fisherman in state waters <hr/> 1/4" without setal hairs <hr/> Federal Permit holders 1/8" with or w/out setal hairs <sup>1</sup>
Max. Gauge (male & female)	5"	5 1/4"	6 3/4"	5 1/4"	5 1/4"	5 1/4"	<hr/> State Waters none <hr/> Federal Waters 6 3/4"
Measures to change in 2013							
Min Gauge size			3 17/32" Jan 1, 2013				
V-notch requirement					Mandatory for all eggers Jan 1, 2013		
Season Closure				Feb 1- Mar 31, 2013	Feb 1- Mar 31, 2013	Sept 8 – Nov 28	



**New Jersey Division of Fish and Wildlife**

**ASMFC American Lobster Compliance Report  
2013**

**I. Introduction.**

The New Jersey American Lobster Fishery occurs from 1 to 100 miles off the coast covering depths from 5 fathoms to just over 100 fathoms. New Jersey is part of the Southern New England Lobster Management Area with focused effort in Lobster Conservation Management Areas 3, 4, and 5. The New Jersey Division of Fish and Wildlife along with the NJ ACCSP staff has been managing and monitoring the NJ fishery for the past 5 years both in landings and at sea observer coverage. These monitoring programs will be continued into 2014.

**II. Request for *de minimis*, where applicable.**

N/A

**III. Previous calendar year's fishery and management program (2012).**

- a. **Commercial Harvests:** Total Harvest, Total Trap and non-trap , Total harvest by LCMA, and Total Harvest by Biological Stock (Fill in the table), total traps fished (not traps purchased)

<b>Total State Harvest</b>	<b>Total Trap Harvest</b>	<b>Total Non-Trap Harvest</b>	<b>Total Harvest by LCMA</b>	<b>Total Harvest by Stock</b>	<b>Traps Fished (by LCMA if you have it)</b>
919,260	684,188	2,715	3=197,085 4=464,852 5=24,966	SNE=919,260	LCMA 3=5,591 LCMA 4=25,510 LCMA 5=2,750

- b. Total **Recreational** Harvest, recreational harvest by traps, and recreational harvest by divers (Fill in the Table)

<b>Total Harvest</b>	<b>Harvest by Traps</b>	<b>Harvest by divers</b>	<b>Total Traps Fished</b>
N/A	N/A	N/A	N/A

- c. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP. See Appendix Regulations.

- d. Monitoring Programs (Fill in for the programs your state participates in)
1. Landings monitoring via SAFIS eDR.
  2. At sea observer coverage aboard commercial lobster trap vessels.

3. Independent Ocean Trawl Survey conducted from the Sandy Hook, NJ at the northern most terminus to Cape May, NJ at the southern terminus.

- e. **Sea Sampling:** Number of trips by stat area sampled and data categories collected; See Appendix Table 1 and 2.
- f. **Port Sampling:** N/A
- g. **YOY Settlement or larval:** N/A
- h. **State Trawl Surveys:** See Appendix Figure 1.

**IV. Planned management programs for the current calendar year**

- d. Summarize regulations that will be in effect. Please find a copy of the current NJ regulations in Appendix Regulations.
- e. Summarize monitoring programs that will be performed.  
The NJ Bureau of Marine Fisheries will continue at sea observer coverage of the American lobster fishery in LCMA 4 and 5 off the coast of NJ. A target of 18 trips will be set again for 2013 to gain a comprehensive view of the commercial lobster pot fishery off the coast from 0-60 nm and from depths of 40-230 feet. As in past years, staff will concentrate effort throughout the entire fleet of lobster vessels (32 active permits buying tags, 17 active vessels landing lobster) as much as possible, however a core group of roughly ten vessels will likely be active in the observer program.
- f. Highlight any changes from the previous year.

**None.**

**Appendix;**

**2012 NJ Lobster Observer Data**

**Total Number of Lobster Measured and Trips Taken by Statistical Area**

<b>Stat Area</b>	<b>Trips</b>	<b>Lobsters Measured</b>
612	7	8,698
615	2	1,256
<b>Total</b>	9	9,954

Table 1. NMFS Statistical area sampled and number of trips and lobsters measured during the 2012 sampling season.

**Data Points Collected**

<b>Trip Data</b>	<b>Biological Data</b>
Trip ID	Lobster Sex
Owner/Operator	Lobster Size
Vessel	Lobster Egg Development Stage
Port	Number of Claws
Fishery	Number of Regenerating Claws
LMA	Shell hardness
Stat Area	Shell Disease
Soak Time	
Line Number	
Start (GPS) Waypoint	
Start Latitude	
Start Longitude	
Depth	
Bait	
Number of Pots	
Trap Type	
Trap Length x Width x Height	
Mesh Size	
Collector	
Additional Comments/Notes	

Table 2. Data elements collected on each at-sea observer trip taken by NJDFW personnel.

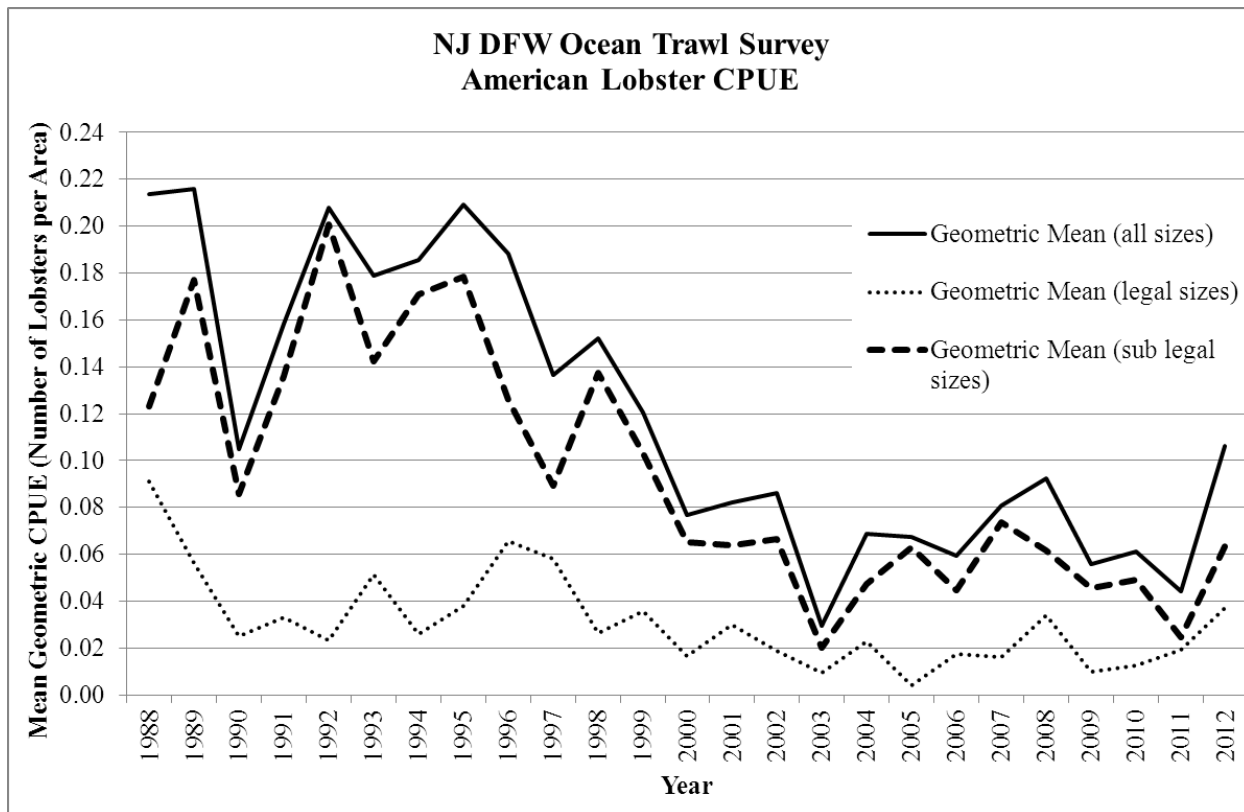


Figure 1. Stratified mean CPUE of all lobsters collected aboard the NJDFW Ocean Trawl Survey. The survey stratifies sampling in three depth gradients, inshore (18'-30'), mid-shore (30'-60'), offshore (60'-90'). The mean CPUE was calculated as the sum of the mean number of lobsters per size class collected in each sampling area weighted by the stratum area.

**NJ Division of Fish and Wildlife American Lobster Regulations for 2013.**

**§ 7:25-14.13 Size of lobster taken**

(a) A person shall not take from the marine waters of this State by any means, import, export, offload at any port, have in his or her possession, buy, sell or offer to buy or sell, any American lobster of the genus and species *Homarus americanus*, which when measured from the rear end of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell is less than the lengths listed below after the dates stipulated.

<b>After</b>	<b>Minimum Size (inches)</b>
August 19, 2002	3 1/4
July 1, 2002	3 5/16
July 1, 2003	3 11/32
July 1, 2004	3 3/8

(b) A person fishing in Atlantic States Marine Fisheries Commission (ASMFC) Lobster Management Area (LMA) 3 or that has designated Lobster Management Area 3 for fishing on their Federal Fisheries Permit or State Lobster Pot Permit shall not take, land, have in his or her possession, sell or offer to sell any American lobster with a length as measured in (a) above that is less than the length listed below after the dates stipulated:

<b>After</b>	<b>Minimum Size (inches)</b>
July 1, 2005	3 13/32
July 1, 2006	3 7/16
July 1, 2007	3 15/32
July 1, 2008	3 1/2
January 1, 2013	3 17/32

(c) A person fishing in ASMFC Lobster Management Area 3, 4 and/or 5 or that has designated Lobster Management 3, 4 and/or 5 for fishing on their Federal Fisheries or State Lobster Pot Permit shall not take, land, have in his or her possession, sell or offer for sale any American lobster with a length as measured in (a) above that is greater than the length listed below after the dates stipulated.

<b>ASMFC Lobster Management</b>	<b>Dates</b>	<b>Maximum Size (inches)</b>
Area		
LMA 3	after July 1, 2012	6 3/4
LMA 4	after July 1, 2002	5 1/4
LMA 5	after July 1, 2004	5 1/4

(d) A person shall not import, export, have in his or her possession, buy, sell or offer to buy or sell any American lobster that does not comply with the size limits for the Lobster Management Areas as stipulated in (a) through (c) above.

(e) The maximum size limits stipulated in (c) above apply to the recreational harvest of American lobster. The minimum size limit for American lobster harvested for recreational purposes shall comply with those stipulated in (a) above and shall not be sold, offered for sale or bartered.

(f) A State Lobster Pot Permittee possessing a Type A, B, C, E or F Permit shall report to the Department the initial ASMFC Lobster Management Area(s) he or she intends to fish and notify the Department prior to relocating to a different Lobster Management Area(s). Notification shall be sent to:  
 NJ Lobster Pot Permit Program  
 Nacote Creek Research Station  
 PO Box 418  
 Port Republic, NJ 08241

1. If the permittee identifies more than one ASMFC Lobster Management Area as an area he or she intends to fish, then the more restrictive maximum and/or minimum size limit of those identified areas shall apply to that permittee's possession, landing and sale of lobsters.

(g) A person shall not take from the marine waters of this State by any means, possess at sea or offload at any port an American lobster, which is damaged or mutilated to the extent that its length as specified in (a) above cannot be determined.

(h) A person shall not import, export, have in his or her possession, buy, sell or offer to buy or sell, any detached American lobster tail, if the sixth abdominal segment (that segment closest to the fan of the tail), when measured along its dorsal center line with the tail flexed, is less than one and one-sixteenth inches in length.

#### **§7:25-14.14 Lobster possession limits**

American lobster taken by otter trawl or fish pot shall be limited to 100 lobster per day per vessel (based on a 24-hour period) up to a maximum of 500 lobsters per trip per vessel, for trips of five days or longer. American lobster taken by hand, or any gear or methods other than otter trawl, fish or lobster pot or fish or lobster trap shall be limited to six lobster per person in possession or taken in any one calendar day.

#### **§ 7:25-14.15 Prohibitions**

(a) A person shall not take from the marine waters of this State by any means, import, export, offload at any port, have in his or her possession, buy, sell or offer to buy or sell, any American lobster with eggs attached, or from which the egg have been removed.

(b) Effective July 1, 2012, all commercial lobster permit holders authorized to fish in LMA 4 and/or 5 must, prior to discarding, apply a v-shaped notch in the base of the tail flipper of each egg-bearing female American lobster. The v-shaped notch must be at least 1/4 inch deep and placed in the base of the pelvic flipper immediately to the right of the center flipper as viewed from the back of the lobster.

(c) A person fishing in ASMFC Lobster Management Area (LMA) 4 and/or 5 or that has designated LMA 4 and/or 5 for fishing on their Federal Fisheries or State Lobster Pot Permit shall not take or attempt to take, land, have in his or her possession, sell, or offer to sell any American lobster during the closed season of February 1 through March 31, inclusive. During the closed season, no dealer shall accept, have in his or her possession, buy or offer to buy, sell, or offer to sell any American lobster harvested from LMA 4 and/or 5. During the closed season, all lobster traps in LMA 4 and/or 5 must be removed from the water. However, a licensee shall have a two-week period from when the season closes to accomplish removal of all lobster traps. In addition, lobster traps may be set one week prior to the season reopening. If the license holder is harvesting other species with lobster trap gear, the lobster trap gear does not need to be removed; however, it shall be tended at least every 30 days.

(d) A person shall not possess a female lobster bearing a v-shaped notch (that is, a straight-sided triangular cut with or without setal hairs, at least one-eighth inch in depth and tapering to a sharp point) as viewed from the rear of the female lobster. V-notched female lobster also means any female which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

(e) A person shall not use any spear, gig, gaff or other penetrating device as a method of capture of lobsters.

#### **§ 7:25-14.16 Eligibility for lobster pot permit and pot allocation**

(a) As of December 31, 2001, a vessel shall not land lobster harvested by a lobster pot unless such vessel is in the possession of a valid New Jersey Lobster Pot Permit issued in the name of the vessel and owner, except as provided for at N.J.A.C. 7:25-18.5(g)11i(4).

1. To be eligible for a Type A, B, C and F Lobster Pot Permit allowing the use or possession in Federal and/or State waters of an allotted number of lobster pots as defined under N.J.A.C. 7:25-18.5(g)11, a complete application, including the required documentation,

must be received by the Department no later than December 31, 2001. To be eligible for a Type E Lobster Pot Permit allowing the use or possession in Federal and/or State waters of an allotted number of lobster pots as defined under N.J.A.C. 7:25-18.5(g)11, a complete application, including the required documentation, must be received by the Department no later than December 31, 2002. Applications may be mailed to:

New Jersey Lobster Pot Permit

Nacote Creek Research Station

PO Box 418

Port Republic, NJ 08241

i. For a Type A Lobster Pot Permit, the applicant shall document that the vessel owner possesses a current valid Federal Lobster Permit, had landed and sold a minimum of 2,000 pounds of lobster in New Jersey in any one calendar year during the period from March 25, 1991 to September 3, 1998, and participated in the harvest of lobster by lobster pot, pursuant to (a)4 below, during the year of documented landings submitted by the applicant.

(1) A Type A Lobster Pot Permittee shall receive an allocation for the number of lobster pots (traps) authorized on the permittee's Federal Fisheries Permit for American lobster (Federal Lobster Permit), to be fished in Federal and/or State waters. For the purpose of this section, lobster pots will be assumed to last for five years with a 10 percent loss of pots per year.

(2) Documented proof of participation in an ASMFC Management Area pot fishery shall consist of one or more of the following:

(A) Federal logbook reporting forms identifying the vessel, number of pots fished, date of landings and National Marine Fisheries Service Statistical Area from where lobster were harvested;

(B) A personal logbook in combination with a notarized statement from the applicant attesting to its authenticity; and/or

(C) Gear damage compensation reports.

ii. For a Type B Lobster Pot Permit, the applicant shall document that the vessel owner possesses a current valid Federal Lobster Permit, had landed and sold a minimum of 2,000 pounds of lobster in New Jersey in any one calendar year during the period from January 1, 1980 to March 25, 1991 and participated in the harvest of lobster by lobster pot pursuant to (a)4 below, during the year of documented landings submitted by the applicant.

(1) A Type B Lobster Pot Permittee shall receive an allocation for the number of lobster pots (traps) authorized on the permittee's Federal Fisheries Permit for American lobster to be fished in Federal and/or State waters.

iii. For a Type C Lobster Pot Permit, the applicant shall document that the vessel owner has possessed a valid New Jersey Lobster/Fish Pot License in any one calendar year during the period from January 1, 1980 to September 3, 1998 and landed and sold a minimum of 2,000 pounds of lobster in New Jersey during the year of the valid New Jersey Lobster and Fish Pot License submitted by the applicant.



(1) A Type C Commercial Lobster Pot permittee shall receive an allocation for 500 lobster pots to be fished in State waters only.

(2) An applicant seeking eligibility for a Type C New Jersey Lobster Pot Permit and pot allocation shall not have received or applied for pot or trap tags from any other lobster pot or trap tag issuing jurisdiction.

iv. For a Type E Lobster Pot Permit, the applicant shall document that the vessel owner possesses a current valid Federal Lobster Permit, landed and sold a minimum of 500 pounds of lobster in New Jersey in any one calendar year during the period from January 1, 1980 to September 3, 1998, and participated in the harvest of lobster by otter trawl or lobster pot, pursuant to (a)4 or (a)5 below, during the year of documented landings submitted by the applicant.

(1) A Type E Lobster Pot Permittee shall receive an allocation for the number of lobster pots (traps) authorized on the permittee's Federal Fisheries Permit for American lobster to be fished in Federal and/or State waters.

(2) A Type E Lobster Pot Permittee that does not possess a Federal Fisheries Permit for American Lobster shall receive a lobster pot (trap) allocation of 500 pots (traps) to be fished in State waters only.

(3) A Type E Lobster Pot Permittee shall not possess otter trawl gear aboard his or her permitted vessel when fishing with pot gear. The simultaneous possession of otter trawl gear and lobster pot gear on board a vessel shall constitute prima facie evidence of a violation of this section.

v. For a Type F Lobster Pot Permit, the applicant shall document that the vessel owner possesses a current valid Federal Lobster Permit, landed and sold a minimum of 2,000 pounds of lobster in New Jersey in any one calendar year during the period from September 3, 1998 to December 31, 2000, and participated in the harvest of lobster by lobster pot pursuant to (a)4 below during the year of documented landings submitted by the applicant.

(1) A Type F Lobster Pot Permittee shall receive an allocation for the number of lobster pots (traps) authorized on the permittee's Federal Fisheries Permit for American lobster to be fished in Federal and/or State waters.

2. Documented proof of a Federal Lobster Permit or State Lobster/Fish Pot License shall consist of a copy of said permit or license submitted with the application that can be confirmed by Federal and State records.

3. Documented proof of landings shall consist of one or more of the following:

i. Weigh-out slips from the purchaser totaling the weight and the date the lobster was harvested; or

ii. A notarized statement from the applicant and the purchaser(s), attesting to the weight and date the lobster were landed and sold. A copy of the business records supporting the statement(s) must accompany the application.

4. Documented proof of participation in the lobster pot fishery shall be established through

one or more of the following:

- i. Federal logbook reporting forms identifying the vessel, number of pots fished and date of landings in New Jersey;
- ii. A personal logbook in combination with bait and pot receipts;
- iii. Gear damage compensation reports; or
- iv. A notarized statement from the applicant and pot manufacturer or retailer attesting to the number of lobster pots and the date that the pots were purchased. A copy of the business records supporting the statement(s) must accompany the application.

5. Documented proof of participation in the lobster otter trawl fishery shall be established through one or more of the following:

- i. Federal logbook reporting forms identifying the vessel, fishing gear and date of landings in New Jersey; or
- ii. A copy of New Jersey license to fish with an otter trawl that can be confirmed by State records.

6. Other documentation similar to that in (a)3, 4 and 5 above may be accepted at the discretion of the Commissioner after his or her review.

7. The applicable New Jersey Lobster Pot Permit shall be on board the vessel to which it is issued at all times. The permit and pot allocation is valid upon issuance and in subsequent years unless revoked as part of a penalty action pursuant to N.J.A.C. 7:25-14.19 or as modified by the Commissioner, pursuant to N.J.A.C. 7:25-14.19. The applicable permit is issued to a specific vessel in the name of the owner.

8. The owner of a vessel permitted pursuant to this subsection may transfer his or her Lobster Pot Permit, upon application to the Department as follows:

- i. To his or her replacement vessel. The vessel being replaced shall no longer be eligible for a New Jersey Lobster Pot Permit or pot allocation based upon the vessel's history, but shall be eligible for a permit transfer from another permitted vessel.
- ii. Along with the sale of his or her vessel to a new owner, the owner selling the vessel shall no longer be eligible for a New Jersey Lobster Pot Permit based on the harvesting history of the vessel being sold.
- iii. Transfer of a permit to a new vessel shall be limited to the same pot allocation and Lobster Permit Type as the original permitted vessel or as modified by the Commissioner pursuant to N.J.A.C. 7:25-14.19.

iv. No permit shall be transferred without the prior approval of the Department, based upon satisfaction of (a)8i through iii above.

9. Any harvester or vessel landing lobster in New Jersey for the purpose of sale shall sell all lobster only to a permitted Federal lobster dealer.

10. All New Jersey Lobster Permit holders landing lobster in New Jersey shall be required to complete monthly reports signed by the permittee attesting to the validity of the information. The monthly report forms shall be supplied by and returned to the Federal or State agency given authority for the Pot Tag Program and shall include all information required by said agency.

11. All New Jersey Lobster Permit holders shall allow research personnel from the Department or a person designated by the Department aboard the permitted vessel at any time following a 48 hour notification to sample lobster pot catches at sea.

#### **§ 7:25-14.17 Lobster pot tag program**

(a) All lobster pots as defined under N.J.A.C. 7:25-18.5(g)11 in State or Federal waters or aboard a vessel shall be tagged with appropriate tags to be issued by the Federal or State agency given authority for the pot tag program.

1. Pot tags shall be placed on the pot bridge or main cross member clearly visible for inspection.
2. Pot tags shall be a permanently affixed and not transferable to another pot once attached to a pot.
3. A person or permitted lobster pot vessel shall only have on board or lift pots that have the valid identification as assigned to said person or vessel.
4. A person or vessel shall not have on board or fish more lobster pots than that vessel is allocated under the permittee's New Jersey Lobster Pot Permit.
5. Pot tags shall be issued annually and shall be valid for one year.
6. Permit holders shall be issued tags based upon their allocation of tags plus 10 percent to cover routine losses.
7. Catastrophic tag loss shall be defined as losses above the 10 percent routine loss rate established by the issuing authority due to gear conflicts, storms or other circumstance which may be accepted at the discretion of the Federal or State agency given authority for the pot tag program.
  - i. When a catastrophic loss occurs, an entirely new allotment of tags shall be dispersed and the original tags shall be invalid upon replacement.
  - ii. Permittees shall be allowed to fish new pots with a letter of exemption from the issuing authority until new tags are re-issued for a time period not be exceed two months.
  - iii. The issuing authority shall have the right to invoke emergency measures to suspend pot tag regulations in the event of area-wide catastrophic losses, for a time period not to exceed two months.
8. Permittees shall purchase pot tags only from the issuing authority.

### **§ 7:25-14.18 Exceptions for research**

N.J.A.C. 7:25-14.13(a), 14.13(b), 14.15(a) and 14.15(b) shall not apply to the taking or possession of lobster bearing a tag that has been issued or affixed by the Department of Environmental Protection or by any other state or Federal agency with which the Department cooperates in a research project.

### **§ 7:25-14.19 Administrative notice**

The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify minimum or maximum size limits, pot and trap limits, trip limits, quotas and possession limits in this subchapter by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify minimum or maximum size limits, pot and trap limits, trip limits and possession limits in this subchapter by notice in order to provide for the optimal utilization of any quotas specified in this subchapter. The Commissioner will review the catch rate for a particular species in relation to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may adjust the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such modification by filing and publishing a notice of administrative change in the New Jersey Register and a notice in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

### **§ 7:25-14.20. Penalties**

- (a) Any person violating any of the provisions of this subchapter relating to crabs shall be liable to the penalties provided by N.J.S.A. 23:2B-14 except for (b), (c) and (d) below.
- (b) Any person not having a valid license in possession or failing to exhibit same for inspection by an authorized law enforcement officer while tending a pot or trot line or dredging crabs, or violating the provisions of N.J.A.C. 7:25-14.5(a)1 or 2 or 14.6 shall be liable to a penalty of \$30.00 for the first offense and \$50.00 for each subsequent offense.
- (c) Any person failing to check crab pots at least once every 72 hours pursuant to N.J.A.C. 7:25-14.2(d) shall be liable to a penalty of \$30.00 for each pot in violation.
- (d) Any person violating the provisions of N.J.A.C. 7:25-14.9 or 14.10 shall be liable to a penalty of \$30.00 for each crab taken or had in possession.
- (e) Any person using or possessing a crab pot which does not contain a biodegradable panel or other mechanism specified in N.J.A.C. 7:25-14.1 shall be subject to a penalty of \$30.00 for each pot in violation.
- (f) Any person dredging crabs outside of the "crab dredge area" or dredging crabs on unauthorized marked leased shellfish grounds pursuant to N.J.A.C. 7:25-14.7(b) shall be subject to the penalties provided by N.J.S.A. 23:2B-14 in addition to a mandatory 12 month crab dredge license privilege revocation and seizure of the entire catch in possession. The commercial licensee shall be held liable and subject to license privilege revocation and catch seizure for violations actually committed by an agent based upon the apparent authority of the agent to act for his or her

principal.

(g) Any person violating the provisions of N.J.A.C. 7:25-14.13, lobster size, tail size and landing of lobster parts; N.J.A.C. 7:25-14.14, possession limits; N.J.A.C. 7:25-14.15, prohibition of egg-bearing lobsters, v-notched female lobsters and the prohibition of the use of a penetrating device; N.J.A.C. 7:25-14.16, eligibility for a lobster pot permit and pot allocation; N.J.A.C. 7:25-14.17, lobster pot tag program; N.J.A.C. 7:25-18.5(g)11i, lobster pot maximum size or N.J.A.C. 7:25-18.5(g)11iv, escape vents, shall be subject to a penalty of \$30.00 for each lobster, lobster part or lobster pot in violation.

(h) Failure to comply with the provisions of N.J.A.C. 7:25-14.13, lobster size, tail size, and landing of lobster parts; N.J.A.C. 7:25-14.15, prohibition of egg-bearing lobsters, v-notched female lobster; N.J.A.C. 7:25-14.16, eligibility for a lobster pot permit and pot allocation; N.J.A.C. 7:25-14.17, lobster pot tag program; N.J.A.C. 7:25-18.5(g)11ii, lobster pot maximum size; or N.J.A.C. 7:25-18.5(g)11vii, escape vents, shall result in the suspension during the period which extends from April 1 to November 30, or revocation of the vessel's lobster pot permit and/or the lobster pot license of the operator according to the following schedule:

1. First offense: 60 days suspension;
2. Second offense: 120 days suspension;
3. Third offense: permanent revocation.

4. In calculating the period of suspension or revocation applicable under (h)1 through 3 above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this paragraph; therefore, a permit holder who incurs more than one suspension within a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this paragraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.

(i) Pursuant to N.J.S.A. 23:10-21 and 21.1, any gear used in violation of the provisions of this subchapter may be seized and forfeited.

(j) The assessment of any administrative penalty shall not preclude the Department from prosecuting for a larger amount in the event the administrative penalty is not paid by the time requested.

(k) Nothing in this section shall require the Department to assess an administrative penalty before instituting prosecution.

### **§ 7:25-14.21 Request for adjudicatory hearing**

(a) Any person, subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3), who believes himself or herself to be aggrieved with respect to a license and/or permit decision made by the Department under this subchapter may request an adjudicatory hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A request for an adjudicatory hearing must be received by the Department within 30 calendar days after the person requesting the hearing receives notice of the Division's decision. If the Department does not receive a hearing request within the allotted time, it shall deny the hearing request.

(c) A person requesting a hearing shall provide the following information in writing to the Department at the address in (f) below:

1. The name, address, and telephone number of the person requesting the hearing;
2. A copy of the decision document;
3. A description of any facts or issues which the petitioner believes constitute a defense to the decision made by the Department;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(d) If the person fails to include all of the information required by (c)1 through 6 above, the Department may deny the hearing request.

(e) A request for an adjudicatory hearing shall be submitted to the Department at the address listed below, with a copy to the Division of Fish and Wildlife at the address given at N.J.A.C. 7:25-14.4(c):



# COMMONWEALTH of VIRGINIA

*Marine Resources Commission*  
2600 Washington Avenue  
Third Floor  
Newport News, Virginia 23607

Douglas W. Domenech  
Secretary of Natural Resources

Jack G. Travelstead  
Commissioner

March 1, 2013

## **MEMORANDUM**

To: Toni Kerns, American Lobster Fisheries Management Plan Coordinator  
Atlantic States Marine Fisheries Commission

From: Allison Watts  
Fisheries Management Division  
Virginia Marine Resources Commission

Subject: 2013 Report on Virginia Compliance with the Interstate Fishery Management  
Plan for American Lobster

### I. Introduction

Virginia Marine Resources Commission (VMRC) Chapter 4VAC20-110-10 et seq., "Pertaining to Lobsters," was amended in 2012 to make it unlawful for any person to possess, for a period longer than is necessary for immediate measurement, any lobster less than 3-17/32 inches in carapace length or greater than 5-1/4 inches in carapace length, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources. Additionally, this amendment incorporated federally-designated lobster conservation management areas into the regulation, established the requirement of V-notching and immediate release of all egg-bearing female lobsters as of September 1, 2012, and established a closed season to the landing of lobsters from February 1 through March 31.

The 2012 (preliminary) landings were 10,429 pounds. The VMRC will provide an update of 2012 landings when data are final. Average landings for 2011 and 2012 were 11,654 pounds, below the 40,000 pound threshold that is used to determine *de minimis*.

### II. Request for *de minimis*

As the most recent two-year average (2011-2012) landings (11,654 pounds) fall below the 40,000 pound *de minimis* threshold, the VMRC is requesting *de minimis* status for 2013. While 2012 landings are preliminary and may increase when finalized, average American lobster landings in recent years (average 2007-2011) were 19,020 pounds, well below the *de minimis*

*An Agency of the Natural Resources Secretariat*

[www.mrc.virginia.gov](http://www.mrc.virginia.gov)

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threshold. In addition, the highest landings in that period (2007-2011) were 26,765 pounds (2007), and even if that value was used along with the 2011 landings, the average is still well below the 40,000 pound *de minimis* criteria.

III. Previous calendar year's fishery and management program

- a. There is no active fishery-dependent monitoring program.
- b. There is no active fishery-independent monitoring program.
- c. A copy of Chapter 4VAC20-110-10 et seq. is attached as a separate file, for this report, and may be referenced for compliance with Section 3.1 of Amendment 3. In addition, Virginia requires that all vessels obtain a Virginia landing license, in order to land seafood in Virginia for commercial purposes (Chapter 4VAC20-920 et seq.). Similarly, it is unlawful for any Virginia seafood buyer to receive any marine seafood from any boat or vessel that is not licensed for the landing of seafood. This regulation will facilitate Virginia's transition to the ACCSP commercial data collection program.

IV. Planned Management Program for 2013

- a. The attached regulation and information cited in III c. define the lobster management program for Virginia in 2013.
- b. No monitoring programs beyond monitoring of industry adherence to regulatory requirements are planned for the 2013 fishery.



**"PERTAINING TO LOBSTERS"**

**CHAPTER 4 VAC 20-110-10 ET SEQ.**

**PREAMBLE**

This chapter sets forth requirements for the harvesting, landing, or possession of lobsters within the Commonwealth of Virginia.

This chapter is promulgated pursuant to authority contained in §28.2-201 of the Code of Virginia, and amends and re-adopts previous Chapter 4 VAC 20-110-10 et seq. which was adopted July 26, 2005 and was effective December 1, 2005. The effective date of this chapter is September 1, 2012.

**4VAC20-110-10. PURPOSE.**

The purpose of this chapter is to conserve and protect lobster from overfishing and to provide consistency among federal and interstate laws and regulations.

**4VAC20-110-15. DEFINITIONS.**

“Berried female” means a female American lobster bearing eggs attached to the abdominal appendages.

"Carapace" means the unsegmented body shell of the American lobster.

"Carapace length" means the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace.

"Ghost panel" means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

“Land” or “landing” means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Lobster" means any crustacean of the species *Homarus americanus*.

"V-notched female lobster" means any female lobster bearing a V-shaped notch (i.e., a straight-sided triangular cut without setal hairs, at least 1/4 inch in depth and not greater than 1/2 inch in depth and tapering to a sharp point) in the flipper next to the right of the center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female that is mutilated in a manner that could hide, obscure, or obliterate such a mark.

**"PERTAINING TO LOBSTERS"**

**CHAPTER 4 VAC 20-110-10 ET SEQ.**

**4VAC20-110-20. MINIMUM AND MAXIMUM SIZE LIMIT.**

It shall be unlawful for any person to possess for a period longer than is necessary for immediate measurement any lobster less than 3-17/32 inches in carapace length or any lobster greater than 5-1/4 inches in carapace length, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.

**4VAC20-110-30. POSSESSION PROHIBITIONS.**

- A. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of the presence of eggs, any berried female lobster, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.
- B. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of unnatural removal of eggs, a lobster that has been scrubbed or has in any manner other than natural hatching had the eggs removed therefrom.
- C. It shall be unlawful to possess a V-notched female lobster. The prohibition on possession of a V-notched female lobster applies to all persons, including but not limited to fishermen, dealers, shippers, and restaurants.
- D. It shall be unlawful to possess a lobster that has an outer shell that has been speared.
- E. It shall be unlawful to land lobster from February 1 through March 31.

**4VAC20-110-40. MARKING OF LOBSTERS.**

Any berried female harvested in or from Virginia waters shall be V-notched before being returned to the sea immediately.

**4VAC20-110-50. LOBSTER PARTS.**

It shall be unlawful for any person to possess aboard any vessel or to land picked or cooked meat of the lobster, lobster meats, detached tails or claws, or any other part of a lobster that has been separated from the lobster.

**"PERTAINING TO LOBSTERS"**

**CHAPTER 4 VAC 20-110-10 ET SEQ.**

**4VAC20-110-55. GEAR REQUIREMENTS.**

All lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) shall contain a ghost panel. The opening in a trap to be covered by the ghost panel shall be rectangular and shall not be less than 3-3/4 inches (9.53) by 3-3/4 inches (9.53cm). The panel shall be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath; cotton; hemp; sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter; or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24cm) in diameter. The door of the trap may serve as the ghost panel if fastened with a material specified in this section. The ghost panel shall be located in the outer parlor(s) of the trap and not the bottom of the trap.

**4VAC20-110-60. LICENSE REQUIRED.**

In accordance with the provisions of §28.2-201 of the Code of Virginia, the Marine Resources Commission does hereby establish a Lobster Boat License to be valid for one calendar year and does

hereby require that each such vessel engaged in the fishing for or landing of lobster within or upon the waters within the jurisdiction of the Commonwealth procure and display such license provided that such vessel be not otherwise licensed for fishing by the Marine Resources Commission or engaged in the use of fishing gear that is not otherwise licensed by the Marine Resources Commission.

**4VAC20-110-65. LANDING LIMIT.**

Landings by fishermen using gear or methods other than traps (nontrap fishermen) shall be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips five days or longer. Possession by any nontrap fishermen aboard any vessel on Virginia waters or the landing by any nontrap fishermen of quantities greater than those specified shall constitute a violation of this chapter.

**4VAC20-110-70. PENALTY.**

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

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**"PERTAINING TO LOBSTERS"**

**CHAPTER 4 VAC 20-110-10 ET SEQ.**

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on August 28, 2012.

**COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION**

BY: \_\_\_\_\_  
**Jack G. Travelstead**  
**Commissioner**

Subscribed and sworn to before me this \_\_\_\_\_ day of August, 2012.

My Commission expires March 31, 2016.

\_\_\_\_\_  
Notary Public