

# Atlantic States Marine Fisheries Commission

## American Lobster Management Board

August 6, 2013

11:00 a.m. – 12:30 p.m.

Alexandria, Virginia

### 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 ( <i>D. Grout</i> )                                      | 11:00 a.m. |
| 2. Board Consent  | 11:00 a.m. |
| • Approval of Agenda  |            |
| • Approval of Proceedings from May 2013   |            |
| 3. Public Comment   | 11:05 a.m. |
| 4. Consider Draft Addendum XXI for Final Approval <b>Final Action</b>             | 11:15 a.m. |
| • Review of Draft Addendum XXI management options ( <i>K. Taylor</i> )            |            |
| • Public Comment Summary ( <i>K. Taylor</i> )                                     |            |
| • Consider final approval of Addendum XXI   |            |
| 5. Review of NOAA Fisheries American Lobster proposed rule ( <i>K. Taylor</i> )   | 12:05 p.m. |
| 6. Review of lobster gear marking regulation inconsistencies ( <i>K. Taylor</i> ) | 12:20 p.m. |
| 7. Other Business/Adjourn   | 12:30 p.m. |

The meeting will be held at the Crowne Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia; 703-683-6000

*Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015*

# MEETING OVERVIEW

**American Lobster Management Board Meeting**  
**Tuesday, August 6, 2013**  
**11:00 a.m. – 12:30 p.m.**  
**Alexandria, Virginia**

Chair: Doug Grout (NH) Assumed Chairmanship: 01/12	Technical Committee Chair: Josh Carloni (NH)	Law Enforcement Committee Representative: Joe Fessenden (ME)
Vice Chair: Dan McKiernan	Advisory Panel Chair: Vacant	Previous Board Meeting: May 20, 2013
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 February and May 2013

**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.

<b>4. Consider Draft Addendum XXI for Final Approval (11:15 a.m. – 12:05 p.m.) Final Action</b>
<p><b>Background</b></p> <ul style="list-style-type: none"> <li>• The Board delayed moving forward with the proposed measures regarding changes in the LCMA 2 and 3 transferability measures to allow for further clarity.</li> <li>• A subcommittee of industry and board members met in September to work on the Board task</li> <li>• The PDT had drafted a revised draft addendum for public comment at the February meeting</li> <li>• The Board tasked a working group of commissioners and industry members to define ownership in the context of the draft Addendum</li> </ul>
<p><b>Presentations</b></p> <ul style="list-style-type: none"> <li>• Review of Draft Addendum XXI management options by K. Taylor (<b>Briefing CD</b>)</li> <li>• Public Comment Summary by K. Taylor (<b>Briefing CD</b>)</li> </ul>
<p><b>Action for consideration</b></p> <ul style="list-style-type: none"> <li>• Consider final approval of Addendum XXI</li> </ul>

**5. Review of NOAA Fisheries American Lobster Proposed Rule (12:05 – 12:20 p.m.)**

**Background**

- NOAA Fisheries published a proposed rule that addresses the Commission's effort to restrict lobster trap fishing to only historic participants in Area 2 and the Outer Cape Area. Additionally, NOAA Fisheries proposes to implement the Transferable Trap program in Areas 2, 3, and the Outer Cape Area.
- The public comment period closed on July 29, 2013. The Board submitted comments based on email discussions. After comments are received, NOAA will complete the final environmental assessment and publish a Final Rule to implement measures (**Briefing CD**).

**Presentations**

- Review of the federal proposed rule by K. Taylor

**Action for consideration**

- Consider further comments to submit to NOAA Fisheries

**6. Review of lobster gear markings inconsistencies (12:20 – 12:30 p.m.)**

**Background**

- In April, the New England Fishery Management Council (NEFMC) discussed the inconsistency and related safety concerns of lobster gear marking regulations. The NEFMC believes that some of the current gear marking requirements may be unobservable on the water's surface and, in some cases, not strictly followed.
- The NEFMC recommends a minimum standard for fixed gear similar to the current EEZ regulations for traps in a trawl with more than three traps (**Briefing CD**).

**Presentations**

- Overview of NEFMC letter and recommendations by K. Taylor

**Action for consideration**

- Consider comments to NEFMC from the Commission

**7. Other Business/Adjourn**

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

**Crowne Plaza Hotel - Old Town**  
Alexandria, Virginia  
May 20, 2013

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. **Move to approve Option 2 in Addendum XX to the American Lobster FMP.** (Page 2). Motion by Terry Stockwell; second by Bill Adler. Motion carried (Page 3).
3. **Move to approve Addendum XX as modified** (Page 3). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 3).
4. **Move that the board accept the changes to the document presented today concerning the ownership language in Sections 3.1.4 and 3.2.5, as well as the sunset provision for single ownership as presented in Section 3.1.3** (Page 7). Motion by Dan McKiernan; second by Bill McElroy. Motion carried (Page 7).
5. **Move to approve Section 3.1.1 C and Section 3.2.1 C in the document** (Page 7). Motion by Bill Adler; second by Bill McElroy. Motion was defeated (Page 7).
6. **Move to approve Addendum XXI as amended today for public comment** (Page 7). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 8).
7. **Move to adjourn by consent** (Page 15).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	James Gilmore, NY (AA)
Steve Train, ME (GA)	Pat Augustine, NY (GA)
Sen. David Watters, NH (LA)	Russ Allen, NJ, proxy for D. Chanda (AA)
Doug Grout, NH (AA)	Tom Fote, NJ (GA)
G. Ritchie White, NH (GA)	John Clark, DE, proxy for D. Saveikis (AA)
Rep. Sarah Peake, MA (LA)	Roy Miller, DE (GA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Bill Adler, MA (GA)	Tom O'Connell, MD (AA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Rob O'Reilly, VA, proxy for J. Travelstead (AA)
Bill McElroy, RI (GA)	Bill Cole, NC (GA)
Rick Bellavance, RI, Proxy for Rep. Martin (LA)	Bob Ross, NMFS
David Simpson, CT (AA)	
Dr. Lance Stewart, CT (GA)	

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

### Ex-Officio Members

### Staff

Robert Beal

Toni Kerns

### Guests

Kelly Denit, NMFS  
Peter Burns, NMFS  
Raymond Kane, CHOIR  
Charles Lynch, NOAA  
Anthony Rios, Ofc. Sen. Boyle, NY  
Jennifer Ni, ACCSP  
Ed Martino, ACCSP

Julie Defillippi, ACCSP  
Michael Pentony, NMFS  
Peg Parker, Commercial Fisheries Research  
David Spencer, AOLA  
Richard Allen, Newington, NH  
Janice Plante, Commercial Fisheries News

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, May 20, 2013, and was called to order at 1:15 o'clock p.m. by Chairman Douglas Grout.

### **CALL TO ORDER**

**CHAIRMAN DOUGLAS GROUT:** Good afternoon. This is a meeting of the American Lobster Board. Since I don't have my name plate, I'll let you know I'm Doug Grout. I'm the Chair for a couple more meetings. Before we get to some of the agenda items, I wanted to make one announcement that I have told that this person doesn't want made.

Our long-time National Marine Fisheries Service partner on this board is going to be retiring and that this is his last meeting. Bob, I just want to say now that the rules are finally out or almost, you're leaving. There is a message here; isn't there? Anyway, I just want to say thank you for all you've done.

There have been some very difficult and tough decisions we have had to make and you have helped work with us through the federal process, which is obviously very cumbersome, but you have made it a little bit more simple. Although some people may not agree with me, but I think you have. You've done a good job. Thank you, Bob. (Applause)

**MR. BOB ROSS:** I'll keep it short and sweet, but it has been a wonderful experience here. I have really enjoyed it. I think the commission has a lot going for it that the councils could look at and benefit from. I have enjoyed all my actions here. I think this group has a lot of flexibility and does an outstanding job. I'm going to miss this; I'm going to miss these gatherings very much. Thank you.

### **APPROVAL OF AGENDA**

**CHAIRMAN GROUT:** And, Peter, I see your shoulders getting weighed down a little bit right now. We have an agenda here and I would like you all to look it over. Are there any changes to

the agenda or additions? I have one. Not on the agenda right now is a letter that the New England Fishery Management Council sent to the commission. It is in your packet.

I would like to just very briefly take this up under other business just to make the board aware of it. Is there any objection to the agenda as it was modified? Seeing none.

### **DISCUSSION OF PROCEEDINGS**

**CHAIRMAN DOUGLAS GROUT:** We also have within our packets the proceedings of the February 2013 meeting. Are there any changes? Bill.

**MR. WILLIAM A. ADLER:** I don't know what happened here, but when I'm reading the minutes it was 2012. I know it was supposed to be 2013, but I'm reading the minutes and Executive Director Vince O'Shea had comments, and I don't think he did. Then at the minutes, it is signed off as February 2012. I don't know how that happened. I was reading the minutes here and it sounded like okay, but then all of a sudden what caught my attention is when Vince O'Shea made some comments. I go was he there in February making comments? If you could just check that over and see if the wrong minutes went into the – that's all.

**CHAIRMAN GROUT:** Thank you for pointing that out, Bill. We won't approve them at this meeting. We'll take a look at them, Toni, and make sure we've got the right minutes to everybody. It looked okay to me, too, but I was looking mostly at the motions. At any rate, we won't approve those. We will now move on to public. Is there anybody from the public that would like to speak on items that are not on the agenda?

### **PUBLIC COMMENT**

**MR. DICK ALLEN:** My name is Dick Allen and I'm representing Little Bay Lobster Company. We wanted to raise a concern about consistency of v-notch enforcement among the states. We understand that there are different definitions in place, but it seems to be an issue that goes beyond that and whether the states are



actually fully enforcing the definitions that they are operating under.

As you can imagine, it puts people at a disadvantage, especially people fishing offshore landing in different states. They're fishing beside people who are landing in different states saying if there is a difference in the enforcement of the v-notch, then that puts people at a disadvantage. I don't know if you could refer that to the Law Enforcement Committee to look at or somehow kind of look and see whether the states are fully enforcing whatever definition they do have.

CHAIRMAN GROUT: Thank you, Dick, and we've had discussions on the v-notch for the past few meetings and maybe we can talk a little bit about that in the future about the specific concerns. We could potentially either refer it to the Law Enforcement Committee again if it is not something that we have already addressed here. Dan.

MR. DAN McKIERNAN: I would ask Dick if he could put it in writing because I'm not sure what the specific issues are. Are we talking about Area 1 with zero tolerance? Are we talking about different interpretations from state to state? To me the problem isn't well defined yet.

#### **DISCUSSION OF DRAFT ADDENDUM XX FOR FINAL ACTION**

CHAIRMAN GROUT: Do you think we could get a letter identifying the specific issue? I think I know what you're talking about, but it would be good to have it in writing. Thank you. Is there any other public comment? All right, we have Agenda Item Number 4, Draft Addendum XX for final approval. Toni is going to give a presentation on it, and we will move to making decisions on final action here.

MS. TONI KERNS: Draft Addendum XX was looking at an agreement between the offshore lobster fishery and the sector trawl fishery for bottom sharing in Closed Area 2. This addendum was out for public comment. We

didn't conduct any hearings. We did not receive any public comment on the draft addendum.

As a reminder, this draft addendum had two options. Option 1 would be status quo, no Closed Area 2 season closure. Option 2 is to have a Closed Area 2 season closure that reflects the agreement that was made between the offshore lobster fishery and the groundfish sector. The agreement was that it would be prohibitive to set or store traps in the closed area from November 1<sup>st</sup> to June 15<sup>th</sup>. All lobster trap gear must be removed by midnight, October 31<sup>st</sup> from Closed Area 2 except for the habitat areas of particular concern.

No lobster gear would be set in the area until 12:01 a.m. on June 16<sup>th</sup>. Any gear set or stored from November 1<sup>st</sup> through June 15<sup>th</sup> would be considered derelict gear. There would be an exception for Acts of God. Then the sector operation plans are not in effect until May 1<sup>st</sup>. To start the agreement from May 1<sup>st</sup> to June 15<sup>th</sup>, the mobile gear sector vessels would enter the area for the six weeks of spring season above 41/30.

If opening of Closed Area 2 does not become effective until 2014, then the agreement would remain in effect for the initiation at that time. Depending on what option is adopted, then the commission would send recommendations to NOAA Fisheries. Are there any questions?

CHAIRMAN GROUT: Are there any questions for Toni? Seeing no questions; we have an addendum before us for final action. There is only one management decision we need to make; either choose status quo, Option 1, or Option 2. After we make a decision on that, then I would be looking for a motion to approve the addendum. Terry Stockwell.

**MR. TERRY STOCKWELL: Mr. Chairman, I move Option 2.**

CHAIRMAN GROUT: Okay, and a second by Bill Adler, and that is Option 2 under Section 3.0 in Addendum XX. Is there any discussion on this motion? Terry.

MR. STOCKWELL: This is a well-thought-out collaborative effort between two gear types to share the bottom in what could be a contentious confrontation. I support the industry's effort and I think they have led the way helping us find the proper resolution. I support it.

MR. ROSS: I agree and I mirror what Terry said. I appreciate the efforts by the commission to move the addendum forward to complement efforts that NMFS is doing on our side of the house to implement this measure. I support it. Thank you.

MR. DAVID SPENCER: Mr. Chairman, I agree with Terry and Bob. Anytime you craft a bottom-sharing agreement, it is very difficult. I think both sides did a very good job in coming up with a solution. My comment is avoiding gear conflicts was the issue that brought both sides to the table. It really should have a very prominent place in this document.

I am going to ask on Page 3, the paragraph just above "proposed changes in management tools", there is a section that says, "The American Lobster Offshore Fishing Fleet in Closed Area 2 developed an agreement with the groundfish sector to prevent gear conflicts" – I would just ask if that could be highlighted in bold. It is a very sensitive issue, especially the mobile gear fleet, and I just want to get it on the record that was the primary reason that they agreed to come to the table. Thank you.

CHAIRMAN GROUT: Okay, back to the board; is there further discussion on this? Pat.

MR. PATRICK AUGUSTINE: Mr. Chairman, I'm in agreement with it. The big concern I have is once the pots are out of the water, the lobster grounds are fair game for anybody and has anyone thought of the implications of lobster pot wars like we've had in Long Island Sound over the years? It may be a far-fetched issue out in the ocean, but I'll tell you it is not a far-fetched issue for us. Remembering history in Long Island Sound, there were boats sunk, people shot and a whole bunch of other things. Here is a case where these pots will be out of the water for a pretty significant amount of time. It

may not be an issue to be concerned with right now, but there are no guarantees. Once they're out, they're out. Have we thought about this any at all or is it not important at this juncture?

CHAIRMAN GROUT: Well, Pat, the other part of this is that the groundfish fishermen that are operating mobile gears in sectors are also part of this agreement. It is written into their operations plans, which have been approved by the National Marine Fisheries Service; so I think, yes, the pots will be out of the water over a certain period of time, but then mobile gear is supposed to be out of the area during the period that traps are supposed to be allowed in. Are there any further questions? Dan.

MR. McKIERNAN: On Page 4 in the compliance section – this is probably a type there – it says, "All states must implement Addendum XIX". That is just a comment, but just a question to Toni. Is it the expectation that the states will enact state rules to do this?

MS. KERNS: In the sense that you recognize that the addendum is in place, yes, but I don't think there are any regulations that you have to put in place in your books.

CHAIRMAN GROUT: Are there further questions? Do you need time to caucus? **I'm going to read the motion into the record while you're caucusing. Move to approve Option 2 in Addendum XX to the American Lobster FMP. The motion was made by Mr. Stockwell; seconded by Mr. Adler. Okay, all states in favor raise your hand; all those opposed; abstentions; null votes. The motion carries unanimously.** We now need a motion to adopt the addendum for final action. Bill McElroy.

MR. WILLIAM A. McELROY: **Mr. Chairman, I move to adopt the addendum as we just changed it or corrected it, whatever.**

CHAIRMAN GROUT: **Bill Adler seconded the motion. Is there any objection to approving the addendum? Seeing none, I note that it is approved unanimously.** The next item on the agenda is Draft Addendum

XXI, and we are putting this together to potentially approve it for public comment. Toni, I think you're first on the list to review it.

**DISCUSSION OF DRAFT ADDENDUM  
XXI FOR PUBLIC COMMENT**

MS. KERNS: Draft Addendum XXI, as I think we're all aware, is the trap consolidation banking provisions for Areas 2 and 3. At the last board meeting we went through and made several changes to the draft addendum through board votes, but we asked that a working group of commissioners come back to us to look at what does ownership mean.

We had a working group of about seven folks come back and pull together some suggestions for ownership. I'm going to go through the document and indicate areas where the working group suggested we add additional information to the document. I'll go right into the management options.

For Areas 2 and 3, the draft addendum looks at transferring a multi-area trap allocation. Originally the document looked at separating a partial transfer of a multi-area trap allocation and a full business transfer of a multi-area allocation. Through the working group discussion, there were some members of the working group that would like to treat transfers of a multi-area trap allocation the same, no matter if it was a full business sale or a partial business sale.

What I did was broke this section up for each of the areas into three parts, either treating it as an Option A as a partial transfer; B, looking at it just as the full business transfer; or, C, any transfer of multi-area trap allocation. If the board would like to add C, just looking at it as a whole, then we would need to have a motion to include that in the document because it is different from how we looked at it before.

For partial transfers of a multi-area trap, Option 1, status quo, is that you must choose a single LCMA to fish multi-area traps. Once the transfer has occurred and the fisherman has chosen what area that trap will be fished in, the privileges for the other areas will be forfeited.

Option 2 is to allow the fisherman to fish two of the historical areas; so instead of forfeiting all of the areas that allocation had, that fisherman could pick two of those areas.

Once he picks those two areas, then all the other areas are forfeited. Option 3 is similar, but it allows the fisherman to pick those two areas on an annual basis. Option 4 is to fish all the areas at anytime; you don't have to pick any of the areas and you don't forfeit any of the areas.

Next is looking at the full business sales. Option 1 for a full business sale is that a fisherman – under status quo what we have currently in place is a fisherman may fish any LCMA that the transferred multi-area trap had history in, but is bound by the most restrictive rule. Option 2 is you must choose a single area to fish in the multi-area trap and all other privileges will be forfeited.

Then looking at Option C, any multi-area historical transfer – and this is the new section that some members of the working group wanted added to the document. Option 1 is two areas can be fished. The fisherman would pick those two areas and then not be able to change them over time. Option 2 is to have two areas could be fished. You would choose them annually when you're renewing your permit. Option 3 is just to allow them to fish any of the areas.

Now we're going to go into measures that are solely for Area 2. Looking at a single ownership cap; Option 1, status quo, no action. Option 2 allows for the purchase and accumulation of traps over and above the active trap cap for individual corporation. The transfer tax would not be assessed on those traps, and you could have up to 1,600 traps.

We're looking at this as a trap provision and not a traps and permits. We're just using traps as our measure of metric. New to this document is putting a sunset provision in for this single ownership cap. As you remember, the single ownership cap was sort of our new way to talk about banking.

It is what allowed us to have the extra traps available so that as we have the trap reductions that were approved in the last addendum, fishermen could take traps that they had in their bank and move them over as they were reduced. The Area 2 LCMT had discussions and said that once all these reductions were put in place, that they wanted to see their fishery go back to how it historically was and that there would be sort of this one allocation per person or per entity fishing, and one allocation is 800 traps and not the 1,600 that the banking allows for.

What this does is sunsets the single ownership cap after all of the trap reductions have been put in place. The first option would be no sunset provision, so we would allow to have this sort of banking stay in place until the board was to choose to end it. Option 2 is that we would sunset one year after the last trap reduction. Option 3 is to sunset two years after the last trap reduction. The aggregate ownership cap; the working group put in language into this section for both Area 2 and Area 3 to describe what ownership is and the requirements for the fishing industry.

Ownership would be defined as a person who has any interest in a lobster permit or business, and all stockholders must be disclosed when renewing landing permits or trap tag allocations. This is for the states and agencies to try to have an understanding of who is involved in a fishing permit; so that when a person applies to have more than one permit, we can make sure that person or entity is only involved in one business.

Option 1, status quo, no company or individual may own or share ownership of more than two permits. Those that had more than two permits in December of 2003 may be retain the number that they had at that time, but may not own or share ownership of any additional permits beyond that. Option 2 is you cannot own more than 1,600 traps, so that would be basically two permits.

The traps would be subject to annual reductions. It doesn't say this in the document, but it should, and I will make sure it is added that any person who had more than two permits before

December 2003 may retain that number that they had at that time. Moving into the Area 3 provisions, the Area 3 designation – and this designation hasn't changed since we have gone through the document for the last two times, so I'm not going to go over it again.

We have the trap and permit cap on ownership. We are proposing several types of restraints on ownership to inhibit the excessive consolidation of industry. For Area 3 we have a cap on the number of individual active traps a single permit may fish; a cap on the number of traps a single permit may fish and own; and a cap on the aggregate number of federal permits and traps an entity or company may own.

First is looking at the trap cap. The current trap cap for Area 3 is 2,000 traps, so that is Option 1. Option 2 is as specified. In the first table it is that we have the trap cap will be reduced as the Area 3 trap reductions occur. Those trap caps drop down from 2,000 to 1,548 and 2,000 down to 1,800.

The single ownership cap, Option 1 would be no single ownership cap. Option 2 is an ownership cap as proposed in the next table under the Section 3.2.3. It allows the purchase and accumulation of traps over and above the active trap cap. It also seems that NOAA Fisheries would implement a 2,000 trap cap and then cut the allocated traps by 25 percent as was recommend in the last addendum that we did that did all of the trap reductions for Area 3.

Again, this is to allow the flexibility for industry to move traps over from a savings account into their active account as these trap reductions occur over the next five years once they have been implemented. The single ownership cap would be 2,333 in Year One and then drops down to 1,900 traps in the last year.

Lastly is looking at an aggregate ownership cap. Again, the working group recommended adding the language about ownership and two has to disclose information about what they own when they're renewing their landing permit or their trap tag allocations to this section. The first option is status quo, no single company or

individual may own or share more than five LCMA 3 permits.

If they had more than five prior to December 2003, those permits may be retained. Option 2 is that no single company or individual may own or share more than five LCMA permits and cannot own more than five times the individual ownership cap. That individual ownership cap is in the table in the addendum.

In the first year that would be 11,665 traps and then the final year it would be 9,500 traps. If the board were to choose Option 2 to have this aggregate cap, then the plan development team recommended that we ask NOAA Fisheries to establish a control date for the number of permits or traps a single company or individual could own or share ownership of at the approval of the addendum document. That is everything that I have that is new.

If the board wants to consider treating the multi-area traps all the same – so that was Section C – we would need a motion for that. If the board wants to consider a sunset provision for the single ownership of the Area 2 caps, we would need to include that. If the board wants to include the language about ownership and how to declare where permit holders have ownership, we would need a motion for that as well.

CHAIRMAN GROUT: Are there any questions? Bill.

MR. ADLER: Mr. Chairman, I do have questions. I know this is just to go out to public hearing, but if we could just for a second get to the banking section idea. I read that it says, okay, somebody banks some traps and it might be over his allowed allocation; and then with the reductions coming, his allowed allocation goes down; and does it mean, then, that he can take some of his banked traps and put them back in to get himself back up – that is what I read; is that correct? That is my first question.

MS. KERNS: That is correct. It is under the single ownership cap for Area 2 and 3. For Area 2 they are suggesting to have a sunset provision

for that banking or that single ownership cap after the final reductions have occurred.

MR. ADLER: Okay, in other words, that is what it was getting at. Okay, my next chairman, Mr. Chairman, the most restrictive rule has to do with traps in those areas; or that wording “most restrictive rule” has to do with trap caps in different areas; is that correct?

MS. KERNS: Specifically to the transfer of multi-area trap allocations; so the most restrictive rule would apply to the multi-area traps.

MR. ADLER: Next question; on Page 4 where it has trap allocated; I just wondered why if you allocated a certain number of traps, let’s say in 2008, and you see what traps fished in 2008 – okay, that makes sense. In 2009 the allocation went down a little; traps fished stayed pretty much – and then in 2010 the allocation went back up. I thought when you allocated the traps, that was the allocation. I didn’t understand how we can go back up on an allocation, how that worked. Do you have any idea how that came about?

CHAIRMAN GROUT: I’m told that we should defer that to the states because that is the information the states provided us with traps allocated.

MR. ADLER: All right, it is just a question.

MR. McKIERNAN: It is tough for us to tease out where the discrepancy is because we know what Area 2 traps were allocated; but because 2 and 3 and are combined, so I think we have to consult with NMFS to see what is going on there.

MR. ADLER: All right, thank you; and I do feel that full and part transfer ideas are so confusing; it is going to be a nightmare as to what does that mean. This is why when someone makes a motion for C, I will support putting in an Option C on that one. Thank you.

MR. McKIERNAN: Are you ready for a motion?

CHAIRMAN GROUT: Yes, concerning those three items that need to be put in. Go ahead.

MR. McKIERNAN: **I would move that the board accept the changes to the document presented today concerning the ownership language in Sections 3.1.4 and 3.2.5, as well as the sunset provision for single ownership as presented in Section 3.1.3.**

CHAIRMAN GROUT: Seconded by Bill McElroy. Okay, is there discussion on that motion? Seeing none; do you folks need time to caucus, then? Bob Ross.

MR. ROSS: Mr. Chairman, I heard the reference, Toni, to a possible control date. Would it be appropriate to revise the document at this point to make that reference and recommendations to the federal government? It would be Section 5.0 if you do intend to reference a control date.

MS. KERNS: Bob, under Section 3.2.5 on Page 14, the last paragraph says, "If this option were adopted, the board would recommend to NOAA Fisheries establishing a control date." Do we actually need to put a specific date in there or do you want me to also put it in the other section – okay, thank you.

CHAIRMAN GROUT: Okay, are you ready to vote? **All those states in favor of this motion raise your hand; any opposed; abstentions; null votes. The motion carries unanimously.** Are there any other motions? Bill Adler.

MR. ADLER: Is it appropriate to make a motion to take this as refined to public hearing? Is it time for that?

CHAIRMAN GROUT: It could be. I understood there was a desire to have an Option C under Section 3.1 and 3.2, and I didn't hear in Dan's motion that was included. On Page 7, 3.1 –

MR. ADLER: **Okay, I will make a motion to approve Option C to be put in the document, 3.1.1, Part A, Option C; add it – 3.1.1 C.**

CHAIRMAN GROUT: Seconded by Bill McElroy. Are you going to take that – for Section 3.2.1 for Area 3; is that going to be taken up in a separate motion? Okay, is there any discussion on this motion?

MR. McELROY: Mr. Chairman, I would like to move to substitute or if the maker of the motion would accept a friendly amendment we would like to include Area 3 in that as well; do it all in one shot.

CHAIRMAN GROUT: So you're okay with adding Section 3.2.1 in there; adding an Option C to that, too?

MR. ADLER: Yes.

CHAIRMAN GROUT: Now is there any discussion on the motion? Okay, seeing none, I'll give you a chance to caucus briefly.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: **The motion is move to approve Section 3.1.1 C and Section 3.2.1 C in the document. Motion by Mr. Adler; seconded by Mr. McElroy. Okay, all those in favor raise your hand; all those opposed; abstentions, 1; null votes. Motion carries eleven to zero to one to zero.** We could now use a motion to approve for public comment. Bill McElroy.

MR. McELROY: **I move that we approve Addendum XXI as amended today for public comment.**

CHAIRMAN GROUT: Seconded by Bill Adler. Is there discussion on the motion? Bob Ross.

MR. ROSS: We have raised some concerns about some of the contents of this addendum in the past. The evolution goes back to I guess Addendum XVIII initially. Our concern has to do with the complexity of the process and the ability to account for and accurately ensure that the dual state/federal permit holders from all jurisdictions have accurate trap allocations both at their state level and their federal level.

If the board recollects, one of our early concerns was the need for a trap transferability database to house the information on an ongoing basis and act as a conduit to communicate lobstermen's requests to transfer traps through this database so that the database in the process could reach out to all the necessary jurisdictions.

If, for instance, a fisherman in Rhode Island wanted to sell his allocation to someone in Massachusetts and he was also a dual permit holder, there are three jurisdictions that would need to be involved there, and all jurisdictions would need to be ensured that the number of traps was accurate, et cetera.

We had provided written comment on several of these issues in Addendum XVIII and our concerns as well as the process has not changed. We will likely comment again in writing during this public comment period. We continue at this time to support for partial transfers the ability to only buy a trap for one area; and if that trap does have multi-area authorizations, then the buyer would have to make a selection of what area that trap would go into. that would be my comment and the likelihood of additional written comment to follow. Thank you.

CHAIRMAN GROUT: Are there any other comments? **Do I see any objections to approving this for public hearing? Seeing none, the document stands approved for public hearing.** Moving right along, Bob, you're up next. We have an agenda item here – maybe it is Peter. Peter, are you going to do this, review of NOAA Fisheries Lobster Proposed Rule.

## **DISCUSSION OF NOAA FISHERIES LOBSTER PROPOSED RULE**

MR. PETER BURNS: Yes, I will explain the rule. For the record, my name is Peter Burns. I'm with the National Marine Fisheries Service, Northeast Region. I appreciate the opportunity today to brief you on a proposed rule that we have been working on. The rule is not out yet, but we suspect that it will be out probably in the next week or so, and then we will have a 45-day public comment period.

This rule has to do with implementing a limited entry program for the Area 2 and the Outer Cape Lobster Trap Fishery. It would also implement a transferable trap program for those two areas as well as Area 3, the offshore area. As you know, over the last decade or so, the commission has asked NOAA Fisheries to implement limited entry programs in all of the lobster management areas, and we have done that.

Area 2 and the Outer Cape are the last two areas that are yet to have that done. The states have already done this in Area 2 and in the Outer Cape under the commission's recommendations. As we move forward with this rule and knowing that most state permit holders and federal permit holders are dual permit holders, we want to try to align with what the states have already done with respect to decisions to qualify permit holders into these two areas and to also allocate traps.

The point of that is that the states are the ones that have the data there, and we would be making decisions on essentially the same permit histories that the states have already done in their own waters. To allow for a reasonable and doable lobster trap transfer program, we want to be able to try to align with the states as best as we can, so we're going to be working with them moving forward to qualify, allocate and align our decisions with what they've already done in state waters.

We know that there may be some disconnects. For the most part, we hope to align with what the states have already done; but in the case where there might be differences in a state decision on an allocation or a qualification into an area compared to what the federal government comes up with, we have some tools that are built into this rule to try to address that and to align better with what the states have done.

One of those is the director's appeal, which will allow the director of a state's marine fisheries agency to appeal on behalf of a permit holder or permit holders to us to let us know why that individual should be allocated a certain amount of traps if there is a discrepancy. Once we

qualify the permits and allocate the numbers of traps, the next step is to introduce the trap transfer program. Again, that is for Area 2, the Outer Cape and Area 3.

Traps can be transferred in ten trap increments; and each partial transfer, meaning any portion of the traps up to the full amount of the allocation can be transferred with a 10 percent transfer tax. The buyer of those traps; 10 percent of those traps purchased would be retired from the fishery. We're going to allow all federal lobster permit holders to buy into these areas.

I think in the commission's plan it requires that Area 2 only transfer with Area 2; Outer Cape with Outer Cape, et cetera. To mitigate any impacts to permit holders who may not qualify into these areas and given that this program was really implemented by the commission as a means to provide economic flexibility for industry and allow them to scale their lobster trap businesses up or down to meet their needs, we're going to allow all federal lobster permit holders to be able to buy Area 2, 3 or Outer Cape traps.

One real important point is that we're ready to go ahead with trap transferability after we qualify and allocate; but unless we have a centralized database in place that is tested and ready to go, populated with the data, et cetera, ready to go and available to all state and federal agencies that require it, we're not going to be able to implement trap transferability.

Just a little bit about our timeline; we're going to go out soon with a proposed rule and then a 45-day public comment period. We're hoping to have a final rule in place sometime in the summer or early fall of 2013. At that time we will have worked with the states to find their information to try to align with their qualification and allocation decisions.

We will be asking all federal lobster permit holders to apply for this program who are interested, so we will begin with a six-month application program. Three months into the program we intend to start the trap transferability process; so those folks who have

already been qualified and allocated into the fishery at that point, probably late winter, will be able to being making arrangements with other permit holders to transfer traps.

If everything goes perfectly, the rule gets out on time, and we have our centralized database in place in time, then we're hoping to have all the qualification and allocation decisions in place by the start of the 2014 fishing year, which starts May 1, 2014. Then any transfers that have taken place in that time would be effective in that same time.

After that we will have an annual trap transfer period where there will be a 30-day window for federal permit holders to be able to buy and sell traps, and then those new allocations will be effective the start of the following fishing year. I just wanted to bring a few issues to the surface here. Certainly, we want to get public comment on these things.

One thing that was in the commission's plan is the Outer Cape Area Closure period. Our intention in this rule is to align with that just for consistency. We're going forward with a proposal for a 10 percent tax on partial transfers, but there wouldn't be any tax on a full business transfer, meaning a vessel and permit being sold.

It would just be on parts of the trap allocation – it would only be the transactions that would be taxed under this proposed rule. In the event that a state and federal lobster permit holder's state and federal license allocations don't align, meaning the trap allocations, they can opt for the higher one.

For instance, if the state allows a higher allocation in one area than the federal decision ultimately does, that permit holder can keep that higher allocation and fish it, but he won't be able to transfer any of those traps. When he does decide he wants to transfer, he can opt for that lower allocation and then he can opt into the trap transfer program and those traps will become transferable.

We're proposing in this action that any traps that qualify for more than one fishery management



area, the buyer will have to select one area and then the history associated with the other areas with those traps will be deleted from the traps' history. In Area 1 we have a limited entry program that we just implemented; but different from all the other lobster management areas, this is just a static trap cap; 800 traps.

If you're in, you can fish 800 traps; whereas, all the areas, including Area 2 and the Outer Cape, which we're working on now, those individuals will qualify and then be allocated the number of traps based on their proven history. If someone has a multi-trap history associated with their permit and they sell traps, their allocations in other areas will be similarly deducted.

If someone in Area 1, however, has Area 3, Area 2 or Outer Cape traps that they want to sell, there is no mechanism in place now to be able to deduct that from their Area 1 allocation as well consistent with what we're doing with these other areas. Consistent with Addendum XII, this proposed rule goes forward with anyone who sells Area 2, Area 3 or Outer Cape traps will lose their Area 1 eligibility, but they would be able to buy traps and maintain their Area 1.

The last issue is again – I'll hit on this one more time – is the timing of the program. If everything goes well and we can get the rule out on time and the trap transfer database is in place, then we could conceivably move ahead with qualifying, allocating and starting a trap transfer program to become effective in 2014. That's it.

CHAIRMAN GROUT: Do you know when the comment period will close yet? I know proposed rule isn't out yet.

MR. BURNS: We're hoping the rule will probably publish in the next week or two weeks, and 45 days out from that will probably put us out probably mid-July. That is why this is such a great opportunity for us to be able to just give you a preview. We were hoping to get this out beforehand, but we're not going to meet again until August, after the comment period is over likely.

What we'll do is make sure that once the rule comes out, that the commission will be informed and we will let everybody know how to access the proposed rule and our DEIS. I also wanted to mention, too, that you'll probably remember that we did a draft environmental impact statement, which analyzed these measures as recommended by the commission throughout several addendum that are involved in this. This rule really doesn't deviate at all from that analysis that we did. Once this rule comes out, we will make sure that the public and the commission know how to get the rule and how to get the EIS again and provide comments.

MR. ADLER: If I may, first of all, it sounds like most of this is catch-up to what we have already put in place as opposed to something brand new. It is just like the federal movement has been behind what we have already done. That is the first thing that I'm anticipating. I would like to go back to that Area 1 line, the second to last one there. I'm trying to understand that.

If somebody fishes in Area 1 and has an allocation for some traps in Area 3, as an example here, and he sells off his allocation in Area 3, which is a trap allocation system, why would he be losing Area 1 access? That is the way I read this. Is that the way this works? If he sells three; okay, he is out of three; but can he still have Area 1 access?

MR. BURNS: This is something that stems back from Addendum XII, and it is written in there very clearly. The commission at that time convened a working group on this to work through it and really it became the foundational elements of a trap transferability program that really drives this whole action right here now. That was one of the things that they struggled with. At that time we didn't have a limited access program for Area 1.

It was still open access, so anybody at that time with a federal permit could select Area 1 for lobster traps. I think there was some fear at the time that folks who had just seasonal small allocations in Area 3, which is the case in New Hampshire and Maine in some ways, that they

would sell their allocations and just go into Area 1 or people with Area 3 allocations might sell out and become Area 1 fishermen.

Since then we have gone through and we have capped Area 1 effort by qualifying permits, so that might not be an issue anymore, but nevertheless it is in the addendum and we have followed through with that in this proposed rule. I think that the other reason, too, it is just more difficult because it is not a permit-specific allocation in Area 1 and so there isn't any mechanism to deduct – you'd basically be giving somebody, if they had an 800 trap allocation in Area 1 and had 300 Area 3 traps, you'd allow them to cash out those 300 Area 3 traps and still fish 800 traps.

It is one of those difficult issues, and I don't think that there was ever really any desire to have an individual trap allocation or really transferability in Area 1 to begin with, and that was made clear at this board back when we were discussing Addendum XII.

CHAIRMAN GROUT: Are there further questions for Peter? Steve.

MR. STEPHEN R. TRAIN: Kind of in the same tone as Bill just asked; it doesn't seem, for lack of a better word, equitable. If I were one of the guys in Area 1 that had an Area 3 permit – I'm not, but if I were and I was allocated 260 Area 3 traps, to sell those and be shut out of Area 1 altogether with my other 640 traps; that flies in the face of logic to me.

I could see if you lost 260 of your total, but to lose all of them because you no longer want to fish Area 3 or want to transfer that doesn't seem to follow. The other thing I caught on this was we're trying to bring everything together or at least one of the options we're going out to is to have a 10 percent reduction on everything, full or partial, and is going to be one of the potentials for us, and that doesn't even seem to be an option with the NOAA Plan.

MR. BURNS: Steve, to your first question, we're trying to implement what the commission asked us to implement and that is in Addendum

XII. It was looked over fairly extensively. It doesn't mean that we wouldn't be receptive to public comment otherwise on this, so we would certainly look at that.

The other question was the multi-area transfer, and Bob did a good job on the record right before we started on this topic talking about that. It is just the complexities of trying to track – we're hoping that we have the database in place so that we can actually do transferability.

Will we be able to have the capability, too, to be able to track a multi-area history on a trap so if somebody buys a trap with Area 2 and Area 3 history and is able to keep both of that but only fishes it in one area and then sells it five or ten years down the road are we going to be able to have that information, that archival information to be able to dig back down and say, oh, yes, those traps actually have Area 2 as well.

I think it would be confusing and complicated. I think it might be very unwieldy to deal with in a data base or recordkeeping situation. I just think that it may just open the door for more and more disconnects between the states and NOAA Fisheries trying to track trap transfers, but again this is a public comment so let us know what you think.

CHAIRMAN GROUT: Are there further questions? Okay, thank you very much, Peter, for that report. We appreciate the heads-up on this and we will be looking very, very closely at the Federal Register for those proposed rules. Okay, Toni, we have an overview of the Mid-Atlantic Fishery Management Council Action for Special Management Zones.

**DISCUSSION OF THE MID-ATLANTIC  
FISHERY MANAGEMENT COUNCIL  
ACTION FOR  
SPECIAL MANAGEMENT ZONES**

MS. KERNS: The board asked me to provide you with an update of what the Mid-Atlantic Fishery Management Council was doing looking at their special management zones. As a reminder, these special management zones are artificial reef sites that are off the coast of

Delaware. There were like originally 65 sites that they were talking about. I can't remember how many, but originally there were a larger number of artificial reef sites that they were considering work or new regulations on.

The council has recommended to NOAA Fisheries to have special requirements for five sites. All of those sites are in federal waters in Statistical Area 621 and 624, I believe is the other site. What they're recommending is to only allow hook and line and spearfishing on these sites, and so no commercial gear, pot or dredge or trawl could be used within a quarter mile of these sites, and then there would be a 500-yard buffer, I believe, at that quarter mile line site.

There is not a lot of information or specific information on how much of that commercial fishing was lobster gear. I can tell you from the information that we have reported to us through ACCSP in Delaware the majority of our lobster landings from the time period that was analyzed in the report come from Area 621, and 621 is where four of those sites are.

I can't tell you if they're coming from those reefs or not because the landings' information isn't that refined. The report did tell us that 23 percent of the total commercial landed pounds does come from lobster from those sites, and that 43 percent of the ex-vessel value of that is lobster value. Now, I don't know if that is a hundred percent of Delaware's lobster landings or if it is 50 percent of Delaware's lobster landings because I don't have that refined data yet. I don't know if, John, you have any specific information on that.

MR. JOHN CLARK: Toni, we only have six permitted black sea bass potters that work out there and I think half of them also have lobster permits, so it is not a lot of people. I know the one who does the most fishing did dispute these figures and says he does catch more at the reef sites.

MS. KERNS: So with the limited lobster fishing or I guess it is mostly bycatch, really, that comes from these black sea bass potters,

there is potential to have impact. This recommendation was made to NOAA Fisheries and NOAA is considering the council action and will also look at the analysis of the economic impact on those commercial fishermen. I'm not sure if the council will later pick up on artificial reef sites off of the coast of New Jersey. I know that there had been a request at one point, but I don't know if that request is still at the council level or not. I don't know if it is not there – Russ, do you know.

MR. RUSS ALLEN: We don't really have any further information on that at this time. I know our reef program is kind of in flux right now; so as soon as we get that kind of figured out, then we will move forward, probably.

MS. KERNS: We have a little bit better data on New Jersey lobster landings than we do – more specific data on New Jersey landing licenses for lobster landings in New Jersey than we do in Delaware, so we might be able to provide the council with a little bit more information on impacts if we go in that direction.

MR. ROB O'REILLY: I think the 65 is closer to 35 and there is a table on Page 24 that shows the federal waters reefs. The one correction I wanted to make because it came up several times at the council; it is hook and line, it is spearfishing, but commercial hook and line is allowed, so that there is commercial fishing by commercial hook and line. It was asked a few times and the statement was that would not affect the Wallop-Breaux funding.

#### **OTHER BUSINESS**

CHAIRMAN GROUT: Are there any other questions about this for Toni? We have one item under other business. That is a letter that we just received from the council asking questions about current gear marking requirements that may make some of the buoys unobservable in federal waters. In some cases they're saying it is not strictly enforced.

What they have asked in this letter is that the council have the commissioners from the states Maine, Massachusetts and New Hampshire get

together with the large whale take reduction plan coordinator and arrange meetings with our lobstermen to talk about gear marking requirements. Dan and Terry, I think this really applies to us and probably something that we should talk about as opposed to this being a full board issue unless you object to that.

**ADJOURNMENT**

All right, so we will get together and talk about this. Are there any other items to come before the board? I will take a motion to adjourn. We are adjourned.

(Whereupon, the meeting was adjourned at  
2:22 o'clock p.m., May 20, 2013.)

DRAFT

DRAFT

DRAFT

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

**Crowne Plaza Hotel - Old Town**  
Alexandria, Virginia  
February 19, 2013

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

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**Adjournment ..... 29**

## INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move to accept Option 2 in Addendum XIX.** (Page 2). Motion by Bill Adler; second by Bill McElroy. Motion carried (Page 2).
3. **Move to approve Addendum XIX for American Lobster** (Page 2). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 3).
4. **Move to accept Addendum XX for public comment** (Page 6). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 7).
5. **Move to add a new Section 3.1.5 called the limitations on eligibility for Area 2 permit holders and requirement for permit holder to be aboard. To facilitate the accurate and proper identification of the holder of an Area 2 permit and trap allocations, states shall limit the issuance of Area 2 permits for trap fishing or landing lobsters taken by traps to only named individual persons, not corporation. Moreover, within two years of the passage of this addendum, states shall require the named permit holder to be on board the vessel whenever the vessel is fishing for or landing lobsters. Exemptions to the owner-on-board rule may be developed by states to allow immediate family members to operate the permit and vessel and for short-term disability or other hardship for only up to two years** (Page 16). Motion by Dan McKiernan; second by Mark Gibson. Motion was defeated (Page 18).
6. **Move to include another option in Section 3.1.1, trap allocation transfers for partial transfers and Section 3.2.1 to add an option that allows the areas fished to be declared on an annual basis** (Page 18). Motion by Bill McElroy; second by Dennis Abbott. Motion carried (Page 19).
7. **Move to add in 3.2.5 in Option 3. It would read aggregate ownership trap limit. No single company or individual may own traps greater than five times the single ownership cap if they have not already accumulated them prior to the National Marine Fisheries Service publishing a present-day control date. Therefore, should an individual owner be in excess of the aggregate ownership cap before the control date is published, that owner will retain his existing trap ownership and that owner may not increase trap ownership once the National Marine Fisheries Service control date has been published. Any ownership with an accumulation of fewer traps than the aggregate cap at the time the control date is published may not exceed the aggregate ownership cap** (Page 19). Motion by Ritchie White; second by Pat Augustine. Motion carried (Page 20).
8. **Move to remove Option 2 in Section 3.2.5** (Page 20). Motion by Pat Augustine; second by Ritchie White. Motion carried (Page 21).
9. **Move to remove Section 3.1.4, controlled growth, from the document** (Page 22). Motion by Bill McElroy; second by Dennis Abbott. Motion carried (Page 23).
10. **Move under Section 3.1 to add an additional option, areas fished on a multi-LCMA permit: The recipient of a trap allocation from the permit that has a multi-LCMA trap allocation would retain the multi-LCMA history. The recipient could elect to fish in any two of the LCMA areas that the trap history allows. Fishermen would annually declare the areas fished when applying for trap tags. The recipient would be bound by the most restrictive rule for the areas that are designated on the multi-LCMA permit. The history of the trap**

- will be retained in the trap database** (Page 23). Motion by Bill McElroy; second by Bill Adler. Motion withdrawn (Page 24).
11. **Move to postpone approval of Addendum XXI for public comment until the May 2013 meeting** (Page 26). Motion by Terry Stockwell; second by Bill McElroy. Motion carried (Page 26).
  12. **Move to adjourn by consent** (Page 29).



## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)  
 Willis Spear, ME, Proxy for S. Train (GA)  
 Rep. Walter Kumeiga, ME (LA)  
 Dennis Abbott, NH, proxy for Rep. Watters (LA)  
 Doug Grout, NH (AA)  
 G. Ritchie White, NH (GA)  
 Dan McKiernan, MA, proxy for P. Diodati (AA)  
 Bill Adler, MA (GA)  
 Rep. Sarah Peake, MA (LA)  
 Mark Gibson, RI, proxy for R. Ballou (AA)  
 Bill McElroy, RI (GA)  
 Rick Bellavance, RI, proxy for Rep. Martin (LA)

David Simpson, CT (AA)  
 Dr. Lance Stewart, CT (GA)  
 James Gilmore, NY (AA)  
 Pat Augustine, NY (GA)  
 Peter Himchak, NJ, proxy for D. Chanda (AA)  
 Tom Fote, NJ (GA)  
 John Clark, DE, proxy for D. Saveikis (AA)  
 Bernie Pankowski, DE, proxy for Sen. Venables (LA)  
 Tom O'Connell, MD (AA)  
 Cathy Davenport, VA (GA)  
 Bob Ross, NMFS

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

### Ex-Officio Members

Joe Fessenden, Law Enforcement Representative

### Staff

Robert Beal  
 Toni Kerns

Mike Waine  
 Mark Robson

### Guests

Sen. Ronnie Cromer, SC (LA)  
 Lori Steele, NEFMC  
 Peter Burns, NMFS  
 Raymond Kane, CHOIR  
 Charles Lynch, NOAA

Kelly Denit, NOAA  
 Michael Eastman, NH F&G  
 Matt Cieri, ME DMR  
 Bonnie Spinazzola, AOLA  
 Richard Allen, Westerly, RI

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, February 19, 2013, and was called to order at 9:30 o'clock a.m. by Chairman Douglas Grout.

### **CALL TO ORDER**

CHAIRMAN DOUGLAS GROUT: This is a meeting of the ASMFC American Lobster Management Board. My name is Doug Grout; I am the current chair of the board. I would like to welcome you all. We have a busy schedule where we will be working on a number of addenda. I would like to recognize Terry Stockwell from the state of Maine to introduce a couple of new commissioners from the state of Maine,

MR. TERRY STOCKWELL: Mr. Chairman, as you can see, I have two new commissioners on my right. Representative Walter Kumiega is co-chair of our Marine Resource Committee and he will be taking Senator Langley's previous position. Willis Spear is here to proxy for Steve Train, who is at his daughter's state swim meet this week. He is a lobsterman from the Casco Bay area.

CHAIRMAN GROUT: Okay, thank you, Terry. Are there any other introductions anybody would like to make here? Bob Beal.

EXECUTIVE DIRECTOR ROBERT E. BEAL: We also have Senator Cromer from North Carolina. He is the new legislative commissioner from North Carolina appointed very recently.

SENATOR RONNIE W. CROMER: Mr. Chairman, one correction there. We fought a war over that. I'm from South Carolina actually. (Laughter)

CHAIRMAN GROUT: I don't believe South Carolina is on this board; is it?

SENATOR CROMER: Mr. Chairman, we're not but we're thinking about starting to raise American lobsters. (Laughter)

### **APPROVAL OF AGENDA**

CHAIRMAN GROUT: Okay, thank you very much. The next item on the agenda is approval of the agenda. Are there any changes? Pete Himchak.

MR. PETER HIMCHAK: Mr. Chairman, I was wondering if under other business there would be a discussion of the technical committee report, January

14, 2013, on the review of the most restrictive rule applied to LCMA 4 and 6. It is not on the agenda.

CHAIRMAN GROUT: Yes, we will add it on there for a discussion. I have one other item that I'd like to recommend to the board is I would like to move Item 6, Draft Addendum XIX final action up the beginning. I think that has a relatively small number of measures; and I think if we can get that out of the way before we get into Addendums XX and XXI, I think that will help move things forward a little bit here.

Is there any objection to move six up to after public comment? Seeing none; we will move it up there. With those changes, are there any objections to approving the agenda as modified? Seeing none; the agenda is approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN GROUT: We also have proceedings from our last meeting in October of 2012.

Are there any changes that people would like to make or modifications or corrections? Seeing none; is there any opposition to approving the proceedings? Seeing none; I will take those as approved.

### **PUBLIC COMMENT**

CHAIRMAN GROUT: Next on our agenda is the opportunity for public comment. This is the opportunity for the public to comment on things that are not on the agenda. Bonnie.

MS. BONNIE SPINAZZOLA: I would like to bring to the board's attention that Area 2 and Area 3 got together since the last meeting and brought together some compatible measures throughout all of Addendum XXI. There are some additions that we have put in there – go ahead.

CHAIRMAN GROUT: Bonnie, could we wait until Addendum XXI and I will give you the opportunity once we get to that on the agenda, but that is clearly related to XXI. I'm looking for things that aren't at all on the agenda.

MS. SPINAZZOLA: Okay, sorry.

**CONSIDER FINAL APPROVAL OF  
DRAFT ADDENDUM XIX FOR PUBLIC  
COMMENT**

CHAIRMAN GROUT: Seeing none; we will move on to Draft Addendum XIX, and I am going to turn it over to Toni Kerns to give a little overview of this. Remember this is for final action.

MS. TONI KERNS: Just to recall where we stand for all these issues; the transfer tax did go out for public comment twice. The first time it went out as part of Addendum XVIII. When we separated Addendum XVIII into two parts, we did the trap reductions as the final version for Area 2 and 3. Then we pulled out all the other measures for further exploration by the LCMTs, and that is in Addendum XXI that we will discuss later today.

We thought that the National Marine Fisheries Service proposed rulemaking would occur sooner than it has, and so we pulled out the Area 3 trap transfer tax in order to get public comment to NOAA Fisheries in time for the rulemaking. That was Addendum XIX, which went out for public comment in November.

NOAA Fisheries rulemaking was delayed; and so instead of doing an e-mail vote to make sure there was as much transparency as possible we waited to take final action until this meeting today. This addendum addresses the transfer tax for full and partial business sales. It proposes a uniform trap tax as a part of the Area 3 transfer program.

NOAA Fisheries public comment period should be very soon, and so we can include comments to them regarding this issue if changes to the transfer tax are made today. For the first option for the transfer tax amount, currently we have a transfer tax for Area 3. It is 20 percent it's partial transfers and 10 percent on full business sales.

The addendum proposed a conservation tax of 10 percent on all transfers, either a full or a partial. For example, if a fisherman purchases a hundred traps from Fisherman B, ten traps will be retired for conservation purposes and the buyer will have 90 traps out into their allocation for use. If it is a full business sale, obviously 10 percent will be charged on the full business sale.

We would make recommendations to NOAA Fisheries through a letter in their rulemaking if changes are made in this document. We did not receive any public comment during this public

comment period, but we did receive public comment when it was out in Addendum XVIII from the ALA in favor of Option 2 to consolidate their transfer tax. That is all.

CHAIRMAN GROUT: Are there any questions for Toni on this? Okay, seeing none, I would entertain a motion. Bill Adler.

MR. WILLIAM A. ADLER: **Mr. Chairman, I will make a motion that we accept Option 2 in Addendum XIX. My comment on it is that this is the simplest thing I have seen.** The other ones we will get to won't be that simple, I don't think, but I will make that motion.

CHAIRMAN GROUT: Motion by Bill Adler; seconded by Bill McElroy. Is there any further discussion on this item? Seeing none; we will take a vote on this. Do you need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Are we ready to vote on this? All states in favor raise your hand, 11 in favor; opposed; abstentions; null votes. **The motion carries unanimously. I would now entertain a motion to approve this addendum.** Bill McElroy, I will give you the opportunity.

MR. WILLIAM A. McELROY: **So moved.**

CHAIRMAN GROUT: I take it your hand was a second, Bill Adler? Seconded by Bill Adler. Is there any discussion on this motion? Under our new procedures, this will be a roll call vote since it is a final action. Do you need time to caucus? I think we're all set. The motion is to approve Addendum XIX for American Lobster. The motion was made by Mr. McElroy and seconded by Mr. Adler. Okay, Toni, roll call, please.

MS. KERNS: Maine.

MAINE: Yes.

MS. KERNS: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. KERNS: Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: Yes.

MS. KERNS: New Jersey.

NEW JERSEY: Yes.

MS. KERNS: Delaware.

DELAWARE: Yes.

MS. KERNS: Maryland,

MARYLAND: Yes.

MS. KERNS: Virginia.

VIRGINIA: Yes.

MS. KERNS: North Carolina is absent. National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN GROUT: **The motion carries unanimously.** Thank you very much on this. I recognize Terry Stockwell.

MR. STOCKWELL: Mr. Chairman, during our discussion on Addendum XIX, Maine's two additional delegates are here, Representative Walter Kumiega and Willis Spear, so I would like to welcome them to the ASMFC Lobster Board.

CHAIRMAN GROUT: Welcome! That addendum that we just passed is effective immediately and we will be sending comments on this to NOAA Fisheries.

### **CONSIDER APPROVAL OF DRAFT ADDENDUM XX FOR PUBLIC COMMENT**

CHAIRMAN GROUT: Okay, next we will move on to Addendum XX, and this is a draft that we're putting together for public comment.

MS. KERNS: Now we're going to go through Addendum XX. Addendum XX is looking at the

Area 3 Closed Area 2 Season Closures that coincides with the agreement that was made between the offshore lobster pot fishermen and the mobile gear sector. The board requested that the plan development team pull together an addendum that would include measures outlined in the agreement between both industries for bottom sharing within Closed Area 2 in order to protect large concentrations of egg-bearing females as well as prevent gear conflicts.

Background on Closed Area 2; it was first established to protect groundfish in 1969. It went through a couple of different iterations of its main purpose throughout history through the New England Fishery Management Council. In 2012 the council is considering Framework 48, which considers the opening of several areas that are currently closed to the groundfish fishery, the mobile gear sector. Included in that is Area 2.

In September of 2012 the council supported a measure that would allow the groundfish sectors to request exemptions from prohibitions on fishing in groundfish areas. Those two restrictions provided that access would only be granted for the parts of the areas that are not defined as habitat closed areas or that have not been identified as potential habitat management areas currently under consideration by the council in a habitat action that is looking at – it is an omnibus habitat action.

Secondly, the access to Closed Area 1 and 2 on Georges Bank would only be granted for these mobile gear fishermen between the periods of May 1<sup>st</sup> through February 15<sup>th</sup> to protect spawning fish. Those are actions that were taken by the council. The New England Fishery Management Council is also considering a second phase that will develop the alternatives to complement some of these openings of closed areas with the habitat management areas for consideration.

It includes rolling closures, spawning closures as well as year-round closures. It is projected that the council will take action on this in April of 2014. As the council started to discuss these openings, the lobster offshore industry came and reported to us that there are large concentrations of egg-bearing females within the area.

The industry and the board members were concerned that opening of Closed Area 2 to mobile gear would have a negative impact on the local lobster population. The board asked the technical committee to review impacts on lobster in the area. They looked

at studies that were on areas not necessarily the same bottom type as Closed Area 2 but the studies that we had available to us on bottom-tending gear impacts on lobster.

Those studies suggested that there could be additional damage to these lobsters if the Closed Area 2 were opened to mobile gear. The technical committee recommended additional surveys and studies should be completed to accurately assess the effects of mobile gear on lobster near Georges Bank.

In response to the action taken by the council, the American Lobster Offshore Pot Fleet fishing Closed Area 2 developed this agreement with the groundfish sector to prevent gear conflicts, and the two industries drafted an agreement that would give equal access to the area. That agreement is in the appendix of the draft document that was on the Meeting CD.

The management options that are in this document are a reflection of that industry agreement. Option 1, which is status quo; there would be no Closed Area 2 season closure. Option 2 is to have a Closed Area 2 season closure. It would be prohibitive to set or store lobster in Closed Area 2 from November 1<sup>st</sup> to June 15<sup>th</sup> each year.

All lobster trap gear would be removed from the water by midnight on October 31<sup>st</sup> from Closed Area 2 except for the habitat areas of particular concern. No lobster gear would be set in the area until 12:01 a.m. on June 16<sup>th</sup>. Any gear that is set or stored in the area from November 1<sup>st</sup> through June 15<sup>th</sup> would be considered derelict gear. In the case where an Act of God may prevent the removal of fixed gear by October 31<sup>st</sup>, the situation would be communicated immediately to the qualifying sectors and gear removal would commence immediately upon the situation being resolved.

This is mostly to make sure that folks aren't going out during bad weather storms to remove gear. For the initial period, the sector operation plans are not in effect until May 1, 2013. To start this agreement, there would be a period from May 1<sup>st</sup> to June 15<sup>th</sup> when mobile gear sector vessels would first enter the area for their six-week spring season, and that is above the 41/30 line should the opening of the Closed Area 2 not become effective until 2014.

This portion of the agreement would remain in effect for the initiation at that time in 2014. The boundaries for the closed area are also marked within the document. If the board were to move forward with this addendum, we would need to determine which

measures, if approved, would be recommended to NOAA Fisheries for implementation in federal waters. As a reminder, this Closed Area 2 Section is 100 percent in federal waters, so it likely would be a recommendation to make that change. That is everything if anyone has any questions.

CHAIRMAN GROUT: Are there any questions for Toni? Dan.

MR. DAN McKIERNAN: Toni, under Compliance, 4.0, I recognize that as boilerplate language, but is it really expected that every state at this board would enact these as state regulations?

MS. KERNS: In the past what we have done for some of the states is that it is a part – that they have done regulations that say something to the effect that we abide by all the rules in commission addenda for the areas that they do not have regulations over. That is traditionally what most of the states have done.

CHAIRMAN GROUT: Are there any other questions? Bill Adler.

MR. ADLER: I don't know if Toni can answer this or not, but on the chart that is in this document it has a couple of areas here where status quo – in other words, shared – and I'm trying to figure out what "a shared" means in this particular situation. Is there a problem in there or maybe there is or isn't; I don't know. There hasn't been or what?

CHAIRMAN GROUT: Bonnie, would you like to answer that question?

MS. SPINAZZOLA: Bill, those areas have traditionally been shared by both mobile gear and lobster. The reason we're concerned about the area between 41/30 and 41/50 is specifically because of the large aggregations of the berried females. Now, while the mobile gear does not really want us to use that term, they want us to strictly acknowledge gear conflict because they're concerned that it could come back and sort of bite them. I understand that as well.

We are concerned very much about the gear conflict in that area, but it is because the lobstermen are not going to move because of all of those lobsters going through. The rest of the areas were part of the agreement between the two gear sectors.

MR. ADLER: Mr. Chairman, I would like to ask, if I may, Bonnie, the shared part, that hasn't been a problem with gear conflicts down in that area south

of 41/30; although it is shared, it has not been a gear conflict problem?

MS. SPINAZZOLA: That is something that they agreed to back probably ten years ago, anyway. The scallopers and offshore lobstermen got together and they had an agreement for below 41/30 in Closed Area 2, so it is not really shared. The lobstermen pretty much stay out of it and the scallopers are pretty much in it, but they wanted to denote just that area between 41/30 and 41/50, which is why they used the shared language down below rather than trying to go into other language that has already taken place.

MR. McKIERNAN: Just a technical correction; you do have the two areas that overlap by one day. They both claim they can fish there on June 15<sup>th</sup>, so you might want to just change that; give one side or the other.

MS. SPINAZZOLA: Toni, we're supposed to get in there June 16<sup>th</sup>. They're supposed to be able to fish the 15<sup>th</sup>.

CHAIRMAN GROUT: We will make that correction. Are there any other questions? Dennis Abbott.

MR. DENNIS ABBOTT: Mr. Chairman, would you like a motion at this time?

CHAIRMAN GROUT: Yes, thank you, I would appreciate that.

MR. ABBOTT: I think in view of the fact that the pot sector and the groundfish sectors came to us with this proposal and they're in agreement to it, I would like to propose that we adopt Option 2.

CHAIRMAN GROUT: Seconded by Terry Stockwell. Before we get to discussion on this with the board, I would like to see if there is any person from the public that would like to speak on this motion. Seeing none; I will bring it back to the board. Is there any discussion on this motion? Bill Adler.

MR. ADLER: I understand this is a proposal to go out to public hearing and not a final decision; is that correct?

CHAIRMAN GROUT: That is right, and that is my mistake here. We should be approving the document for public hearing purposes here. Pat Augustine.

MR. PATRICK AUGUSTINE: Mr. Chairman, with that correction, then it appears that the last motion would not be in order.

CHAIRMAN GROUT: Correct.

MR. AUGUSTINE: **And I would that we accept the document as presented for the public to review it.**

CHAIRMAN GROUT: Is there a second on this motion? Seconded by Bill Adler. Is there any discussion on this motion? I will read the motion. The other motion was withdrawn. The motion is move to accept Addendum XX for public comment. Motion by Mr. Augustine and seconded by Mr. Adler. Is there any further discussion? Bill Adler.

MR. ADLER: We have to take this out to public hearing and then come back and approve it. Is there any problem – I saw the 2013 and 2014 dates and the summer is coming. What do you anticipate will be the time schedule on this so that we can get this basically on line?

CHAIRMAN GROUT: Could I have Bob Ross answer that?

MR. BOB ROSS: As you know, the New England Council developed this Framework 48 to allow the sectors into these closed areas. I appreciate the board's efforts to develop this addendum. It was at my urging to complement the agreement between the sectors and the offshore lobster industry. The intent at this point on the other side of the house, on the council side of the house is to move forward with measures to authorize sector access into some of these closed areas as early as possible after May 1<sup>st</sup> of this year.

At this point, given the complexity of the discussions that have been going on at the New England Council relative to the opening of various areas in Gulf of Maine as well as Georges Bank, the decision was to separate out this action from the normal sectors' approval process. The groundfish sector actions are moving forward, but this closed area access is coming out on a separate timeline. Again, the intent is to make May 1. We are going to do everything possible to implement the sector side of this equation on May 1. Thank you.

CHAIRMAN GROUT: Can you implement this recommendation by then?

MR. ROSS: Given that since September there have been some positioning changes at the New England Council, I understand that there has been a revisit to some of the areas, and at this point the Gulf of Maine closed areas are not going to be included in any analysis. As a result, it really would be only this Closed Area 2 Issue.

Given that and the fact that the industry has in fact seemingly mitigated the mobile gear concerns of access into this Closed Area 2 during the summer, it could be possible to go out for public comment. My suggestion would possibly just to do public comment rather than public hearings and provide a more timely recommendation to NMFS in support of the offshore lobstermen and sectors' agreement similar to what potentially was intended for Addendum XIX.

CHAIRMAN GROUT: So you're suggesting 30 days and then we approve by e-mail vote; is that what you would need for something timely here?

MR. ROSS: Again, I am unclear internally where exactly when our sector rule is going to go out, but we're driving that to implement as soon as possible and May 1 is our target date. It would assist us if we have that commission recommendation supporting inclusion of the lobster agreement.

CHAIRMAN GROUT: Okay, thank you very much. What we will do is we have a motion on the board right now, and we will vote this up or down. At that point we will talk about how and when we're going to meet or how we're going to consider this for final action. At this point is there any other discussion on this motion to approve this document for public comment? Seeing none; do you need time to caucus? I don't see anybody with a burning desire here for caucusing. This is not a final action so we can do this by vote.

I might even go to the extreme extent of saying is there any objection to moving this forward? Seeing none; **I will assume that is a unanimous vote and thank you very much.** I think we have a recommendation here that we expedite the timeframe for approving this and possibly only go out for public comment as opposed to having public hearings on this. Do we have any objections to bypassing the public hearing aspect of it? Bill, go ahead.

MR. ADLER: I'm fine with it except for the fact would anybody oppose the fact that we only gave comment instead of a hearing; do you expect any problems with that?

CHAIRMAN GROUT: I wouldn't but I will take at least comment from the public on that. Bonnie, would you like to give us your input on that?

MS. SPINAZZOLA: Bill, all of the sectors have signed on to this in the northeast, so we don't expect any problem.

CHAIRMAN GROUT: Okay, is there any objection? Dan.

MR. McKIERNAN: Just a quick question; if this goes in place for the summer and there is a violation, what is the expected course of action?

CHAIRMAN GROUT: We have to ask Bob Ross about that because during the summer it would be the prohibition on mobile gear, so that would be a groundfish sector management violation; correct?

MR. ROSS: Yes, basically at that point, within the sector plan the sector side of the house is codified that they have to stay out of that Closed Area 2 during their prohibited time periods. We would also do the same thing on the lobster side of the house, prohibiting access into that area. If any one of those groups were caught in that area when they were prohibited from being in there, it would be another notice of violation through the normal enforcement process.

MR. AUGUSTINE: Mr. Chairman, relative to whether we should have public hearings or not, I think it is standard procedure that we ask the states if they would be interested in having a public hearing in their area. We in New York would not so it may be possible that you might only have one or two states that so desire one. That may solve the problem so we could move this process a lot faster. It is your choice, Mr. Chairman.

CHAIRMAN GROUT: My question of seeing if there was any objection to bypassing the public hearing process was sort of a way of me getting around and seeing if anybody had objection to that; and if they did, then I assume that would want a public hearing there. I haven't seen anybody object to that.

The next decision we have to make are you comfortable with having an e-mail on this within 30 days, which would sometime in March? No objection to that? Well, Toni will send out an e-mail packet I assume with any written public comments that we have on this, and we will expedite this and get our recommendation to NOAA Fisheries. Okay,

thank you very much. Now, we have voted on this without objection, so we're moving on now to Addendum XXI. Toni, would you like to give us an overview of Addendum XXI?

**CONSIDERATION OF  
DRAFT ADDENDUM XXI FOR  
PUBLIC COMMENT**

MS. KERNS: Yes, Mr. Chairman, thank you. Hopefully, we won't be baffled by Addendum XXI today. That is my hope. All right, Addendum XXI is the second half of effort consolidation for Areas 2 and 3. The Lobster Board voted to scale the Southern New England Fishery to the size of the resource, and this addendum proposes a consolidation program for Areas 2 and 3 to address latent effort and reductions in traps allocated.

This is focusing on the latent effort and the transferability programs. This is in order to improve the economic performance of the fishermen who will remain in the fishery by constraining unused gear from returning into the fishery should the stock rebuild. As I reminded everyone earlier, we have done the trap reductions through Addendum XVIII for both of these areas.

Because we have done the background of this many times, I decided to skip that section and just go straight to the options. We last saw this presentation in August. Industry members as well as board members got together in the fall to pull out the pieces of the addendum that they no longer thought were necessary and to change the language some for other parts to refine it to meet the needs of industry as well as the managers.

Looking at the trap allocation transfers for multi-area fishermen – and this is for both Area 2 and 3. In your addendum document it is Section 3.1.1 and 3.2.1 as well on Page 6 and 9 of your document. Partial transfers of a multi-area trap allocation; currently the commission's plan is that if a person chooses a single LCMA – let me go back.

If we have a person that wants to transfer an allocation that has the history of multi-areas and they only want to do some of their traps, the buyer, when they buy those traps under the current plan has to choose only one area that they can fish those multi-area traps. For example, a person buys a hundred traps that have a historical allocation to fish in Area 2, 3 and 4, ten of those traps are retired from conservation purposes under the transfer tax and ninety traps are available to be fished or banked.

The buyer must choose only one of those three areas, Area 2, 3 or 4, that the trap had history in to fish in the future. All the other areas will lose their fishing privileges for those traps, and that is currently how we have this on the books. Option 2 is to allow industry to choose two areas to be fished.

Those two areas may be fished in any of the LCMAs that the trap history allows with a maximum of two areas per year, declare the area fished when you do your trap tags, and you're bound by the most restrictive rule for those two areas. You pick those two areas and then it is set.

Option 3 is to have all areas be eligible. If a person buys a multi-area trap from another fisherman, it stays a multi-area trap and you can fish any of the areas at any time, but you are still bound by the most restrictive rule. Next is looking at full business transfers for multi-area history traps.

Under the current commission rules, status quo, when selling your full business with multi-area history traps, the history remains with all those traps. The person purchasing the traps may fish those traps in any of the areas that trap had history in; again still bound by the most restrictive rule.

Option 2 is the person purchasing the traps must choose only one of the areas that trap had history in and can only fish in that one area, and all other fishing privileges for the other areas are forfeited. Looking at an aggregate ownership cap; this is for Area 2 only. The commission adopted Addendum VII which limited the number of permits any single individual or company could own.

That was two with the exception for a group of permit holders that were grandfathered in; and so if you had more than two permits before December 2003, they may remain that number of permits they had above two, but they cannot purchase or share ownership of any additional permits from that point forward.

Two options are being considered in the addendum to further limit the consolidation within the area to allow as much cultural and geographic distribution within the fishery as possible. The concept is built on the principles of banking which we had talked about previously. The goal is to reduce the possibility of one entity exerting significant control over the markets and to keep as many individuals in the fishery as possible.



Option 2 is to allow the purchase and accumulation of traps above the active trap cap; and that is that an individual cannot own more than 1,600 traps. Eight hundred of those traps would be active traps and 800 of those traps would be inactive or what we were calling before banked traps. All of these traps are subject to annual reductions. This option is only looking at limiting traps. It does not limit permits.

Option 3 is you cannot own more than 1,600 traps, 800 active traps and 800 banked traps, or more than two permits. If someone owns more than two permits at the time of implementation, they may retain that overage but not purchase anymore beyond what they currently own, so again just grandfathering in individuals. These traps are subject to annual reductions as well.

This is for Area 2 only and Area 2 is limited just to two permits right now. It is different rules for Area 3. For controlled growth for Area 2, controlled growth is being proposed to allow an entity to annually move trap allocation from their trap allocation bank account and add them to their allocation of active traps at some predictable rate.

Controlled growth applies to each individual's allocation by their LCMA, and it is not an individual's total allocation. The controlled growth provision would be effective in the same year as NOAA Fisheries implements transferability and once annually thereafter. A full transfer of all qualified and banked traps would be exempt from this controlled growth provision.

Option 1 would be status quo. Currently we have no rules on growth so you can move as many traps as you want at any given time. Option 2 is to have a maximum of 400 traps that can be moved per year from a bank account to active accounts. Next is moving over to regulations that are for Area 3, so these are options that are contained in Section 3.2 of the document. I already went over the first, which is the multi-area fishery transfers for full and partial and will not go over those again.

Next is looking at the Area 3 designation. The document proposes to split Area 3 into two designations; LCMA 3 and LCMA 3 Southern New England. Lobstermen that have been fishing in the Southern New England portion of Area 3 have typically fished a larger number of traps. It is believed that the continuation of historical fishing methods would deter the transfer of effort into the Gulf of Maine or Georges Bank stock area.

Therefore, this endorsement is being proposed. The proposed endorsement area is located along the recognized boundaries within Area 3 and it is at the 70 degree boundary line. The Area 3 endorsement would also allow fishermen to be profitable in the offshore fishery Southern New England Stock Area. It should be noted that the Southern New England Lobster Fleet have the largest number of reductions in traps because they were introduced at a sliding scale, and those with the larger trap allocations had the largest amount of reductions. The endorsement of SNE 3 would not restrict fishing in all of Area 3, but the most restrictive rule would apply for anyone that designated SNE.

Option 1 is status quo; no designation. Option 2 is to annually designate on your permit whether or not you're going to fish in LCMA 3 or LCMA 3 Southern New England. As a reminder, you can change that every year. I was hoping to show you on the map, but it is too small so we will just skip over.

Next is looking at trap and permit caps on ownership. We're proposing several types of restrictions on ownership to inhibit excessive consolidation. There are three types. It is a cap on the number of individual's active traps a single permit may fish; a cap on the number of traps a single permit may fish and own; and a cap on the aggregate number of permits an entity or company can own.

First is just your trap cap, so number of active traps an individual can own. Option 1 is status quo. For Area 3 the current trap cap is 2,000 traps. Option 2, as specified on the table on Page 11, we would have a set of trap caps. One cap is for LCMA 3 and one is for the designation Southern New England LCMA 3.

For both of these, it assumes that NOAA Fisheries will implement the reductions that were agreed upon in Addendum XVIII. If they do a lower trap cap schedule, then we would adjust these accordingly. For Area 3 we would start off at 2,000; and by the fifth year we would drop down to 1,548 as the trap cap,

If someone designated just Southern New England Area 3, their cap would start off at 2,000 and drop down to 1,800 traps, and this is to reflect the practice that those fishing in the lower portion have had historically a higher number of traps than those fishing in Georges Bank and Gulf of Maine.

Next is looking at the single ownership cap, and single ownership cap somewhat captures the concept of banking that we previously had called it but

hopefully have simplified things. The single ownership cap allows for the purchase and accumulation of traps over and above the active trap cap limit. Newly purchased traps along with traps already owned by a permit holder may be combined to equal the number of traps necessary to go through these reductions that we have implemented in Addendum XVIII, and it allows industry to be able to end up at that trap cap level of either 1,548 or 1,800.

Option 1 is status quo; no ownership caps. Option 2 is to put together an ownership cap. This is for anyone fishing in Southern New England. It is not tiered to the designation. In Year One someone could have up to 2,333 traps and drops down to 1,900. In the first year it allows someone to have 333 inactive traps, and in the final year it will allow an individual to have up to a hundred inactive traps that could be moved into the active account if that individual had a trap reduction forthcoming.

Traps would have to be moved from the inactive to active by the regulatory authority that issues that individual's trap tags, whether it be the state or NOAA Fisheries. Lastly on our caps we have the aggregate ownership cap. The aggregate ownership cap is intended to look at anti-monopoly.

Addendum IV limited the number of federal permits that a single entity or company could own to five with an exemption for those who at the time of the implementation of the addendum had more than five permits. They were grandfathered in. This regulation was put in place by the commission. This regulation has not been put in place through NOAA Fisheries.

While it is a regulation that is on our books, it is not actually being promulgated for the Area 3 fishermen because NOAA Fisheries regulates them. Option 2 is that no single company or individual could own or share more than five LCMA permits and could not own more than five times the individual ownership cap.

Any entity that owns greater than the aggregate cap at the implementation of this addendum would be able to retain that, but they would not be able to purchase any additional traps and then therefore subject to the cap until they dropped down to the lower number of permits. That aggregate cap for number of traps in Year One is 11,665.

The document that is on the CD had an inaccurate number there and so that first number in Year One should be corrected. It has been corrected in our

documents. Year Five you drop down to a total number of 9,500 traps that any individual or company could own. States would be required to submit with their compliance reports the number of allocated traps for Areas 2 and 3; the number of traps transferred for Areas 2 and 3; the rate of transfer for Areas 2 and 3; the maximum number of traps fished for Areas 2 and 3; and the degree of consolidation that has been seen for that previous year for both Areas 2 and 3.

Some of this information will be able to be pulled from the transferability database and others the state would have to provide to the commission. The transferability database is still being put together by ACCSP. We are waiting for the states to get back to Mike on a couple of questions that he had before he moves forward with the prototype for testing.

CHAIRMAN GROUT: Are there any questions for Toni? Pat Augustine.

MR. AUGUSTINE: Excellent presentation, Toni, very clear. It cleared up a lot of concerns our lobstermen had. This document is about ready to go out to the public, and as you know I am a stickler for details. I noticed that somebody's finger got stuck on the word "that" starting with partial transfer of multi-LCMA trap allocation, Option 1, status quo, we end up with a permit "that, that"; Option 2, "that that"; Option 3, "that that"; full business, Option 1, "that that", the same word in Option 2.

I think that occurs in about eight or nine different places; and if I'm picking on somebody, I don't mean to do it intentionally. If it is a public document, I wish those would be removed. And then a question on the last part of the options that were presented, 3.2.3, when we talked about – I think it was that one or the one before when we talked about NOAA and the possibility of their putting in place – I'm sorry, it was Option 2, aggregate ownership, cap and ownership accumulation; whether or not they had any idea of when they would establish a control date if in fact that option were to go forward. Those are my only questions, Mr. Chairman.

CHAIRMAN GROUT: Bob, did you hear that question? He was asking about the possibility – I believe you were asking about the possibility of a control date relevant to the aggregate – Section 3.2.5; an aggregate ownership cap control date being established by the National Marine Fisheries Service.

MR. ROSS: Mr. Chairman, I apologize; I was distracted there, but, yes, our intent – and I go back to

the Draft Addendum XVIII, which had a lot of similar measures in it. It did have a control date recommendation to the National Marine Fisheries Service that would allow us to notify all impacted permit holders that there is the possibility of some kind of ownership constraints going forward in the future. If I'm understanding the question right, yes, we would support a request for a control date.

MR. G. RITCHIE WHITE: Bob, if I could follow up on that, it was Addendum VII, I believe, in which we passed – Addendum VII created the situation of limiting the number of permits, and I don't believe the Service has implemented that. Could you explain why that happened?

MR. ROSS: The dilemma we face – and we have tried to articulate some of this in our earlier comments I believe on XVIII. The states generally have owner/operator requirements; whereas, the federal government allows ownership of permits by multiple entities; for instance, individuals, partnership, corporations. In fact we have NGOs in some states owning permits now.

The problem we face – and those of you that are familiar with the council process, there are various moves underway under various fisheries to constrain or cap ownership. Groundfish is one, scallop is another, et cetera. The reason we did not move forward with a monopoly or ownership control earlier is that this is one area that we would urge the need to develop a working group with the commission-impacted states to try to find a way that we could consistently determine ownership when there were multiple owners involved at the federal level.

Even though the state has an owner/operator, that same individual may also on our side of the house be defined as a corporation potentially with other owners in that corporation. If those other owners then have other boats, what we need is a way consistently across all jurisdictions to determine whether that is a full business transfer for taxing purposes are exactly what you would define as a full business. I fully support the approach towards controlled ownership caps, but I just voice caution that it is going to require some effort to integrate the federal corporation and partnership approach to the owner/operator approach at each state level. I hope that helps a little bit.

MR. WHITE: So it would not be the National Marine Fisheries Service's intent then to go back and implement Addendum VII?

MR. ROSS: No, it would not be our intent.

CHAIRMAN GROUT: And just for clarification on the record; it was Addendum IV that implemented that. Just so the board knows how I'm going to handle this; after we get through with questions for Toni on this, I'm going to go to the audience and see if we have any public comment overall on the addendum, and then we will come back to the board to have a discussion about the document.

I know there has been some suggestion on the part of some that there are some options that need to added and subtracted here, so I will give you opportunity, but I do want to just get the questions here for Toni first in place. Bill Adler.

MR. ADLER: Toni, Page 7 where they go through the options and bound by the most restrictive rule; that I assume deals with if an area has a different trap limit than the other area, you're bound by the most restrictive rule. That is my first of three questions. Is that basically what I'm seeing here?

MS. KERNS: Yes, it is speaking to the number of traps that you have available to fish in that area, so your multi-area fishermen are bound by the most restrictive of those, whichever is the lowest; as well as if you're a multi-area fisherman, it also applies to your biological measures as well if you're fishing in multiple areas.

MR. ADLER: Okay, thank you. Question 2; Page 9; Option 2, a maximum of 400 traps could be moved per year; that concept of moved per year; move where? How does that work?

MS. KERNS: Again, as I said before, this controlled growth provision is to move an inactive trap into an active status, so you could move 400 traps from inactive to active. I believe, though, industry is asking to now remove this controlled growth provision altogether, if that is helpful in your questioning.

MR. ADLER: Okay, moved per year, I didn't know where they were moving. And the last question – well, actually it is not a question. If we go out to public hearing with this, I noticed in a couple of places you had examples. To keep everybody from getting totally confused with this whole thing, the examples will be very important to give to the public. Otherwise, they're going to just haze over with this stuff. It is getting very confusing.

MR. McKIERNAN: I'd like to follow up on the comments made by Ritchie and Bob. I have a lot to say on this. Back in Boston my job is to approve permit transfers, sort of our limited entry permit systems. It is the corporation that undermines most of our goals. I urge this board to really stop and think about this.

Ritchie just pointed out that it has been about a decade when this rule was put in, and it seemed very rational and it was never implemented by Bob for very rational reasons. We're about to embark on a massive trap cut in Southern New England, in Area 2 especially, that is going to rework or reshape who is in this fishery.

This is an incredibly opportune time to adopt a measure that I call the owner-on-board measure for all of Area 2. We have this for our coastal permits; so any Area 2 permit holder that has a state of Massachusetts coastal lobster permit and an Area 2 allocation from us, they have to be the person who signs for the permit. They have to be on the boat unless we give them a letter for various reasons.

That is what is needed to track this because all of this talk about let's limit the number of permits per entity and all that, it is very labor-intensive and very legalistic and impossible to track. For example, if we have permits that are issued in corporate names or boats, then what you're asking us to do through this measure is mine into the corporate structure of each boat that is not issued to a person to determine if one person who is already in another corporation migrated into that.

That is just a complete waste of time, so I suggest that much like Maine has their owner-on-board rule for all boats fishing and landing in Maine ports, so all the way out to the Area 3 Line, this would solve a huge amount of problems for Area 2, and it would rework this fishery going forward so that it is owner-on-board.

Owner-on-board creates a level of compliance, of accountability. The biggest problems we have in enforcement and compliance is the hired captain. We get this all the time. People want to drop a dime to us, they're calling us asking for enforcement, and nine times out of ten the law breaker is someone who doesn't own the boat and doesn't own the permit.

If we were to consider this as an option for this addendum that Area 2 – vessels that are licensed to land lobsters with an Area 2 trap allocation, that the states could step up and say you have to be owner on

board. The permit holder or the state landing permit is a person. Then we can go forward and we can track this stuff; but if you're asking us to determine the corporate makeup, we're dead.

This is a great opportunity to sort of go into a new course for Area 2 Southern New England. Now, as far as Area 3 goes, I'm not going there. There are already fleets; there are already hired captains, very common. I have no interest in changing the way Area 3 manages its fishery; but for Area 2 it is already a predominantly state-managed fishery, and that is why this makes sense.

CHAIRMAN GROUT: Are there further questions for Toni? Dave Simpson.

MR. DAVID SIMPSON: Actually I'm not sure if I have a question for Toni, but Dan's comment awakens me. Normally I let Area 2 and 3 people do whatever it is they want to do, but this whole idea of permitting to me is a uniquely government function and should be done at the discretion of the government entity at the state level.

I'll just express again my anxiety when we begin to do management in federal waters because I think it is the feds responsibility to manage federal waters. We had lots of discussion about how difficult it is to link up a commission process and action with a federal one. I have only got a couple of guys in Area 2; but when you start to talk about owner-on-board, we have that, too, and we have every exception imaginable. If a guy sprains his ankle or, God forbid, actually gets sick, are they out of business, so you make an exception for it.

Pretty soon the whole thing is a farce, anyway. It sounds good. I think the concept – and I said this at the New England Council years ago – the concept of owner/operator I think is a good one, but the commission is getting deeper and deeper into economics of fisheries, and there really is no – you know, there is no enforceability of a commission plan that has at its roots economics if it is not fisheries conservation. So, just a little bit of caution here, and I will tell you my antennas go up when we start talking about how you can permit and who you can permit and what they can do that has nothing to do with conservation.

MR. WHITE: Mr. Chairman, to continue in that vein, I would tend to guess that there is probably no vessels fishing out in Area 2 and 3 offshore that aren't corporation. Now, it may be one individual owner, but it is probably an LLC. There are probably

very few people today that are going to have the kind of liability that they would have without having the corporate veil.

I think Dan's idea would solve a lot of issues for us, and I think in today's world the ability to get around that would be very easy. I think you could have an LLC and give a captain a one-hundredth share; he is an owner even though he is not a majority owner. I think it would be very difficult to go there.

MR. McKIERNAN: Ritchie, it is our experience that the permit is issued to someone who signs his name or her name; and when that boat lands, they look for that person. Now, whether they put the business into an LLC is independent because the permit is issued to the person, and that person needs to be on the boat.

To Dave's point, we have a rule that says we will give you a letter of authorization for medical reasons for up to two years. The industry is quick to – because in Massachusetts it is a very popular system to have the permit holder on board. When things are amiss, we get a call and we call the person, but this – our experience is not that this is easy to circumvent. We're really happy with the system. I think Maine has that same comfort level. Honestly, what is working for 95 percent of the landings in the United States ought to be looked at a little closely.

CHAIRMAN GROUT: Okay, are there any other questions? What I would like to do is now go to the public and see if there is any public input on this and then we will come back to the board. If there are any changes that you would like to make to this draft addendum, we'll entertain motions for that. Bonnie.

MS. SPINAZZOLA: Mr. Chairman, I'm going to start very quickly at the beginning only because this is a compatible plan. I know it has to do with Area 2 initially, but I will just throw this out there as I'm talking about Area 3. One of the things we wanted to discuss is the partial and full transfers.

One of the things is right now NMFS has for a full transfer, in Area 3 we can choose any area or any numbers of areas that we wanted. We know, for instance, members of the commission wanted only one single area and that is what is status quo now. However, due to many issues – one of them flexibility – for instance, I am going to bring something out. I have it on Page 6, but I changed this document numerous times.

Just above management tools being considered before Area 2, you have a paragraph that starts with

“SNE” and it says, ‘SNE fishermen recognize that the decline in lobster abundance and the potential for future offshore industrial development could constrain the fishable areas and reduce future landings to unforeseen low levels.’”

That alone gives a good picture of why multiple areas could be needed for something like the LCMA partial and full transfers, why we wouldn't want to be held to one area. So both Area 2 and Area 3 are combined recommending that we are able to choose two areas. That way it is more of a pragmatic possibility for the industry and yet it makes it a little bit easier for the managers. That is the first thing.

The other thing is that if you will notice for areas to be fished for full and partial, we have put in there that it is annually that the industry – since they would be holding on to the history of their LCMA or of the permit, they would be able to annually choose any two areas. They would fish only two areas per year. As fishermen do now, they are able to designate areas each year when they get their trap tags if they are a multi-LMA permit holder.

All we're doing is saying that we would like the same thing only we're only requesting two permits or two areas to be used and the most restrictive would apply. Okay, the other thing – and this might get to what Dan was just talking about with the confusion as far as permit holders and corporations.

Area 3 is going to, in this document, recommend that we use traps as currency; because what we're doing is we're talking about single ownership permits or single ownership trap caps, the active trap cap and aggregates, and we recommend that it would be an aggregate trap cap as well instead of permits, because you can have any number of traps on a permit.

Four permits could equal your ability to fish your top number of traps or it could be two or it could be ten, whatever it might be; but if you have a single number of traps allowed on a vessel or to an owner for aggregate, then you know exactly what you're talking about. Okay, so I'm going to back into Area 3 proposed measures.

We do have the flexibility and the compatibility as far as Area 2 and 3, talking about those partial and full transfers. The other thing, too, is if you were to agree on the exact same scenario in full and partial transfers, then you really wouldn't have to call it full or partial. It would just be transfers and it would simplify things incredibly.

Okay, the other thing is under the LCMA 3 endorsement – and I know a lot of people had questions about this and it was brought up to me as to why we might have more traps in Southern New England, why we would want to separate the area. The reason for that is that in Georges Bank and the Gulf of Maine we actually have industry fishing fewer traps than what has been the history, as Toni said earlier, fishing in Southern New England.

One of the reasons we thought this would be a good idea is because, first of all, it was requested of us from the LCMT fishing in Southern New England. We were concerned that if we didn't agree with that, we would end up with a shift of effort going to Georges and to the Gulf of Maine. Since we have marine mammals as well as lobster areas and everything else to be concerned about, we wanted to try and mitigate any sort of shift of effort whatsoever.

So if we try and give those people in Southern New England what it is they typically need to fish and make a healthy living, then we felt that was a good thing to do. Further, back when we first started reducing our traps, the Southern New England portion of Area 3 reduced the highest amounts of traps because we had a sliding scale trap reduction, which was the highest number of traps reduced the most.

Therefore, because they reduced the most, we're talking about basically bringing them to where they were – or not exactly to where they were; they were actually fishing much higher levels, but they're slightly higher than the regular Area 3 Gulf of Maine and Georges people. The other thing is that in Southern New England you have a trap cap or an active trap of 1,800.

However, Area 3 has 5 percent reductions in traps. Those people in Southern New England will reduce the five reductions; they will go down to the 1,500 traps, but they will be able to buy back up to the 1,800. The people in Area 3, as it stands Gulf of Maine and Georges Bank would have to stay at the 1,500.

Finally, as far as that is concerned, because of equalization of the value of the permit, everyone in Area 3, whether it is Southern New England or the other Area 3, would be allowed to go to an ownership, single ownership of the 1,800 traps. That being said, of course, the ones in Georges and Gulf of Maine couldn't fish the full 1,800.

But because people would want to have the same value as everybody else, and they wouldn't want the people in Southern New England to have a higher value on their permit, especially when they want to go and sell it – the people in Georges and the Gulf of Maine will have an 1,800 trap permit; yet they will only be able to be fishing 1,500.

Therefore, each one of these permits will hold an extra 300 traps that won't be fished, and we consider that further conservation. The other thing, too, is in all of this I just want to kind of not let you forget the fact that – or I don't want it to get lost in all of this – that in Area 3, once we finish with our five years of reductions, we will have reduced 55 percent of our traps and will be fishing approximately a hundred – maybe a little less, maybe a little more, I'm not sure right this second, but around a hundred thousand traps in all of Area 3 from Cape May up through Maine and out to the Hague Line.

And, finally – I know I said “finally” before – there is not a precedent for splitting the areas. In Area 3 alone we have above the 43/10, I think it is, up into the Gulf of Maine, those people in Area 3 v-notch and the rest don't, so Area 3 already is split along a stock assessment line or a stock area line. Okay, so that was that and I hope I answered questions there.

As far as the single ownership cap, I think I mentioned about the 300, but I did want to say again that we want to be able to use or we think it is a really good idea to use traps as a currency, so that we're all talking about the exact same thing instead of permits that we don't know how many permits belong to a – or how many traps belong to a permit. Again, all of these things that we're talking about are renewable.

The areas are renewable if you have a multi-LCMA permit on an annual basis; with if you're fishing two, you'd have to do it with the most restrictive. The other thing I just want to mention is as far as the aggregate in Area 3, Option 2 is basically the same thing that Area 3 would now be recommending, which is that no single company or individual may own traps greater than five times – and again traps – the single ownership cap if they have not already accumulated them prior to NMFS publishing a present day control date.

Therefore, should an individual owner be in excess of the aggregate ownership cap before the control date is published, that owner will retain his existing trap ownership, and that owner may not increase trap ownership once NMFS control date has been

published. Any ownership with an accumulation of fewer traps than the aggregate cap at the time the control date is published may not exceed the aggregate ownership cap. Basically what we're talking about – Toni had on the screen 11,665; all that is, is five permits, just as we talked before, but with the maximum number of traps associated with it. That's it. Are there any questions?

MS. KERNS: Just to make it very simple, what Bonnie was asking to do is under Section 3.1.1 and Section 3.2.1 is to either – and I'm not sure what the board would like to do, so I'm going to say either/or – either leave Option 2 as it exists and add an additional option that states that you can two areas in which you buy in to be eligible to fish and that you can choose those two areas on an annual basis.

Right now the option reads you pick your two areas and you're done, so either you change Option 2 to say on an annual basis or you add an additional option and you say just that. Secondly, what she also is asking is to add a third option under Section 3.2.5 that gives the aggregate ownership currency in traps and it adds a grandfather clause.

MS. SPINAZZOLA: Thank you, Toni, you made that sound much easier.

CHAIRMAN GROUT: Are there any other questions? Okay, Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, I was going to ask if there would be a problem with NOAA having to deal with that. Would that be acceptable, the idea that we would put those two extended options in there as a part of the public document? Would it give you folks any grief of any sort or would it be doable?

I notice when we talk about on an annual basis as opposed to a one-shot deal, where the areas are divided as Bonnie clarified, that may create you folks some real grief. Could we get a response to that first? And then if not, I would move that we add those options, Mr. Chairman.

MR. ROSS: Mr. Chairman, a couple of observations here from our perspective, and again a lot of this issue is a rehashing of some of the measures that were in this Draft Addendum XVIII, which NMFS commented on fairly extensively at that time.

For the issue of partial trap transfers and the ability to retain more than one area as a buyer, I think we have to go back to Addendum VII and Addendum XII where the commission established a trap

transferability subcommittee that worked literally well over a year on the minutia of how a transferable trap program would work. I think what we're hearing here is this is a very complicated process that we're trying to move into.

The industry is looking at this as a retirement plan. They're looking at this as a financial investment for them. The responsibility of the jurisdictions should be to ensure that all of our jurisdictions agree on numbering of traps, what those traps authorize us to do, where these lobstermen can fish, et cetera.

One of the things NMFS urged initially was the need for a unified database because this is an extremely complicated process. I'm unclear at this point if in fact the database has the ability to monitor multiple traps; but just looking at the complexity of – at least in the beginning, when we turn on transferability, I think we have to keep it simple.

As transferability grows, I think we can begin to implement tweaks and adjustments to it, but from the federal perspective – and I articulated this at the last meeting – we had hoped to have a rule out for this meeting. I apologize for us not having the transferability proposed rule out for you to see at this meeting, but we expect it to be out in the next month.

We're going to strive for a long public comment period on that proposed rule. That rule has a lot to do with transferability and this addendum. The concept here is that we want to be able to turn on transferability with the states and have it work correctly. We do have some concerns about allowing traps to be sold and retaining multiple area rights.

We also have some concerns about ownership and the way that ownership is defined. For instance, this issue of a monopoly – well, one area, Area 3 has less than a hundred vessels. They're proposing a maximum of five permits. Area 2, on the other hand, has several permit holders and they're proposing a cap of only two permits. This isn't a monopoly issue.

It has got more to do with ownership concerns but from the federal perspective a monopoly implies the ability to impact pricing structures. Area 3 accounts for a very small percentage of all lobsters landed in the northeast. In fact, if you get outside of Maine, there is really no other area that I would consider from an economic perspective to have pricing control other than Maine.

Monopoly and ownership concerns to avoid monopolies are an issue for us, but I understand the

issue here is you do want ownership controls. We will do our best. If this addendum goes out and we do receive a recommendation to move forward, we will do a control date. We will make an effort to coordinate with the states and align corporations and owners. I hope that at least identifies some of our perspective on this issue. Thank you.

MR. AUGUSTINE: Bob, that was very helpful, thank you. I was going to suggest that we look at including those options that were presented by Bonnie; but after listening to what Mr. Ross had to say, it just seems as though it put another spin on a document that is already going to have some questionable options in it.

If we were to include either of those options, I think we would need a caveat that would say below it not preferred by NOAA because of the complications. It is a tough one. It sounds like the right thing to do; but after listening to NOAA's position on it, I find it very difficult to include the expansion of the options we have. Whenever you're ready, I will make a motion to go forward with the public document, Mr. Chairman. I know you have some other commissioners who want to speak to the issue.

MR. STOCKWELL: Mr. Chairman, from Maine's perspective, I have been deliberately not commenting on any component of the development of what I consider an extremely complicated action. Before we agree or even consider adding any additional measures, Bob's comments notwithstanding, I have a question I guess to Toni from the technical committee's perspective on an option to have annual declarations into the areas. To me it seems to be a conservation measure that trumps all the other management measures, so I'm waving that yellow flag.

MS. KERNS: The technical committee has spoken particularly to a designation. The technical committee has suggested to the board many times over that you all split Area 3 into their stock unit areas, which would help them be able to better identify how the measures are impacting the resource itself. Beyond that, they haven't looked at this.

MR. McKIERNAN: To follow up on Bob Ross' comments, I agree with everything that he said. I just wanted to add another detail or my perspective on why there is a desire for the multi-area trap history to be retained. I think it has to do with the ability to actually get traps on the so-called open market.

We already have a lot of constraints on the transferability or we're going to have that because we have three kinds of permits and three kinds of allocations for the area. It is the state-only traps; it is the dual traps; and then it is the federal-only traps. If you're looking to get some traps, you have got to find somebody who has got the right flavor.

Then you have got this Area 2 and Area 3 – I think I am right about this – that some of the guys who are anticipating selling or buying traps, once this goes into place, they feel that if there is more flexibility, there is going to be more trap movement. There is going to be more opportunity to scale up when you have got less constraint on that.

Therefore, it might become more of a buyer's market as opposed to a seller's market. If there is only one guy in your state who has got the kind of allocation that you need, that is going to be pretty expensive. From my experience the more the pool has other eligible sellers, you will get a better deal.

But to my previous points, I apologize if I bring that forward about owner on board in Area 2 so late in this process, but I had an epiphany and I have been struggling with this for the last six months or so on other permitting issues. I would like to offer a motion to add that to this document; and if it fails, I would request that the board consider a subcommittee to address this if there is any heartburn with some of the other states involved.

I think this is pretty simple, so could I offer a motion that would add some new text to this document? Okay, I have sent that staff and I will read it. **I am moving to add a new Section 3.1.5 called the limitations on eligibility for Area 2 permit holders and requirement for permit holder to be aboard.**

**It does like this: to facilitate the accurate and proper identification of the holder of an Area 2 permit and trap allocations, states shall limit the issuance of Area 2 permits for trap fishing or landing lobsters taken by traps to only named individual persons, not corporation. Moreover, within two years of the passage of this addendum, states shall require the named permit holder to be on board the vessel whenever the vessel is fishing for or landing lobsters. Exemptions to the owner-on-board rule may be developed by states to allow immediate family members to operate the permit and vessel and for short-term disability or other hardship for only up to two years.**



CHAIRMAN GROUT: Is there a second to this motion; Mark Gibson. Is there discussion on the motion? Bill McElroy.

MR. WILLIAM A. McELROY: Mr. Chairman, I would have to speak against this motion. I sympathize with the direction that Dan is trying to go, but I know for Area 2 Rhode Island fishermen, to suggest at this point that the method of business, which has been perfectly legal, accepted and used and utilized for many years, would create a huge problem for these people.

To turn this around at this point and tell a man that has been running a business for 20 or 30 years in fashion, perfectly legal, all of sudden he can't – I just can't support that. I am sympathetic to what Dan is trying to do, but it creates too many hardships for my fishermen. Thank you.

MR. SIMPSON: I will also just speak in opposition to the motion for many of the reasons that Bill pointed out. We struggled with this stuff in Connecticut on our own, but there are several people now that are the fishermen that haul the traps. They don't own the boat. I also just think these are government roles and not commission roles.

The federal government needs to – their entire system is different than permitting the boat. I am not about to tell somebody from Connecticut when they're fishing in federal waters what they can and can't do. I don't want to get into that business. I realize that there are circumstances where we have the authority to do that, but this owner-on-board stuff wasn't tolerated well by the state legislature.

We started there and now we have so many exceptions that there is no practical purpose for it because people have significant investments in their boats and they can't always be on it. If Massachusetts wants to do this in Massachusetts, that is fine, but we have a different way of doing it; and I think what we have heard is the federal government has an entirely different way of doing it.

MR. ABBOTT: Mr. Chairman, I'm not in support of this motion either. Again, I'm sympathetic to the Commonwealth's position, but I don't see this as managing the resource but managing the business instead. I don't see any great benefit to us by getting involved in this at this time.

MR. GIBSON: I seconded the motion for discussion, but I also think given how many times the word "complex" has been used here at that the table, that

this warrants some public discussion as well, and that would be the only way we could get it. Thank you.

MR. THOMAS FOTE: I am looking at this and I hear currency and I hear this going around and it reminds me of IFQs. We don't have IFQs in individual fisheries. Transferable quotas in the lobster fishery – and it concerns me that we're getting into the economics so deeply. I mean, we're here to manage the fish and we're here to manage the number of traps.

When it comes to the economics and how do we deal with it, that is a whole 'nother ballgame. I have seen that happen. I was around during the surf clam debacle – that I still call debacle after all these years. We have been managing to stay away from it in New Jersey, and I think if it is up to a state to basically – or the federal government if they want to run it, but I don't think this is an area where the commission should start going into – we have enough problems managing fish and what we're doing here without starting to manage the permits and everything else when it comes to the economic value of it. I think that is up to the states and the federal government to do.

CHAIRMAN GROUT: Is there further question? Okay, we will take vote. Since this is a new motion, I am going to take comments from the public on this. Dick.

MR. DICK ALLEN: My name is Dick Allen. On this issue I am speaking for myself as an Area 2 federal permit holder and a Rhode Island license holder. I have had some experience with owner on board, which gets very confusing whether you're actually talking about the boat owner being on board or the permit holder or the license holder.

I would urge you not to try to move forward with this until you really – if you want to establish a working group and study it and figure it all out, that is one thing. I think you'll find that it is much more complicated. I suggest that Dan's good experience and the experience in Maine may be because they have never really tried to enforce what they think they've got to the letter of the law.

If you read some of the rules associated with some of the programs in Alaska and see the pages upon pages upon pages in order to make sure the people aren't talking the system and things. This is not a simple thing to do. As Bill mentioned, it will disrupt a lot of businesses. When Rhode Island put their owner on board, which was the boat owner, majority owner of

the boat had to be board, at the time I had a partner who was also a licensed lobster permit holder, a license holder in Rhode Island.

We used to share the operation of the boat. After that law went into effect, we could no longer do that in state waters so our whole business plan was completely disrupted. From my point of view, there was no reason not to allow two licensed lobstermen to share the operation of a boat. What you did was force him to go get his own boat, put his own set of traps in the water, and you ended up with more fishing effort. I could go on and on.

I could give you a whole list of potential problems. How is an enforcement officer going to know who is the actual owner of a boat if you go to the boat thing? If you have a permit with an individual and no corporations, again you're talking about disrupting the whole federal system. I think it is a pretty complicated and pretty disruptive issue. If you're going to do anything, I would say study it pretty thoroughly first. Thanks.

CHAIRMAN GROUT: Back to the board; do you need time to caucus on this motion? Dan.

MR. McKIERNAN: I wonder if I can withdraw the motion and ask for a study group.

CHAIRMAN GROUT: Does the seconder agree to withdrawing? Well, actually it has been thoroughly discussed so at this point it is the motion of the board. Are there any objections from the board to withdrawing this motion?

MR. AUGUSTINE: I would stick by Roberts' Rules, Mr. Chairman. It has already been discussed and been presented, so it would either be an up or down vote or table it.

CHAIRMAN GROUT: I would agree with that; you're right. We need to vote on this. Let's move forward with a vote. All those in favor of the motion, two in favor; all those opposed, nine opposed; any abstentions; any null votes. **The motion fails two to nine to zero to zero.** Would you like a study committee, Dan?

MR. McKIERNAN: Please, yes.

CHAIRMAN GROUT: Can I get some volunteers on the study committee?

MR. McKIERNAN: Can I request Terry Stockwell?

MR. STOCKWELL: I will help you out, Dan.

CHAIRMAN GROUT: Anybody else in Area 2 that wants to address this? Bob from the federal committee want to be on this committee? All right, Mark, Bob and Terry. Anybody else? The study committee has been appointed and you're chairman, Dan. All right, are there any other changes or deletions that people want to make? Bill McElroy.

MR. McELROY: **Mr. Chairman, I would like to make a motion that we include another option in Section 3.1.1, talking about the trap allocation transfers for partial transfers. I would like to add an option that would recommend that the LCMT option of delegating on an annual basis which area would be fished.**

What I'm trying to do is get that option in there so a fisherman would have the ability to choose on an annual basis the two areas that he would wish to fish. Rather than changing the Option 2, we're adding an additional option.

CHAIRMAN GROUT: So, you're only adding it, first of all, to Option 2 of the partial transfers, the 3.1.1, so that is the initial motion you have made here. It is Option 3?

MR. McELROY: Well, it is 3.2.1 also. Well, that is for Area 3, so just for Area 2.

CHAIRMAN GROUT: Do you want to apply it also to Area 3, the 3.2.1?

MR. McELROY: Yes.

MS. KERNS: And I believe that Bill is asking for additional options. He is not going to change the current option, but he wanted to make a whole brand new option; is that what you had told me, Bill?

MR. McELROY: That is correct, an additional option rather than a change of an option.

CHAIRMAN GROUT: So this will be Option 4. Once we get the motion up here and cleaned up, I will look for a second unless there is somebody ready to jump in right now. Are you seconding it, Dennis? Dennis Abbott seconds.

MS. KERNS: Just to be clear to everyone, Option 2 under both of these, Areas 2 and 3, partial transfer, multi-area designation does not allow them to change the area that they're fishing when they're allowed to choose two areas. What Bill is suggesting will allow them on an annual basis when they purchase their

trap tags to declare which two areas that those traps have history in to fish.

It is just like if you were a federal fisherman, you declare which areas you're fishing on your permit each year. We envision this as a similar process. For some areas, if they already do this, for federal fishermen this may be less of an administrative burden because they're already doing so; but on the states, some of them only allow those fishermen to fish in one area, so there potentially be impacts to those states.

CHAIRMAN GROUT: Okay, is that the motion? Okay, I'll let you speak to it first.

MR. McELROY: Basically what we're trying to do here is get consistency. Currently if you have a full business transfer, those rights that we're trying to protect for a partial business transfer are currently allowed. It seems incongruous to suggest that if a fisherman buys an entire permit and an entire business that has multiple designation areas he is able to retain that; but yet if a fisherman is only going to buy a partial allocation, then he would forfeit those rights.

That seems to us to be a little bit unfair in that essentially if a person is wealthy enough that he can afford to buy a whole business, then he can have multiple areas; and if the poor fellow is trying to build himself, he is being told he has got to pick and choose and he can't do that. That doesn't seem to me to be a sense of fairness. We need to treat both entities the same and I think that this would be the way to do it. Thank you.

MR. STOCKWELL: Mr. Chairman, just a question to Bill through you; Bill, this was a recommendation from the LCMT 2?

MR. McELROY: Yes, the LCMT 2 and 3 both recommended that this be done.

CHAIRMAN GROUT: Is there further discussion on this motion? Bill Adler.

MR. ADLER: Once again, if this motion passes, it needs to be explained that it is different from Option 2. Otherwise, people will say, well, this isn't the same as Option 2; so if it isn't there needs to be a line or something that explains the difference between these two because they sound the same.

CHAIRMAN GROUT: I agree and I'm sure staff will make every effort to make it clear in the

document. Is there further discussion? Are you ready to caucus? Do you need time to caucus? I will give the states 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: While they're doing that, I will read the motion into the record: move to include another option in Section 3.1.1, trap allocation transfers for partial transfers and Section 3.2.1 to add an option that allows the areas fished to be declared on an annual basis. Motion made by Mr. McElroy; seconded by Mr. Abbott. Okay, all those in favor raise your hand, ten in favor; any opposed; abstentions, 1; null votes, none. **The motion carries ten to zero to one to zero.** Are there any other changes that would like to be made? Ritchie White.

MR. WHITE: **Mr. Chairman, I would like to add in 3.2.5 an Option 3. It would read aggregate ownership trap limit. No single company or individual may own traps greater than five times the single ownership cap if they have not already accumulated them prior to the National Marine Fisheries Service publishing a present-day control date. Therefore, should an individual owner be in excess of the aggregate ownership cap before the control date is published, that owner will retain his existing trap ownership and that owner may not increase trap ownership once the National Marine Fisheries Service control date has been published. Any ownership with an accumulation of fewer traps than the aggregate cap at the time the control date is published may not exceed the aggregate ownership cap.** This was recommended by the LCMT.

CHAIRMAN GROUT: Is there a second to that motion? Pat Augustine seconds it. Is there discussion on this motion? Seeing none; are there any comments from the audience on this motion? Richard Allen.

MR. ALLEN: Now, on this issue I am speaking on behalf of myself as a shareholder in Off the Shelf, Inc., which owns two federal permits, and for Shaft Master Fishing Company, Newington, New Hampshire. I think this gets at the issue that I found confusing in the original language with reference to the 2003 date and things like that.

We have had some discussion about that. I think it is important to recognize while the commission tends to think about the things that it has adopted, in fact the industry has been operating with no ownership cap in Area 3 because it was never promulgated and never

published so people have just been doing business and going about making their investments.

I think we need to be clear that anything that is done from this point forward needs to have a new control date and needs to have a grandfather provision that recognizes those investments that people have made. In terms of the ownership interest, I was kind of surprised at Bob Ross' comments on the other federal rules because the scallop fishery has had a long-standing ownership cap, the federal sea scallop fishery.

All the permits, whether it is sea scallop or any other federal permit – now I just filled out three them, and they all require a listing of any person with an ownership interest in that permit. The Off the Shelf, Inc., for example, has five shareholders, and I had to list every single individual. It doesn't ask you how much; just any interest.

They have this list; NMFS is keeping track of everybody with an ownership interest; and they have actually enforced the ownership cap in the sea scallop fishery and made people divest themselves of permits if they have an interest in more than the cap. I think that is entirely doable. It seems to be a well-established procedure. Thanks.

CHAIRMAN GROUT: Does anybody else from the public wish to speak on this? Okay, back to the board; do you have further discussion on this motion? Okay, I will give you 30 seconds to caucus on it.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, let's vote. All states in favor of this motion raise your hand, ten in favor; any opposition; any abstentions, one abstention; null votes. **The motion carries ten to zero to one to zero.** While we're in this section, I have a question as I was reading through the document, and I am going to pose this question to Bob Ross.

We have an Option 2 here currently in the document that says no single company or individual may own or share ownership of more than five qualified LCMA 3 federal permits and cannot own more than five times the individual permit cap. Now, there are individuals or corporations that currently own more than five permits right now.

My question for you is if the commission was to pass this option and make a recommendation to the National Marine Fisheries Service, this would really require someone getting rid of permits that he already

has or they have or a company already has. Is that something that the federal government could actually do because this applies to Area 3, which is what you're going to be implementing? Can you tell a corporation or an individual you've got to get rid of permits you already have?

MR. ROSS: No, we would not retroactively go back and take permits away. Normally the benefit of the control date is to notify all our impacted permit holders to be aware that things may change, and in this case it would be specific to ownership changes. As was in some of the earlier text, I think there would be a need to address some type of grandfather clause.

CHAIRMAN GROUT: Given that, I would suggest to this board that we have got an option in here that is not implementable and that maybe we should consider removing that particular option considering the option that we just passed does include a grandfather option, and then, of course, we have the status quo. Pat.

MR. AUGUSTINE: To that point, Mr. Chairman, would it not make sense to go ahead and leave it in and add a clarification point as to what NOAA's response was to it? In other words, it was talked about, thought about. This is what we thought we'd like to do; however if you accepted it – we could also put after it “not recommended” or not approved by the board, but considered. Would that be appropriate because it will come up sooner or later again, as long as it doesn't open a can worms.

CHAIRMAN GROUT: The only concern I have is that we have something in here that is not implementable as an option, and so the public will be commenting on that. Even though we could potentially put it in that but it is not something that – clearly, we could pass it, but it would have no weight; and so that is my concern here is having an option that is not viable. It won't be implementable.

MR. AUGUSTINE: **As a followup, Mr. Chairman, I agree with you wholly, and I would suggest we follow your suggestion on that and remove it from the document.**

CHAIRMAN GROUT: Is that a motion?

MR. AUGUSTINE: **I so move.**

CHAIRMAN GROUT: Is there a second to that? If you look at Option 2 here under 3.2.5, there is an option which will limit Area 3 permit holders to five permits. We currently know that there are some

companies that hold more than five permits, so it would require that if this were implemented, they be asked to get rid of those permits.

The National Marine Fisheries Service said that is not something that is implementable. That is why I'm suggesting that we might want to remove this from the document or least have a motion to do that because it is not something that could be implemented. We have a motion to remove it and do we have a second. Ritchie White seconds. Do we have discussion on this motion? Ritchie White.

MR. WHITE: Mr. Chairman, what would status quo be, then?

CHAIRMAN GROUT: Status quo is what is in here but we had already requested that anybody that currently owns more than five would be grandfathered in; may retain the number that they had back in 2003. Are there any comments from the public on this? Bonnie.

MS. SPINAZZOLA: Mr. Chairman, yes, I would agree that is not implementable so it would make sense to remove it, but this is where I recommended or the Area 3 industry recommended that you change the currency to just talking about traps rather than just traps and permits.

CHAIRMAN GROUT: And we already passed a motion to do that.

MS. SPINAZZOLA: For the entire document?

CHAIRMAN GROUT: For the Area 3 in this particular – the last motion that passed included that.

MS. SPINAZZOLA: Okay, sorry I missed that.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Dick Allen.

MR. ALLEN: I just wanted to point out that the way it stands I think you will confuse the public because you have the language – the next paragraph says that you will ask NMFS to establish a new control date, but why would you do that if in fact you're not assuming that there is going to be a grandfather clause in there. I think that will just be confusing if you don't pull it out.

CHAIRMAN GROUT: Well, didn't we just pass an option that said people that –

MR. ALLEN: Right; and I think the one that you adopted takes care of that; but I think if you leave Option 2 in there with the paragraph immediately following that refers to the control date and then you have another Option 3; that would really confuse people. I recommend that you take it out.

CHAIRMAN GROUT: Is there further discussion on this motion from the board? Okay, we will vote on this. I will give you 20 seconds to caucus on this.  
(Whereupon, a caucus was held.)

CHAIRMAN GROUT: The motion is move to remove Option 2 in Section 3.2.5. Motion made by Mr. Augustine; seconded by Ritchie White. All those in favor raise your hand, 11 favor; that is a unanimous vote. **The motion carries.** Anything else? Dan McKiernan.

MR. McKIERNAN: In light of Dick Allen's comments about the need to disclose any interest, it seems to me that is what is lacking in the addendum is the definition of what ownership means. I don't know if this is a heavy lift at this stage, but shouldn't the public be commenting on what it means to be an owner?

CHAIRMAN GROUT: No, there isn't anything in here so should we try and develop a definition of what an owner is?

MR. McKIERNAN: I think you should. As you probably know, we have one groundfish character in New Bedford who owns over 30 permits and dozens of boats, but he has at least 20 unique corporations. That is the end game when you put those kinds of rules in. Unless you have defined it as Dick has defined it, then it is open.

I guess my follow-up question is do we anticipate a situation where someone who is a member of a corporation or a corporation must disclose on an annual periodic basis or whatever anytime the membership changes or is it up to the government to sniff that out and say, "Aha, look at that, I've found a membership change in the corporation.

MR. ABBOTT: To that point, didn't we just appoint a subcommittee of you and Terry and a couple others to look at this?

MR. McKIERNAN: The subcommittee was to look at an owner-on-board rule for Area 2. This is about Area 3 and the existing rules. If you heard NMFS say why didn't they adopt a rule that is ten years old

in an addendum, it is because this has never been resolved.

MR. ABBOTT: Could we not add that as a task for your subcommittee?

MR. McKIERNAN: Certainly.

CHAIRMAN GROUT: Bill McElroy, you had some other things you would like to address. We will get back to that. I think that is something we need to address as we're deciding whether to move forward with public comment on this.

MR. McELROY: **Mr. Chairman, I would like to make a motion to delete Section 3.1.4, controlled growth, and strike that from the document completely.**

CHAIRMAN GROUT: Do we have a second to that motion? Second by Dennis Abbott. Is there discussion on the motion? Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, this is a public information document. Is there something so onerous about that that it shouldn't be aired by the public? It sounds like we're trying to knock out things that obviously we don't like or don't think should be a part of it. Remember, this is a public information document and we're trying to get the broadest brush of information from the public and responses we can get. I would be kind of opposed to doing that unless there is a real reason why there is no applicability or interest in the public commenting on it.

MR. McELROY: Mr. Chairman, I would like to respond to Pat's question, if I could. The biggest problem that we saw with controlled growth and it turned out to be a unanimous decision of the LCMT not to want to go forward to it is that it creates a situation if you pick any particular number and tell an individual that through transferability he is allowed to buy a certain number of pots to try to build himself back up to the maximum limit that is allowable law; and now that individual has to go out and spend good money to do that.

And to suggest to that person that they can only activate those qualified pots that are not qualified – it is not a new addition to the fishery, but he can't put them all into play at one time, you're telling the guy he has got a lot of money to buy and he can use some of the pots this year and he has got to wait until next year to activate the next batch of them; it creates an undue economic hardship on the individual and it

doesn't offer any conservation value because traps are already fully qualified and authorized through Addendum VII. Thank you.

MR. AUGUSTINE: Thank you, Bill, I appreciate that description. Then I would have to ask NOAA if they had any intention of dealing with that in the future? I mean, they're working on a lot of things in the lobster plan, but here they're being asked the controlled growth provision will be effective in the same years that NOAA Fisheries implements transferability and once annually thereafter.

So we're back to the basic question is there any near-term deadline or date that NOAA can address that and will they in time? I don't know if Mr. Ross can answer that question. I'm not trying to put him on spot, but here is another case where we're going to rely on a federal entity to take action based on something we have agreed to, such as one of our previous amendments.

CHAIRMAN GROUT: Bob Ross, can you answer that?

MR. ROSS: When we were working within the plan development team in this process, we have already moved forward with our analysis for this initial Area 2 and Outer Cape Limited Access Program and then the Area 2, Outer Cape and Area 3 transferability program. This is that proposed rule that I indicated is coming out in the next month or so.

We did not analyze – and as you are aware, this whole issue of controlled growth is fairly new. Again, I go back to some of the public comments we provided on Draft Addendum XVIII that also contained reference to controlled growth. At that point we indicated that we would be unable to implement controlled growth in the initial transferable rulemaking. No, we would not be able to implement these measures in the schedule indicated here.

MR. AUGUSTINE: Thank you, Mr. Ross. So, I guess the basic question is in the information that you folks have gathered relative to a controlled growth provision; do you see anywhere in the future where this might be something that you would look at? If not, then I would agree that we should remove it. I don't know if you can respond to that or not. I mean if it is a dead issue with NOAA, then it is a dead issue and I think we would be right in removing it.

MR. ROSS: It is difficult for the tail, in this case NMFS, to wag the dog here. Obviously, lobster

management is a bottom-up approach where the industry, through the LCMTs, has been very effective and very supportive of measures that they have moved forward through the system.

In this case I don't believe that there was consistence across all LCMTs to support a controlled growth mechanism in my discussions with the LCMTs during several meetings of multiple jurisdictions. The federal government had concerns about constraining the intent of a transferable trap program by setting – not arbitrary but setting caps on what can be turned on in any given year.

Again, I would not say that we do not support it. We would support any recommendations coming from the board. However, it was my understanding in meetings I was at with the impacted Area 2 and Area 3 industry that the interest in a controlled growth measure had lost its traction.

CHAIRMAN GROUT: Is there further discussion on this motion? Okay, then let's vote on this. I'll give you ten seconds to caucus on it.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, all those in favor raise your hand; all those opposed; abstentions; null votes. **The motion carries nine to zero to two to zero.** Tom.

MR. FOTE: I was listening to the back and forth and you let Pat go about four times as usual. I apologize. Our job is to basically take a document and whittle it down to make it easier for the public. This document is so confusing to begin with that I have hard time sitting here a lot of times because I don't deal with lobster fisheries on a day-to-day basis like the former governor's appointee from Rhode Island, Dick Allen.

I get a little lost, but we try to give them as much information in the document that we can. If we really look at a document and said it should be cut out, that is a way of going so I approve that method. I'm not sure what we're doing here. That is why we abstained. It is very confusing to me because it looks like it is a paradox.

You have got one side saying this and the other side saying this, and I'm not sure which side is going to win. I find it extremely confusing and it is very hard to vote if I'm having a problem with it. I think maybe the lobstermen understand more because it is their day-to-day business, but I'm having a real hard time trying to figure through all these ins and outs.

MR. McELROY: Mr. Chairman, I have one last change. **It is under the options for full business sales, and Option 3.1 – Toni already has the language there – we would like to add that as an additional option.**

**It reads as follows: Areas fished on a multi-LCMA permit – and this gets to some of Tom Fote's and everybody else's confusion and adds a little more to it – the recipient of a trap allocation from the permit that has a multi-LCMA trap allocation would retain the multi-LCMA history. The recipient could elect to fish in any two of the LCMA areas that the trap history allows. Fishermen would annually declare the areas fished when applying for trap tags. The recipient would be bound by the most restrictive rule for the areas that are designated on the multi-LCMA permit. The history of the trap will be retained in the trap database.**

CHAIRMAN GROUT: Is there a second to this motion? Bill Adler seconds. Is there discussion on the motion? Go ahead, Bill.

MR. McELROY: I hope I have this right, but I think that basically this is cleaning up the language to make what we have done for Area 2 on those multi-LCMA areas consistent for Area 3. This doesn't really – it looks like we're doing the same thing over again, but the first one we did was for Area 2 and this one is for Area 3 basically.

CHAIRMAN GROUT: Is there any discussion on this motion? Dennis Abbott.

MR. ABBOTT: I think that maybe we should let this go out for public comment. There is a lot to it. In looking at the hour of five minutes to twelve, I hope we can move this question right along.

CHAIRMAN GROUT: Is there discussion? I will go to the audience quickly. Bonnie.

MS. SPINAZZOLA: As Bill said, that is strictly for compatibility so that you're going to have Area 2 and Area 3 all doing the same thing.

MS. KERNS: I just want to confirm that I am correct. You're actually incorrect, Bonnie. You are not having the two areas do the same thing. Area 2 did not ask to have this option added; just Area 3 asked to have this option added. Only Area 3 would be doing this.

MS. SPINAZZOLA: And that is to have the full transfer?

MS. KERNS: It is for full business sales only of multi-area fishing. Area 2 only asked for two options and that was status quo, to have all the traps retain their history and go forward; or, Option 2, which is to only be able to pick one area fished. Area 2 did not ask for two areas fished under full business sales. Only Area 3 did.

MS. SPINAZZOLA: Okay, it was my understanding that for compatibility both areas were doing the same thing.

MS. KERNS: That was not what was asked of me.

MS. SPINAZZOLA: Okay.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Pat Augustine.

MR. AUGUSTINE: The definition of full business sales; that is economic as far as I'm concerned. What does it mean?

MS. KERNS: A full business sale is your entire permit, boat – it is your whole kit and caboodle. It is everything that you sell. It is defined in Addendum XII.

MR. AUGUSTINE: Thank you. I just have a hard time supporting this based on that fact. Thank you for that clarification.

CHAIRMAN GROUT: Is there further discussion from the board? I will go back to you one more time, Bonnie.

MS. SPINAZZOLA: That is basically status quo with the federal fishery that we have right now. Under a full business transfer, we would have all the LCMAs. The reason I said compatibility is because I thought that is what Area 2 was planning to do and that they would be doing the same. As far as federal rules, that is what we have now; but under ASMFC it is status quo so it is one area. We would request that it would be the same as what NMFS' rule is now.

MS. KERNS: Bonnie, this option is asking for two areas; the fisherman that is buying the traps to be able to retain the history in two areas. Status quo is currently that when you –

MS. SPINAZZOLA: One area, right.

MS. KERNS: No. No, status quo is when you have a full business sale, that fisherman that buys the traps can pick any of the areas that trap has history in. When you buy a full business, all of the history goes to the buyer. That is what status is and that is what the National Marine Fisheries Service does currently as well. We are on the same page. This additional Option 3 would only allow for two areas to –

MS. SPINAZZOLA: Two LCMAs to retain –

MS. KERNS: – retain history.

MS. SPINAZZOLA: – the permit.

MS. KERNS: And then any other –

MS. SPINAZZOLA: I'm sorry; if it is not compatibility, which I thought that it was going to be, I would say don't bother. It is not meant to go on.

CHAIRMAN GROUT: Hearing that; do you want to withdraw the motion or do you want to keep it in? It is your choice, Bill.

MR. McELROY: **If Area 3 doesn't want it and doesn't support it, then I would withdraw it. I thought that was what they wanted. I misunderstood; I'm sorry.**

CHAIRMAN GROUT: Does the seconder agree to withdrawal? Okay, so this is withdrawn.

MR. AUGUSTINE: Mr. Chairman, we have beat this document to death. Are you ready for a motion to approve this Addendum XXI for the public?

CHAIRMAN GROUT: Not quite yet; I had one other person that would like to make a suggestion here. Ritchie White.

MR. WHITE: Mr. Chairman, this is a question and a process question. Since the reason for doing this document and the preamble is scale the Southern New England fishery to the size of the resource, my question is should this document not go to the technical committee to say that we are accomplishing what the goal is?

MS. KERNS: We can take it to the technical committee to give their advice to the board on that issue. Also keep in mind that this document was also to look at transferability rules and to refine those and that a lot of the scaling happened in the first iteration, which was Addendum XVII, which did all the trap reductions. This is trying to attempt to have some of



that latent effort not turn into additional effort through some of these rules.

CHAIRMAN GROUT: I have another question for the board here, and this relates to what Dan had brought up here. We have a document here that has several options here that refer to an ownership, an ownership cap, an aggregate ownership cap. What has been pointed out is we don't have a definition of what an ownership is.

I particularly want to ask the National Marine Fisheries Service, because this is going to apply to Area 3, too, and do we need to – before we move this forward for public comment, do we need to include what the definition of an ownership is or can we just say something like it is a permit?

MR. ROSS: Mr. Chairman, I believe the same issue surrounds our dilemma with this as they do with this whole issue of identifying ownership for a corporation. If we're expected to implement this measure at the federal level, we have the same dilemma we face with the states having owner/operator and the federal government having multiple types of ownership.

That is where I was discussing the possibility of some kind of working group or study committee here, which I understand I am now a part of, but, yes, it is my understanding, if I understand the question correctly, that this issue and the other issue are directly related and it would be a challenge for us without a consistent commission approach to accurately identify ownership with dual permit holders, state and federal permit holders.

MR. AUGUSTINE: To that point, it seems like we're not ready to address this issue and have it go out to the public. My question would be when could that group meet and possibly put together this definition, if you will? If in fact they can do that between now and the next meeting, maybe we could get that through an e-mail.

If that would be appropriate, then we can go forward with releasing this document. Otherwise, I would suggest we postpone accepting this document for the public until the next meeting. It sounds like that is the dilemma, Mr. Chairman. We have come a long way today, but we still have that definition of ownership that is going to be a control issue. Whatever you want to do, Mr. Chairman; do you want to postpone this until the next meeting or until we get the definition or would you prefer to go ahead

and approve this, but we're still hung out to dry on the definition.

CHAIRMAN GROUT: My thought was without this definition, we shouldn't be going out to the public because we need to have that definition aired in front of the public so that they can make that. Now, that is my thought and I am willing to take any input from the board on that. Tom.

MR. FOTE: My concern here is that we start revisiting the whole document again at the next meeting when we're just considering the definition. I would like to basically lock in these proposals to go to public hearing with the addition of the clarified definition. We just spent three hours going over this document; and every time we get into lobsters, it winds up being three hours to discuss the document and reiterate what we basically said at the meeting before.

If there was some way of doing that; I have no problem postponing it until the next time, with the clear understanding that we're not going back over the whole document to make more changes because somebody wants to tweak this and tweak that. Again, this is a public hearing document, but that we will just wait for the definition and going out. I don't know if you can do that, Mr. Chairman, but I would like a reading on that because I'm just concerned that we will spend another three hours going over the same document because somebody read the document and says, by the way, we should do it this way.

MR. ABBOTT: Tom Fote's watch runs a little different than mine. I think we started at 9:30 so we have only been here a total of two and a half hours. It must be New Jersey time. A moment ago Pat Augustine was ready to move this out for final vote, but I don't see any emergency or need to press on immediately with this document. I think it would be wise for us to let staff incorporate the things that we have gone over today and do what you have to do to get the definition and then let's deal with it in May.

MR. McELROY: My first wish would be that we approve this document and send it forward. I think in my own view the definition of ownership is going to be quite problematic, and I'm not at all optimistic that we will have a final resolution on that thorny question in that short amount of time.

I am reluctant to ask to delay this addendum. The first half of the addendum, Addendum XVIII, has already been out and passed and is the law of the

land. I think we need to move forward. The question of the ownership I think can be dealt with at a later time because I don't see a way to get it done quickly. Thank you very much.

MR. KERNS: In terms of the timing of the document, what we have been focused on is trying to make sure that we develop regulations in time to make recommendations to NOAA Fisheries on upcoming rulemaking. Bob, please correct me if I am inconsistent in what we have talked about before.

I believe that with what is coming out in the rulemaking now, we had talked about if we made any significant changes we would have to do an additional new rulemaking, so everything in this document NOAA Fisheries would have to do a new rulemaking; and so that wouldn't happen until later down the road, anyway, and so I don't think that we would be delaying any recommendations to NOAA.

Now, there may be some applications to this where some of the states have implemented transferability rules for state-only permit holders, not dual or federal permit holders, where a delay may change some things, but those states have been fairly consistent on how they're doing their rulemaking there, so I'm not sure delaying would be significantly impactful in terms of the process that we have been forward all along.

CHAIRMAN GROUT: Is that your take on it, Bob, that the stuff in this package would be in a different rule-making package?

MR. ROSS: Yes, that is correct.

MR. STOCKWELL: Mr. Chair, as a volunteer on the subcommittee, I think that we have some work to do and we can come back at the May meeting and better inform the board as a whole, so **I am going to move to postpone final consideration of Addendum XXI until the May meeting.**

CHAIRMAN GROUT: Is there a second to that motion? Second by Bill McElroy. All right, is there discussion on that motion? I will go to the public first and then we will come back to the board. Bonnie.

MS. SPINAZZOLA: Earlier when I mentioned traps as a currency – and I don't think it was approved – what I meant is that if you get rid of the word “permit” in the whole document and use strictly the word “trap”; and if you can describe an owner as someone who owns X number of traps; so if you own

1 percent of – if you're a corporation that owns all the traps that you can own and then you own 1 percent of somebody else's, you can't own somebody else's.

You can only own your number of traps, total finite number of traps. If you say “permits”, it could stand for any number of traps. That is why I wanted to just go to traps because any owner could only own X number of traps and they couldn't own anything else, period. That is why we were talking about in Area 3 the aggregate number of traps, not the aggregate permit; just the trap cap. It is just a recommendation or suggestion.

CHAIRMAN GROUT: Well, maybe that is something that our committee can take into consideration and we can get that off the record to the committee. I appreciate that but it still seems you have to have a definition of the ownership; who is the owner of the traps. Dick.

MR. ALLEN: If it is any help, I think you're in the same position that the council was in when they established the ownership cap for sea scallop permits back in 1994. I think they passed some language pretty similar to what you have got in your addendum now. The National Marine Fisheries Service actually implemented it and their approach was to say anybody with an ownership interest and that is why they have each permit holder.

Somebody mentioned about whether you would let NMFS figure out whether there had been a change in ownership and chase people around or what, but actually it is every year when you fill out your federal permit application, you have to list everybody with an ownership interest. NMFS probably has a little computer program that checks and sees whether there are people that own more than that cap.

I mean, it is fine if you want to go in and figure out your own definition; but if you wanted to say, well, you know, we think the way that NMFS has handled it for the sea scallop fishery is adequate for our purposes, they would probably do it the same way. I think they did it first in 1994 for the sea scallop limited access and then they did essentially the same thing with a little different numbers for the sea scallop general category IFQ program. They have been through this before and I think they've got a way to handle it.

CHAIRMAN GROUT: Maybe NMFS can bring that information to the table of the subcommittee. Okay,

to this motion, is there any further discussion? Seeing none; I will give you ten seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: All in favor raise your hand, ten in favor; any opposed; any null votes; any abstentions. **The motion carries unanimously.** We do have a couple more items on the agenda. Okay, go ahead.

MR. HIMCHAK: Okay, I don't know the exact implementation date of the second half of the Southern New England rebuilding, but we're talking about Areas 2 and 3 transferability measures. It is my opinion that we also have to deal with Areas 4, 5 and 6, and I am unaware of any activity that has been taking place since we put in the 10 percent reduction in exploitation.

My question becomes who administratively – I mean, how are we going to – we're starting from Day One and we're listening to this discussion on this business model, who is going to start developing the program for Areas 4, 5 and 6? Has anybody made any effort? Then my question to Bob Ross would be on the same issue on transferability measures; where do we cross swords on Areas 4 and 5 in Area 3? Is it going to be a complicated model like this or is the process much simpler? We haven't been moving on this 25 percent reduction in trap allocations, period, to my knowledge.

MS. KERNS: Pete, the board directed all the Southern New England areas to scale their fisheries to the size of the resource. You are correct, Areas 4, 5 and 6 have not come forward with plans. I think at every meeting I have mentioned that those LCMTs have yet to come forward with their compatible plan that Areas 2 and 3 have done.

The board hasn't given the plan development team anymore direction than to continue to ask those areas to develop their plans so that the plan development team can work with them to put an addendum in place. We have tried to work very closely with Areas 2 and 3 LCMTs to make sure that we're putting together a plan that is going to work with the history of their fisheries. That is what the plan development team would do for those other areas, but we need an initial response from the LCMTs in order to get that conversation going.

MR. HIMCHAK: So just as a follow up, essentially we're putting states on notice that haven't addressed the issue to start convening the LCMTs, and this is

not a simple task. There are a lot of states involved in these three areas.

CHAIRMAN GROUT: Well, we have had them meet before so do you want to take the lead on that?

MR. HIMCHAK: I would rather retire.

CHAIRMAN GROUT: Yes, we do need to get 4, 5 and 6 to start meeting, and I would encourage the state directors from the states that have members in that LCMT to start working on this. There is an addendum that we had passed to take management action here, and I would hope that you folks will take the lead. Dave Simpson.

MR. SIMPSON: I think I have indicated before we don't really have any intention to try to address this because despite repeated requests to the technical committee, we haven't gotten any advice at all on what numbers of traps mean in terms of fishing mortality or scaling to the fishery or any of that. We're focusing on the 10 percent reduction that is required in 2013.

We will do that. New York is ahead of us in terms of proposing legislation because they're going through a legislative process and we will go through a regulatory process. I think it makes sense for us to follow so that we get the same dates. This entire discussion today has to do with economics and transferability which may be a choice for other jurisdictions but not something that I think we're interested in pursuing further.

Frankly, I not only don't see where there is conservation here; I could see where this whole process will further concentrate traps in the hands of the most active fishermen and actually increase effort. Just in terms of our update, we don't have any activity at all on scaling the fishery to the size of the resource, which is almost gone now, but we are fully intending on complying with the 2013 closed season.

CHAIRMAN GROUT: Okay, is there further discussion? We will now go to Item 7 on our agenda, Law Enforcement Committee Report. We had tasked them with commenting on the Area 1 v-notch definition.

## **LAW ENFORCEMENT COMMITTEE REPORT**

MR. MARK ROBSON: At the last meeting of your board you had a discussion about this issue and had requested that the Law Enforcement Committee

provide some advice or information regarding the enforceability of v-notch regulations among the various states or areas, LCMAs. We did have the opportunity to do that. The Law Enforcement Committee was meeting at the fall meeting in Philadelphia, so we did have a discussion there with all the members present.

In addition to that, in order to provide you with some crafted written guidance, we had a follow-up conference call with a good number of the members of the LEC to kind of flesh out this issue. I think you have all been provided a copy of our letter or memorandum regarding v-notch issues. As with this discussion recently, this is not a new issue for the LEC or for you, I think.

They have commented on this issue twice before, both in 2004 and in 2006. In most respects our current comments reflect those prior views and guidance. In fact, we have attached some of those references from the previous memos to this current memo for you. Although there was quite a discussion among the different states about how enforceable these regulations can be, the bottom line is that the zero tolerance v-notch standard is enforceable; and in fact any standard you choose is enforceable.

What it comes to in terms of enforcement is the enforcement branch, the officers in the field developing a good understanding through training or guidance from their division as well as a good understanding among the law enforcement community, the courts and the fishermen themselves as to what standards are applied in terms of a zero tolerance or how much flexibility there is in a one-eighth inch v-notch.

That is the first recommendation or at least advice that we can give us that any of these are enforceable. Again, different states may have different issues. For example, in Maine and New Hampshire where zero tolerance has not been indicated as any kind of an enforcement problem; however, in the state of Massachusetts there have been indicated some enforcement issues, trying to apply either a zero standard in a court situation where it is not entirely clear what zero tolerance might mean in that particular state.

We have followed up with some discussion in the case of Massachusetts. A real further complication is the fact that they actually have three different v-notch requirements, depending on which area is being fished. That harkens back to some of the previous

guidance that the LEC gave us that the overriding problem is not so much enforceability of a particular v-notch standard but the fact that you have multiple v-notch standards in some jurisdictions.

Massachusetts happen to be unfortunately the example of that where we talked about them having to deal with three different v-notch regulations or language, depending on the areas they're fished off of their waters. Coming back to that again, we fall back on our basic philosophy I guess that seems to come out on a lot of LEC comments and suggestions to the boards wherever possible standardization is key in enforceability. This is an issue where when you have multiple standards, you're really going to be affecting the enforceability of that regulation. Mr. Chairman, that concludes my comments.

CHAIRMAN GROUT: Thank you, Mark. Are there any questions of Mark on the report? Yes.

REPRESENTATIVE WALTER KUMIEGA: Mr. Chairman, it was said earlier that what works for 95 percent of the U.S. landings ought to be looked at, and I think that certainly applies with the v-notch standard. It works very well in Maine and Maine fishermen support it, and I don't see why it can't work everywhere else. Thank you.

### OTHER BUSINESS

CHAIRMAN GROUT: Is there any other discussion? Okay, we have one more item. Pete, you were asking about, under other business, a technical review of the most restrictive rule for Area 4 and 6.

MR. HIMCHAK: I just had a question. We did task the technical committee at the annual meeting to look at New York's predicament on the most restrictive rule as it applies to Areas 4 and 6. Toni has her hand up and maybe she will give me the response.

MS. KERNS: The technical committee did review the most restrictive rule as it applies to Areas 4 and 6 seasons. We worked very closely with New York on that issue. They actually, after the technical committee came back with their response, said that they would go ahead and implement the rule as it was.

The technical committee had recommended leaving the rule as it stood for a most restrictive rule. While New York's proposal would only impact a few individuals, the technical committee had recommended not making that change because then you're just making an exception just because it is a

small number of people and not because of the impact that it would have on the conservation of the resource potentially.

As the technical committee had indicated it would be difficult for them to do an analysis of the impact. Because they don't have all of the information in front of them, we would have to wait until we had a couple of years of the season in place before they would be able to tell New York exactly what it meant. New York had said that's fine and started with their rulemaking and so we didn't need to bring it up at the board meeting, and so that is why it was not on the agenda.

MR. JOHN CLARK: Mr. Chair, and I just bring up a brief issue that is kind of tangential to the Lobster Board here? Delaware has had an effort for several years to have its artificial reefs in federal waters designated as special management zones. This was approved by the Mid-Atlantic Council last week.

After the meeting they questioned us as to whether the special management zone would prevent commercial fishing on the artificial reefs in federal waters that Delaware has. They questioned us as to whether the special management zone would apply also to lobster fishing because that is managed by the Atlantic States Marine Fisheries Commission along with the National Marine Fisheries Service. I don't know if this is technical question just for ASMFC or whether it involves this board. Thank you.

EXECUTIVE DIRECTOR BEAL: I am not sure I have an answer directly for John, but my understanding is the Mid-Atlantic Council action removed all commercial gear from the special management zones and extends to 500 yards and not meters – it was a big debate yards versus meters – yards off of the artificial reef site. If it is defined as all commercial gear, I assume that would include lobster gear, but Toni and I can go back at the staff level and look at it and get back to the board.

### **ADJOURNMENT**

CHAIRMAN GROUT: Okay, is there any other thing to come before this board? Okay, motion to adjourn. Any objections? Thank you.

(Whereupon, the meeting was adjourned at 12:28 o'clock p.m., February 19, 2013.)

*Atlantic States Marine Fisheries Commission*

**DRAFT ADDENDUM XXI TO AMENDMENT 3 TO THE  
AMERICAN LOBSTER FISHERY MANAGEMENT PLAN  
FOR PUBLIC COMMENT**

***SOUTHERN NEW ENGLAND REDUCTIONS IN FISHING CAPACITY FOR  
LOBSTER CONSERVATION MANAGEMENT AREA 2 AND 3  
TRANSFERABILITY MEASURES***



*ASMFC Vision Statement:*

*Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.*

**May 2013**

## Public Comment Process and Proposed Timeline

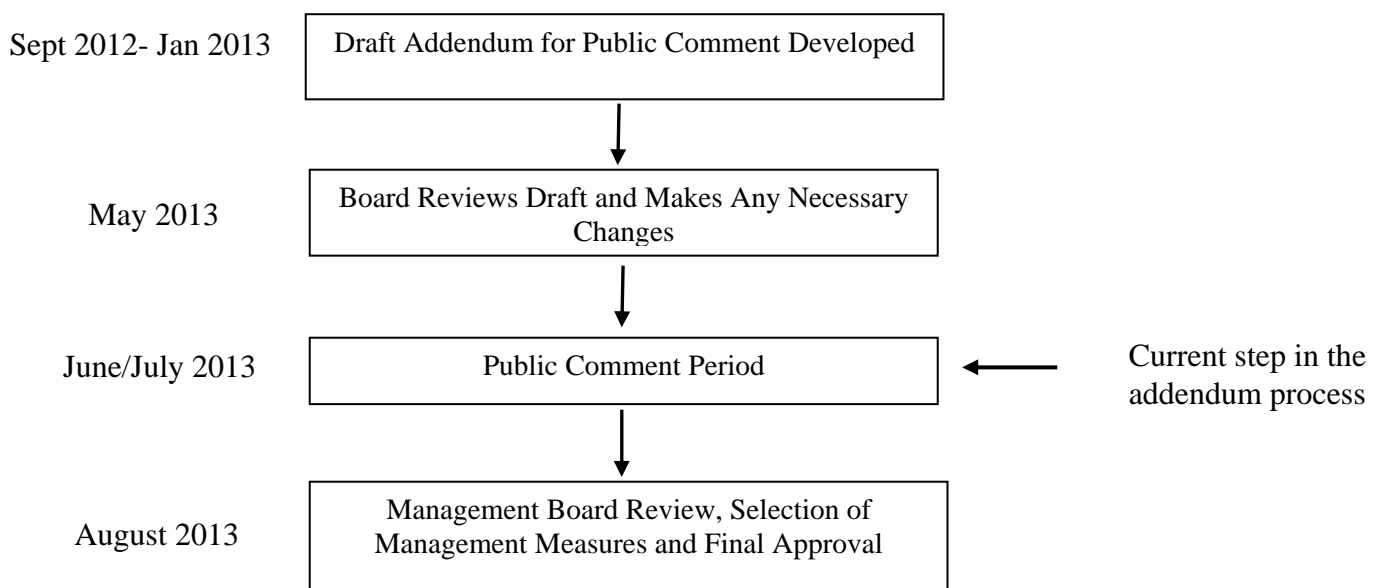
In December 2011, the American Lobster Management Board approved a motion to initiate the development of an addendum to Amendment 3 to the Interstate Fishery Management Plan (FMP) for American Lobster to respond to the poor stock condition in the Southern New England (SNE) lobster stock area. The Board directed the Plan Development Team (PDT) to scale the size of the SNE fishery to the size of the SNE resource. The PDT drafted an addendum that addressed this issue with trap reductions and changes to the transferability programs. The Board split the addendum, approved the trap reductions in 2012, and initiated this addendum to address changes in the transferability program for both Lobster Conservation Management Areas (LCMAs) 2 and 3. This Draft Addendum presents background on the Atlantic States Marine Fisheries Commission's (ASMFC) management of lobster, the addendum process and timeline, a statement of the problem, and options for management measures in the SNE lobster stock (LCMAs 2 and 3) for public consideration and comment.

The public is encouraged to submit comments regarding this document at any time during the addendum process. Public comments will be accepted until **5:00 PM (EST) on July 15, 2013**. Regardless of when they were sent, comments received after that time will not be included in the official record. Comments may be submitted by mail, email, or fax. If you have any questions or would like to submit comment, please use the contact information below.

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Addendum XXI)  
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## 1.0 Introduction

The Atlantic States Marine Fisheries Commission (ASMFC) has coordinated interstate management of American lobster (*Homarus americanus*) from 0-3 miles offshore since 1997. American lobster is currently managed under Amendment 3 and Addenda I-XVII to the Fishery Management Plan (FMP). Management authority in the exclusive economic zone (EEZ) from 3-200 miles from shore lies with NOAA Fisheries. The management unit includes all coastal migratory stocks between Maine and North Carolina. Within the management unit there are three lobster stocks and seven management areas. The Southern New England (SNE) stock (subject of this Draft Addendum) includes all or part of six of the seven lobster conservation management areas (LCMAs) (Appendix 1). There are nine states (Massachusetts to North Carolina) that regulate American lobster in state waters of the SNE stock, as well as regulate the landings of lobster in state ports.

While this Draft Addendum is designed to address the single discrete SNE stock unit, past American Lobster Management Board (Board) actions were based on the management foundation established in Amendment 3 (1997), which established the current seven lobster management areas that are not aligned with the three lobster stock boundaries. LCMA-specific input controls (limited entry, trap limits, and biological measures) have been the primary management tools used by the Board to manage lobster fisheries under the FMP. Managers working to recover the SNE stock face significant challenges since they must confront the complexity of administering and integrating six different management regimes crafted primarily (and largely independently) by the Lobster Conservation Management Teams (LCMTs). To be effective, management actions must not only address the biological goals identified by the Board, but also acknowledge and attempt to mitigate the socio-economic impacts that may vary by LCMA, while ensuring that multiple regulatory jurisdictions have the capability to effectively implement the various management tools available in this fishery.

The Board initiated this Draft Addendum to scale the SNE fishery to the size of the resource with an initial goal of reducing qualified trap allocation by at least 25 % over a five to ten year period of time. The Board motions read: *Move to ... As a second phase initiate Draft Addendum XIX to scale the SNE fishery to the size of the SNE resource. Options in the document will include recommendations from the LCMTs, TC and PDT. These options would include, but are not limited to, a minimum reduction in traps fished by 25% and move to proceed with Draft Addendum XVIII on LCMA 2 and 3 effort control programs to meet the terms of the second phase in the previously approved motion.*

The Board directed the Plan Development Team (PDT) to scale the size of the SNE fishery to the size of the resource in the SNE stock. The PDT drafted an addendum that addressed this issue with trap reductions and changes to the transferability programs. The Board split the addendum, approved the trap reductions in 2012 through Addendum XVIII and this Draft Addendum address changes in the transferability program for both Area 2 and 3. The most recent transferability rules were established in addenda XII and XIV. This Draft Addendum proposed to modify some of those rules as well as establish additional guidelines. Proposed changes to current regulations are noted in section 3 of this document.



## **2.0 Background**

### **2.1 Statement of the Problem**

#### ***Resource Issues***

The SNE lobster stock is at a low level of abundance and is experiencing persistent recruitment failure caused by a combination of environmental drivers and continued fishing mortality (ASMFC, 2009). It is this recruitment failure that is preventing the SNE stock from rebuilding. This finding is supported by the 2009 Stock Assessment Peer Review Panel and the 2010 Center for Independent Experts review of Technical Committee (TC) findings and conclusions articulated in the April 2010 report to the Board: “Recruitment Failure in Southern New England Lobster Stock.

Current abundance indices are at or near time series (1984 to 2009) lows (ASMFC 2009) and this condition has persisted since the early 2000s. In May 2009, the Board set interim threshold and target values well below those recommended by the TC in recognition that stock productivity has declined in the past decade. The stock is overfished but overfishing is not occurring. Members of the Board and TC believe that environmental and ecosystem changes have reduced the resource’s ability to rebuild to historical levels.

#### ***Management Issues***

The Board initiated this draft addendum to scale the SNE fishery to the diminished size of the SNE resource. This addendum proposes changes to the transferability program for LCMA 2 and 3. These changes are designed to allow for flexibility in the movement of traps as the consolidation program for LCMAs 2 and 3 to address latent effort (unfished allocation) are implemented.

The limited entry programs for each LCMA had unique qualifying criteria and eligibility periods resulting in widely disparate levels of latent effort among the areas. Consequently, measures to remove latent effort from the fishery will need to be developed for each LCMA based on the current amount of latency and the unique qualifying criteria and eligibility periods used by each management jurisdiction. For trap limits to be effective in reducing harvest and rebuilding the stock, latent effort must first be addressed to prevent this effort from coming back into the fishery as the stock grows and catch rates increase. Without action being taken to remove latent effort from the fishery any effort to consolidate LCMA 2 and 3 will be undermined. It is anticipated that long-term reductions in traps fished will occur as a result of this addendum.

## **2.0 Background**

The Board has approved past addenda governing the LMCA 2 and 3 trap fishery that allocated traps to each permit holder based on past performance (LCMA 2 allocated traps in 2007 for state permit holders and LMCA 3 in 1999, Table 1). Once NOAA Fisheries allocates traps to LCMA 2, both LCMAs will have a finite number of traps that can be fished based on the total allocation of individuals qualified to fish in the areas. While difficult to calculate and confirm for all areas and jurisdictions, it is estimated that the effort control plans allocated more traps than were being fished at the time the allocation schemes were adopted. The effort control plan for Area 2 was adopted in the middle of the decade long decline in the fishery. Because the fishery was already

seeing substantial attrition, the initial allocations in LCMA 2 and 3 created a pool of latent trap allocation that could be fished in the future. The number of fishermen and traps fished was substantially higher in the late 1990's and continues to decline through the present day. Nevertheless, the proportion of trap allocation that is unfished is significant and continues to grow (Table 2).

Table 1. Initial Trap Allocation approval for each LCMA

LCMA	ASMFC Approval	State Approval	NOAA Fisheries Approval
Area 2	2006	MA - 2006 RI - 2007 CT- 2006	Pending
Outer Cape Cod	2003	MA - 2003	Pending
Area 3	1999	N/A	2003
Area 4	1999	N/A	2003
Area 5	1999	N/A	2003

Table 2. Traps allocated and max traps fished for 2008-2010 for LCMA 2 and 3.

LCMA	2008 Traps Allocated	2008 Max Traps Fished	2009 Traps Allocated	2009 Max Traps Fished	2010 Traps Allocated	2010 Max Traps Fished
LCMA 2	178,376	107,003	175,117	107,886	177,120	104,603
LCMA 3	109,477	87,188	111,109	80,561	111,386	75,808

Data for LCMA 2 is limited to MA, RI, and CT fishermen; max traps fished is from state harvester reports. Data for LCMT 3 includes MA, RI, CT, NY, NJ, DE, MD, and VA. Max traps fished for MA and RI is from harvester reports for all other states data is from the total trap tags purchased.

The trap allocation programs for LCMA 2 and 3 also contained provisions which allowed transfers of trap allocation among eligible permit holders to mitigate some the negative effects of trap allocation schemes. These programs are called ITT's: Individual Transferable Trap programs. However, despite the desire for trap allocation transfers, they have yet to be fully enacted, primarily because NOAA Fisheries and Rhode Island DEM have met administrative challenges trying to implement these programs.

Through Addendum XII, it was understood by the Board and NOAA Fisheries that before transfers would be allowed or resumed two things must occur: (1) NOAA Fisheries must adopt complementary rules to allocate traps for federal permit holders in LCMA 2 and Outer Cape Cod (OCC) and (2) a joint state/federal database must be created to track trap allocations and transfers among the permit holders for these three areas. NOAA Fisheries is currently in rulemaking to consider federal rules that would allow trap allocation transfers among LCMA 2, 3, and OCC permit holders, as well as establish complementary LCMA 2 and OCC trap allocations for federal permit holders in these areas. It is expected that the trap allocation transfers could happen for the 2014 fishing season. When the program commences, industry

members anticipate a rash of transfers that could in fact raise the effort level (traps fished) in the fisheries – despite the 10% conservation tax to be placed on transfers in LCMA 2, 3, and OCC. If the net result is increased effort, then conservation goals would be compromised, at least temporarily. The joint state/federal database is scheduled to be completed in 2013.

Addendum XVIII effort control plans in LCMA 2 and 3 is designed to remove latent effort from both areas. Prior to Addendum XVIII control plans in the areas resulted in some amount of effort reduction at the permit holder level and at the aggregate fleet level. Many permit holders in LMCA 2 received an allocation of traps that was less than the level of traps they fished prior to allocation. The LCMA 2 plan relied on a combination of traps fished and poundage to allocate traps. Some permit holders with relatively low landings received a trap allocation that was lower than their reported traps fished. Until the allocation transfer program is created these permit holders are frozen at their allocation level without any means to increase their allocation. Meanwhile many LCMA 3 permit holders have seen their trap allocation reduced by a series of addenda (Addenda I, IV, XVIII), that imposed differential trap cuts on Area 3 fishermen based on the size of the original allocation. Fishermen with lower allocations were cut 10 %, while others with very high allocations were being cut up to 40%. As a general rule, most Area 3 fishermen had their historic allocations cut by approximately 30%. In the most recent Addendum (XVIII), LCMA 2 will reduce it traps by 50% and LCMA 3 by 25% both over a five year period.

Despite the scaling down achieved through the effort control plans, many in the industry fear the soon-to-be-approved transferability program could result in a flurry of transfers that will spike fishing effort. Therefore, an effort reduction proposal was put forth to the Board by LCMT 2 and 3 to mitigate some of the anticipated unintended consequences of trap allocation transferability programs that are expected to come “on-line” in the months ahead. The proposal establishes long-term effort reductions (allocated traps) in the LCMA’s that feature excessive permits and trap allocations, especially in SNE where the stock is declining. The proposal creates a framework that allows for LCMA-specific long-term reductions in trap allocations with constraints on how quickly a permit holder can build up their trap allocation after a transfer occurs. If enacted, these cuts in trap allocation are designed to eliminate latent trap allocations and reduce the number of traps actually fished. Industry members who envision improvements in the economics of the fishery are willing to undertake these trap reductions as long as the relief valve of trap allocation transfer is available to maintain a profitable fishery for the remaining participants.

SNE fishermen recognize that the decline in lobster abundance and the potential for future offshore industrial development could constrain the fishable areas and reduce future landings to unforeseen low levels. In the absence of government funds to remove permits or trap allocation from the available pool, industry developed a proposal that is essentially a self-funded buy-out. Consolidation is likely to occur as permit holders respond to the annual trap allocation cuts by obtaining trap allocation from those permit holders who downsize their operations or leave the fishery.

## **Management tools being considered**

### ***Single Ownership Trap Cap, previously called Trap Banking***

Establishing a single ownership trap cap will allow a permit holder to obtain trap allocation from other permit holder in excess of the individual trap cap limit (the number of traps that can be actively fished) on an area specific basis. This additional allocation may not be fished until activated by the permit holder's governing agency. This provision will enhance the ability of a lobster business owner to plan for their future. For example, non-active or banked traps could be activated, up to the maximum individual trap allocation, if a permit holder's trap allocation was reduced in the future, instead of trying to buy additional allocation the year the reductions occurred. Entities will also be able to obtain trap allocation in a single transaction vs. making numerous small transactions each year, which will reduce the administrative burden for the management agencies and industry.

## **3.0 Proposed Changes in Management Tools**

NOAA Fisheries is currently in rulemaking to consider federal rules that would allow trap allocation transfers among LCMA 2, 3, and OCC permit holders, as well as establish complementary LCMA 2 and OCC trap allocations for federal permit holders in these areas. It is expected that the trap allocation transfers could happen for the 2014 fishing season, under the current transfer program established in addenda (IV, V, VII, IX, XII, and XIV). If changes to the Commission transfer program are made through this addendum it is likely NOAA Fisheries will conduct addition rule-making to consider any measures adopted by the Commission.

### **3.1 LCMA 2 Proposed Management Options**

The following measures are being proposed for LCMA 2 only

#### **3.1.1 Trap Allocation Transfers** *If an option other than status quo were adopted this would replace section 4.3.3.3 of Addendum XII*

In regards to the transfer of trap allocation, current ASMFC rules (Addenda VII and XII) allow entities to transfer full or partial allocations of qualified traps from one owner to another in accordance with specific criteria in each State and /or in accordance with federal law. NOAA Fisheries currently does not allow for the transfer of partial allocations, but is in rule making to consider this regulation. NOAA Fisheries does allow for a full business sale.

The ASMFC rule is different depending on if the transfer is of a full business or partial trap allocation. The below options allow for the Board to consider multi-LCMA trap allocation separately as they are considered currently in the FMP (section A and B) or together (section C) as one regulation. If the board addresses the transfers the same then they would only need to choose an option under C. If the Board addresses the transfers differently (full business or partial trap allocation.) then they would need to choose an option on both A and B.

### **A. Partial Transfers of a Multi-LCMA Trap Allocation**

#### **Option 1: Status Quo:**

The recipient of a partial trap allocation from a permit that has a multi-LCMA trap allocation must choose only a single LCMA that the transferred trap allocation will be authorized to fish in;

trap fishing privileges for the other LCMAs will be forfeited but the history of the trap will be retained in the trap database.

**Option 2: 2 Areas can be fished:**

The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished (one time) when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

**Option 3: 2 Areas can be fished (areas fished chosen annually):**

The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished annually when renewing their permit and purchasing trap tags. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

**Option 4: All Areas can be fished:**

The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows for a given year, the fishermen would declare the area fished when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

**B. Full Business Transfers:**

**Option 1: Status Quo:** The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap allocation allows. The recipient would be bound by the most restrictive rule when fishing multi-LMCAs.

**Option 2: 1 Area can be fished**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation must choose only a single LCMA that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other LCMAs will be forfeited.

**C. Transfers of a Multi-LCMA Trap Allocation (Partial or Full business)**

**Option 1: 2 Areas can be fished:**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished (one time) when apply for a trap tag. The recipient would be bound by the most

restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

**Option 2: 2 Areas can be fished (areas fished chosen annually):**

The recipient of a trap allocation from a permit that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished annually when renewing their permit and purchasing trap tags. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

**Option 3: All Areas can be fished:**

The recipient of a trap allocation from a permit that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows for a given year, the fishermen would declare the area fished when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

**3.1.2 Single Ownership Trap Cap or Individual Permit Cap (previously called trap banking)**

The Single Ownership Cap or *Individual Permit Cap*, allows the purchase and accumulation of traps over and above the *Active Trap Cap Limit or trap cap*, currently 800 traps in LCMA 2, which are not fishable until activated. Newly purchased traps, along with traps already owned by a permit holder may combine to equal the number of traps necessary to go through active reductions, in order to end up at the final trap level of 800 traps.

**Option 1. Status quo**

No action (trap banking would not be permitted)

**Option 2. Single Ownership Cap or Individual Permit Cap**

The single ownership cap allows the purchase and accumulation of traps over and above the *active trap cap (currently 800 traps for LCMA 2)*. The single ownership cap is 1600 traps for an individual or corporation at a given time. Traps in excess of the active trap cap may not be fished until activated by the permitting state or agency. A transfer tax will not be assessed on traps activated from the permit holder's individual permit cap to an active trap.

**Example:** A state permitted LCMA 2 fisherman has the maximum trap allocation of 800 traps. He buys 100 traps from a state permitted LCMA 2 fisherman. 10 of those traps will be retired for conservation purposes. The Buyer now owns 890 traps. He may only fish 800 of the 890 traps. The other 90 traps are retained and can be activated as his active traps are reduced. If the permit holders traps are reduced by 10% his total individual permit cap is 801. He has 800 active traps (traps that can acutely be fished) and 1 trap that cannot be actively fished.

### **3.1.3 Sunset Provision for the Single Ownership Cap**

As proposed in this addendum the single ownership cap allows the purchase and accumulation of traps over and above the active trap cap (currently 800 traps for LCMA 2). This is to allow for business that are cut in the upcoming annual trap reductions efficiently rebuild their business. The Area 2 LCMT has indicated it is their intention that at the end of the trap reductions the Area 2 fleet would go back to the historical 800 active trap cap allocation.

Option 1: No sunset provision. The single ownership cap would continue as approved section 3.1.2 of this plan

Option 2: Sunset 1 year after the last trap reduction as specified in Addendum XVIII. The single ownership cap as approved section 3.1.2 of this plan would expire 1 year after the last trap reduction as specified in Addendum XVIII.

Option 3: Sunset 2 years after the last trap reduction as specified in Addendum XVIII. The single ownership cap as approved section 3.1.2 of this plan would expire 2 years after the last trap reduction as specified in Addendum XVIII.

### **3.1.4 Aggregate Ownership Cap or Ownership Accumulation Limits**

The ASMFC adopted Addendum VII which limited the number of permits any single entity/company can own to 2 with an exception for a group of permit holders. Ownership is defined as having any interest in a lobster permit/business. All stock holders must be disclosed when renewing landing permits or trap tag allocations. Two options are being considered in this addendum to further limit consolidation within the Area 3 industry to allow for as much cultural and geographic distribution within the fishery as possible. The concept is built on the same principle as a permit bank, which insulates a fishery from changes in geographic and cultural aspects of the fishery. The goal is to reduce the possibility of one entity exerting significant control over the markets and keep as many individuals in the fishery as possible. *If measures are adopted it would replace section 4.2.1.4 of Addendum VII*

**Option 1.** Status Quo: No single company or individual may own, or share ownership of, more than 2 qualified LCMA 2 federal permits. However, those individuals who have more than 2 permits in December 2003 may retain the number they had at that time but may not own or share ownership of any additional permits.

*This option limits the number of permits that can be owned rather than traps*

**Option 2.** An entity could not own more than 1600 traps (800 active and 800 banked traps). However, those individuals who have more than 2 permits in December 2003 may retain the number they had at that time but may not own or share ownership of any additional permits. (LCMT Preferred).

### **3.2 LCMA 3 Proposed Management Options**

The following measures are being proposed for LCMA 3 only. If any of the below measures are approved then ASMFC will recommend to NOAA Fisheries to implement those regulations since LCMA 3 is entirely within Federal waters.

### 3.2.1 Trap Transfers

In regards to the transfer of trap allocation, current ASMFC rules (Addenda VII and XII) allow entities to transfer full or partial allocations of qualified traps from one owner to another in accordance with specific criteria in each State and /or in accordance with federal law. NOAA Fisheries currently does not allow for the transfer of partial allocations, but is in rule making to consider this regulation. NOAA Fisheries does allow for a full business sale.

The ASMFC rule is different depending on if the transfer is of a full business or partial trap allocation. The below options allow for the Board to consider multi-LCMA trap allocation separately as they are considered currently in the FMP (section A and B) or together (section C) as one regulation. If the board addresses the transfers the same then they would only need to choose an option under C. If the Board addresses the transfers differently (full business or partial trap allocation.) then they would need to choose an option on both A and B.

**A. Partial Transfers of a Multi-LCMA Trap Allocation:** *If an option other than status quo were adopted this would replace section 4.3.3.3 of Addendum XII*

**Option 1. Status Quo:** The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation must choose only a single LCMA that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other LCMA's will be forfeited.

**Example:** A person buys 100 traps that have historical allocation to fish in LCMA 2, 3, and 4. 10 traps are retired for conservation and 90 traps are available to be fished or banked. The buyer must choose only 1 of the 3 LCMA's (area 2, 3, or 4) to fish the traps, the other 2 areas will lose fishing privileges for those traps.

**Option 2: 2 Areas can be fished:**

The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMA's that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCA's. The history of the trap will be retained in the trap database.

**Option 3: 2 Areas can be fished (areas fished chosen annually):**

The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMA's that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished annually when renewing their permit and purchasing trap tags. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCA's. The history of the trap will be retained in the trap database.

**Option 4. All areas can be fished:**

The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMA's that the trap



history allows. The recipient would be bound by the most restrictive rule when fishing multi-LMCAs.

## **B. Full Business Transfers:**

### **Option 1. Status Quo:**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows. The recipient would be bound by the most restrictive rule when fishing multi-LMCAs.

### **Option 2. 1 Area can be fished:**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation must choose only a single LCMA that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other LCMAs will be forfeited.

## **C. Transfers of a Multi-LCMA Trap Allocation (Partial or Full business)**

### **Option 1: 2 Areas can be fished:**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished (one time) when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

### **Option 2: 2 Areas can be fished (areas fished chosen annually):**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished for a given year, the fishermen would declare the area fished annually when renewing their permit and purchasing trap tags. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

### **Option 3: All Areas can be fished:**

The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows for a given year, the fishermen would declare the area fished when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

## **3.2.2 LCMA 3 Endorsement**

Lobstermen fishing in the SNE portion of LCMA 3 have historically fished a larger numbers of traps. It is believed that the continuation of historical fishing methods (large number of traps) will deter the transfer of effort into the Gulf of Maine or George's Bank stock area, therefore an LCMA 3 endorsement is being proposed. The proposed endorsement Area is located along already recognized boundaries within the lobster resource and regulatory/management process;

the 70°/stock area boundary line. The LCMA 3 SNE endorsement would allow fishermen to be profitable in the offshore lobster fishery SNE stock area. It should be noted that initially the SNE lobster fleet endured the largest reductions in traps. Since reductions were introduced as a sliding scale model, those with the largest trap allocations reduced the greatest number of traps.

**Option 1. Status quo:**

No change to the current LMCA 3 area designation.

**Option 2. LCMA 3 Permit Designation**

As part of the annual permit renewal process, NOAA fisheries will require fishermen with LCMA 3 permits to designate whether they plan to fish in Area 3 (as commonly designated) or specifically in the Area 3, Southern New England stock area (A3-SNE). The boundary between Area 3 and Area 3-SNE would be split by the 70° longitude. Those fishing west of 70° longitude would designate **LCMA 3-SNE**, those fishing east would designate **LCMA 3**. The area selected will be noted on the permit and remain in effect for the entire fishing year. Fishermen will be allowed to change the area designation once per year as part of the annual permit renewal process, effective in the following year.

Endorsement of LCMA 3-SNE will not restrict fishing in all of LCMA 3, however, the most restrictive rule will apply (i.e. as with “most restrictive” among LCMAs, designation of LCMA 3 with the LCMA 3 SNE endorsement would allow fishing throughout the area, however in that case, the lower active trap cap would apply throughout the entirety of LCMA 3 (section 3.2.3).

**Trap and Permit Caps on ownership**

Several types of restraints on ownership are being proposed for LCMA 3 in order to inhibit the excessive consolidation of industry. These include a cap on the number of individual active traps a single permit may fish, a cap on the number of traps a single permit may fish and own, and a cap on the aggregate number of federal permit and traps a entity/ company may own.

**3.2.3 Active Trap Cap (Maximum number of traps allowed to be fished)**

The Active Trap Cap refers to the maximum number of traps that any LCMA 3 lobster permit hold may actively fish. No single vessel with an LCMA 3 permit may fish more than the maximum number of active traps.

**Option 1: Status quo:**

No action would be taken the trap cap for all of LCMA 3 would remain at 2000 traps.

**Option 2: Active Trap Cap**

The active trap cap at the commencement of transferability will be 2000 traps. The active trap cap will be reduced by 5% per year for five years for LCMA 3 as in the table below (but not the LCMA 3-SNE designation active trap cap), in conjunction with the trap reductions approved in Addendum XVIII. If NOAA Fisheries adopts a lower trap cap for LCMA 3 or different trap cut, the schedule will be adjusted accordingly. Individuals opting to designate the LCMA 3 SNE endorsement area will continue to reduce traps below the “endorsement area’s” 1800 active trap cap, to complete the required trap reductions of 5% per year for five years. The permit owner

would then have to buy his way back up to the 1800 active trap cap, in order to fish the larger, cap.

Active Trap Cap for Area 3 and Area 3-SNE designation

Year	Area 3	Area 3-SNE
Year 0	2000	2000
Year 1	1900	1900
Year 2	1805	1805
Year 3	1715	1800
Year 4	1629	1800
Year 5	1548	1800

**3.2.4 Single Ownership Cap or Individual Permit Cap**

The Single Ownership Cap or *Individual Permit Cap*, allows the purchase and accumulation of traps over and above the *Active Trap Cap* limit. Newly purchased traps, along with traps already owned by a permit holder may combine to equal the number of traps necessary to go through active reductions, in order to end up at the final trap level of 1800 traps.

In order to inhibit the excessive consolidation of the industry, a cap on ownership is proposed. The ability to accumulate traps allows a permit holder to purchase, at one time, the amount of traps necessary to remain competitive, at the same time relieve the administrative burden of multiple purchases. It addresses, and minimizes the economic burden of controlled growth and having to wait to purchase the traps necessary to reach the Individual Permit Cap. This is necessary since it is anticipated that once traps become scarce, their cost will increase. This will be especially advantageous to the smaller operator, as it provides the ability for a smaller operator to purchase traps immediately, rather than waiting until the end of the process, thus enabling them to purchase a greater number of traps early on, while their cost is still relatively low. *If an option other than status quo were adopted this would replace section 4.2.1.4 of Addendum VII*

**Option 1. Status Quo:** No action, no ownership cap

**Option 2. Single Ownership Cap or Individual Permit Cap**

The single ownership cap allows the purchase and accumulation of traps over and above the *Active Trap Cap Limit* (section 3.2.3). The single ownership cap would be specified as in the table below. This schedule assumes that NOAA Fisheries will implement a 2000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years. If NOAA Fisheries adopts a lower trap cap or cut for LCMA 3, the schedule will be adjusted accordingly.

Since the endorsement of SNE in LCMA 3 can be requested on an annual basis, all LCMA 3 permits will (in the end) have the ability to maintain an 1800 trap limit. (Outside of the SNE endorsement area, the “*Active Trap Cap*” (see table 1) prevails, and the most restrictive rule will apply).

Area 3 Individual Permit Cap Table

Year	Number of Traps
Year 1	2,333
Year 2	2,216
Year 3	2,105
Year 4	2,000
Year 5	1,900

### **3.2.5 Aggregate Ownership Cap or Ownership Accumulation Limits**

The ASMFC adopted Addendum IV in December 2003 which limited the number of federal permits any single entity/company can own to 5 with an exception for a group of permit holders. Two options are being considered in this addendum to further limit consolidation within the Area 3 industry to allow for as much cultural and geographic distribution within the fishery as possible (currently GOM to Cape May, out to the Hague Line). The concept is built on the same principle as a permit bank, which insulates a fishery from changes in geographic and cultural aspects of the fishery. The goal is to reduce the possibility of one entity exerting significant control over the markets and keep as many individuals in the fishery as possible. Ownership is defined as having any interest in a lobster permit/business. All stock holders must be disclosed when renewing landing permits or trap tag allocations.

*If an option other than status quo is adopted it will replace Section 4.2.3 of Addendum IV.*

#### **Option 1: Status Quo: Anti-monopoly Clause**

No single company or individual may own, or share ownership of, more than 5 qualified LCMA 3 federal permits. However, those individuals who have more than 5 permits in December 2003 may retain the number they had at that time but may not own or share ownership of any additional permits.

#### **Option 2: Aggregate Ownership Cap or Ownership Accumulation Limits**

No single company or individual may own traps greater than five times the Single Ownership Cap if they have not already accumulated them prior to NMFS publishing a present-day control date; therefore, should an individual owner be in excess of the Aggregate Ownership Cap before the control date is published, that owner will retain his existing trap ownership and that owner may not increase trap ownership once NMFS control date has been published. Any ownership with an accumulation of fewer traps than the Aggregate Cap at the time the control date is published may not exceed the Aggregate Ownership Cap.

If this option were adopted, the Board would recommend that NOAA Fisheries establish a control date for the number of traps a single company or individual may own, or share ownership of for LMCA 3.

Area 3 Aggregate Ownership Cap or Ownership Accumulation Limits Table

<b>Year</b>	<b>Number of Traps</b>
Year 1	11,665
Year 2	11,080
Year 3	10,525
Year 4	10,000
Year 5	9,500

### **4.0 Annual Review and Adjustment Process**

As part of the annual plan review process the Board will review the performance of this program to ensure that it is meeting the goals of the program. The review will consider the number of traps transferred, the rate of transfer, degree of consolidation taking place, etc in each area.

States will be required to submit to ASMFC the following information for the most recent fishing year on July 1

- Number of allocated traps for LMCA 2 and 3
- Number of traps transferred for LCMA 2 and 3
- The rate of transfer for LCMA 2 and 3
- Maximum number of traps fished for LMCA 2 and 3
- The degree of consolidation for LCMA 2 and 3

#### **4.1 Compliance**

If the existing lobster management program is revised by approval of this draft addendum, the American Lobster Management Board will designate dates by which states will be required to implement the addendum. The compliance schedule will take the following format:

XXXXX: States must submit programs to implement Addendum XXI for approval by the American Lobster Management Board

XXXXX: The American Lobster Board Approves State Proposals

XXXXX: All states must implement Addendum XXI through their approved management programs. States may begin implementing management programs prior to this deadline if approved by the Management Board.

#### **5.0 Recommendation for Federal Waters**

The SNE lobster resource has been reduced to very low levels. The Atlantic States Marine Fisheries Commission believes that additional fishery restrictions are necessary to prevent further depletion of the resource.

The Atlantic States Marine Fisheries Commission believes that the measures contained in Amendment 3 and Addenda I-XXI are necessary to limit the expansion of effort into the lobster fishery and to rebuild lobster stocks to recommended levels. ASMFC recommends that the federal government promulgate all necessary regulations to implement the measures contained in Sections 3 and 4 of this document.

#### **6.0 References**

ASMFC, 2009. Stock Assessment Report No. 09-01.

ASMFC 2010, SNE Exploitation Reduction No. 10-120.



# Atlantic States Marine Fisheries Commission

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## MEMORANDUM

July 22, 2013

**To: American Lobster Management Board**  
**From: Kate Taylor, Senior FMP Coordinator**  
**RE: Draft Addendum XXI to the American Lobster FMP Public Comment**

The following pages represent the comment received by ASMFC by July 15, 2013 on Draft Addendum XXI to the American Lobster FMP.

A total of eight written comments have been received during the public comment period. Of those comments one was an individual comment and seven comments were from the following organizations: AOLA; Cote Fisheries, Inc.; Little Bay Lobster Group; MA Lobstermen's Association; NMFS; Off the Shelf, Inc.; and RI Lobstermen's Association. A joint MA and RI public hearing was held on June 26<sup>th</sup> and four individuals attended.

The attached table is provided to give the Board an overview of the support for specific options contained in the document. Support for an option was only indicated in the table if the commenter specifically stated preference for one or more of the options in the document. The specific comments, by organization, are provided below.

### Written Comments

#### AOLA

##### **3.2.1 Trap Transfers (Area 3)**

- Partial Transfers – in favor of option 1 (status quo)
- Full Business Transfers – in favor of Option 2 (only one area for designation).
- Under both options, we support the history of the permit/traps being retained in the database.

**3.2.2 LCMA 3 Endorsement** AOLA supports Option 1 (status quo).

**3.2.3 Active Trap Cap** – AOLA supports one active trap cap throughout all of LCMA 3, beginning at 2,000 at the commencement of Transferability, reducing after five years to an active trap cap of 1,548.

**3.2.4 Single Ownership Cap** – AOLA supports Option 2 (Single Ownership Cap)

**3.2.5 Aggregate Ownership Cap** – AOLA supports Option 2 (Aggregate Ownership Cap)

#### Cote Fisheries, Inc.

##### **3.2.1 Trap Transfers (Area 2)**

- Partial transfers – In favor of Option 1 (status quo)
- Full business transfers – In favor of Option 2 (only one area for designation).

**3.2.2 LCMA3 Endorsement** – In favor of Option 1 (status quo)

**3.2.3 Active Trap Cap** – In favor of Option 2

**3.2.4 Single ownership trap cap** – In favor of Option 2 (Single Ownership Cap)

**3.2.5 Aggregate Ownership Cap** – In favor of Option 2 (Aggregate Ownership Cap)

Little Bay Lobster Group

**3.2.1 Trap Transfers (Area 3)**

- Partial transfers – In favor of Option 1 (status quo)
- Full business transfers – In favor of Option 2 (only one area for designation).

**3.2.2 LCMA 3 Endorsement** – Opposed to the creation of a new lobster management

**3.2.3 Area 3 Active Trap Cap** – In favor of Option 2

**3.2.5 Aggregate Ownership Cap** – In favor of Option 2 (Aggregate Ownership Cap)

MA Lobstermen's Association

**3.1.1 LCMA 2 Trap Allocation Transfer** - Section C Option 3

**3.1.2 Single Ownership Trap Cap** - In favor of Option 2 (Single Ownership Cap)

**3.1.4 Aggregate Ownership Cap** - In favor of Option 2 (Aggregate Ownership Cap)

**Implementation** – LCMA 2 fishermen also would like this to begin in 2014 rather than 2015

NMFS

- NMFS is actively developing new regulations to implement the Trap Transfer Program which predates draft addendum XXI and, therefore, does not include analysis of the measures in the draft addendum.
- ACCSP's Trap Transfer Database, currently under development, has not been designed to incorporate Addendum XXI measures. If major changes in database design are required, delays will undoubtedly result in the implementation of the Trap Transfer Program.
- If the Commission were to adopt measures that alter the basic elements of the Trap Transfer Program, it could challenge NMFS's ability to maintain consistency with the Commission's Plan and compromise implementation of the Trap Transfer Program.
- NMFS urges the Board to explain its rationale for its Addendum XXI choices in a more robust manner so the public is better informed and the administrative record is clear.

Off the Shelf, Inc.

**3.2.3 Area 3 Active Trap Cap** – Opposed to continuing reductions in the Active Trap Cap

**3.2.4 Single Ownership Cap** – In favor of Option 2 (Single Ownership Cap)

**3.2.5 Aggregate Ownership Cap** – Do not support an Aggregate Ownership Cap for Area 3

RI Lobstermen's Association

**3.1.1 Trap Transfers (Area 2)**

- **Partial Transfers** - In favor of option 4, 3, or 2 (in order of preference)
- **Full Business Transfers** – Support status quo
- **Transfers of a Multi-LCMA Trap Allocation (Partial or Full)** – In favor of Option 3 (all areas). Option 2 is less desirable but we would reluctantly support it if it is necessary

**3.3.2 Single Ownership Cap** – In favor of Option 2 (Single Ownership Cap)

**3.1.4 Aggregate Ownership Cap** – In favor of Option 2 (Aggregate Ownership Cap)

**3.2.1 Trap Transfers (Area 3)**

- **Partial Transfers** - In favor of option 4, 3, or 2 (in order of preference)
- **Full Business Transfers** – In favor of status Quo
- **Transfers of Multi LCMA trap allocation (Partial or Full)** - In favor of Option 3 (all areas). Option 2 is less desirable but we would reluctantly support it if it is necessary

**3.2.3 Trap and Permit Caps on ownership** – In favor of Option 2 (Active trap cap)

**3.2.4 Single Ownership Cap** – In favor of Option 2 (Single Ownership Cap)

**3.2.5 Aggregate Ownership Cap** - In favor of Option 2 (Aggregate ownership cap)

**Implementation** - In our view any strategy that delay implementation is illogical, unwarranted, nor in the best interest of the SNE lobster resource.

## Public Hearing Summary

Massachusetts (4 Attendees)

June 26, 2013

### LCMA 2 Proposed Options

- **3.2.1 C. Transfers of a Multi-LCMA Trap Allocation (Partial or Full business)** – one person was in favor of option 3 (all areas can be fished).
- **3.1.2 Single Ownership Trap Cap or Individual Permit Cap (previously called trap banking)** – one person was in favor of trap banking.
- **3.1.3 Sunset Provision for the Single Ownership Cap** – one person was in favor of option 3 (two year sunset) as it seems like it gives a long enough time frame.
- **3.1.4 Aggregate Ownership Cap or Ownership Accumulation Limits** – one person was in favor of option 2.

### LCMA 3 Proposed Options

- **3.2.1 Trap Transfers** - one person was in favor of the status quo for partial transfers and Option 2 (1 Area can be fished) for full business transfers so that both types of transfers are treated the same.
- **3.2.3 Active Trap Cap (Maximum number of traps allowed to be fished)** – one person was in favor of a 2,000 trap cap when transferability starts, as that is what NMFS proposes. And after 5 years it should go to 1,548 traps.

### Other Comments:

- Would there be another round of trap reductions? This would influence my decision on the sunset provision.
- Will the database be public?
- The history should follow the permit, not traps, so that the value of the permit is retained if someone wants to resell the permit.
- Will the pounds also go with the traps? What if the Board wants to go to IFQ? People will want to know what they are buying. Some traps would be worth more if they were very productive. Need to be clear what “the history” means.
- Trap reductions they cannot begin until transferability begins.
- Need to give people the opportunity to build back up.
- We are having a lot of problems with fishermen from Maine fishing in Area 3 without a permit. Nothing happens when it is reported.



		Written Comment						Public Hearing	
		AOLA	Cote	LBLG	MLA	OTS	RILA		Individ.
LCMA 2 Proposed Management Options	<b>3.1.1 Trap Allocation Transfers</b>								
		<b>A. Partial Transfers of a Multi-LCMA Trap Allocation</b>							
		Option 1: Status Quo		x	x				
		Option 4: All Areas can be fished					x		
		<b>B. Full Business Transfers</b>							
		Option 1: Status Quo:					x		
		Option 2: 1 Area can be fished		x	x				
		<b>C. Transfers of a Multi-LCMA Trap Allocation</b>							
		Option 3: All Areas can be fished				x	x		x
		<b>3.1.2 Single Ownership Trap Cap or Individual Permit Cap</b>							
	Option 2. Single Ownership / Individual Permit Cap				x	x		x	
	<b>3.1.3 Sunset Provision for the Single Ownership Cap</b>								
	Option 3: Sunset after 2 years							x	
	<b>3.1.4 Aggregate Ownership Cap</b>								
	Option 2. 1600 trap cap				x	x		x	
LCMA 3 Proposed Management Options	<b>3.2.1 Trap Transfers</b>								
		<b>A. Partial Transfers of a Multi-LCMA Trap Allocation</b>							
		Option 1. Status Quo	x						x
		Option 4. All areas can be fished					x		
		<b>B. Full Business Transfers</b>							
		Option 1 Status Quo					x		
		Option 2. 1 Area can be fished	x						x
		<b>C. Transfers of a Multi-LCMA Trap Allocation</b>							
		Option 1: 2 Areas can be fished						x	
		Option 3: All Areas can be fished					x		
		<b>3.2.2 LCMA 3 Endorsement</b>							
		Option 1. Status quo	x	x	x				
		<b>3.2.3 Active Trap Cap</b>							
	Option 1: Status quo					x			
	Option 2: Active Trap Cap			x		x	x	x	
	<b>3.2.4 Single Ownership Cap or Individual Permit Cap</b>								
	Option 2. Single Ownership / Individual Permit Cap	x	x			x	x	x	
	<b>3.2.5 Aggregate Ownership Cap</b>								
	Option 1: Status Quo: Anti-monopoly Clause	x	x			x			
	Option 2: Aggregate Ownership Cap			x			x	x	

Individual and public hearing comments specified each represent one person in support

July 14, 2013

Dear Kate,

Please accept my comments on Addendum XXI as they pertain to Area 3. I am commenting as an individual offshore lobsterman and my views may or may not align with the Area3 LCMT or AOLA.

### **3.2.1 Trap Transfers**

I support **C: Transfers of a Multi-LCMA Trap Allocation (Partial or Full Business)**. There is no need or good reason to differentiate between a partial or full transfer.

Under C, I support **Option I: 2 Areas can be fished**

The recipient of a trap allocation from a permit that has a multi-LCMA trap allocation would retain the multi-LCMA history. The recipient could fish in any of the LCMAs that the trap history allows with a maximum of two areas fished. The fishermen would declare the area fished (one time) when apply for a trap tag. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

I do not think it fair or equitable to allow a multi-area allocated fisherman to only fish in one area. I do however think that more than 2 areas fished becomes spatially difficult and administratively burdensome.

An example may best illustrate my concern. :

If a current multi-area allocation holder possessed 800 area 2 traps and 400 area 3 traps and is not allowed a way to fish in both areas, he is likely to sell the area 3 traps to an area 3 fisherman who can use them. He will then purchase an additional 400 area 2 traps (plus the additional traps necessary to accommodate the conservation tax) and fish 800 traps in area 2. The net result is that his area 3 traps are being fished in area 3, with the only difference being, he is not the one fishing them, even though he qualified as a multi area fisherman. This makes no sense to me and seems to be rather discriminatory, (*your traps can fish there but you can't*). The fisherman that legitimately qualified to fish that area can't fish there but his traps can!

A lobsterman in this situation should be allowed to purchase an additional 400 area 3 traps, (plus additional traps to satisfy conservation tax), which would result in 800 area 2/3traps. He would then be allowed to fish 800 traps in either area 2 or 3 under the most restrictive 3 7/16 min. size and 5 ¾ max. size.

There is no good justification not to allow 2 LCMA's to be fished under these conditions. The argument that allowing multi-area fishermen into Area 3 will jeopardize past conservation measures makes no sense at all. At the end of the 5 year trap reduction schedule, there will not be enough traps allocated in area 3 for every currently active area 3 lobsterman to own the max (1548) number of traps. Add to this the potential of allowing ownership of 1800 traps, which I do support, and there will be even less traps available to be fished. I see no threat at all to the area 3 fishery by allowing multi area lobstermen to fish 2 areas.

I support the ability to fish 2 areas under the following conditions:

- Both trap allocations are identical in number. To be able to fish both areas, a fisherman would need for example, 800 area 2 traps and 800 area 3 traps. This would satisfy the most restrictive rule. The multi area 2/3 fisherman would then be able to fish 800 traps in either area 2 or 3 or any combination he chooses.
- The multi-area fisherman would have to abide by the most restrictive rule of **both** areas regardless of which area his traps are in.

I do **not** support a scenario that would allow unequal multi-area allocations to be fished in different areas at this time. As an example, I would be opposed to a multi-area fisherman fishing 600 traps in one area and 200 in another. There is currently no good way to monitor this. If and when there is a trap haul validation/location system in place, I would re-consider. Since traps are the currency that we have chosen to deal in, we should explore systems to insure compliance by all.

### **3.2.3 Active Trap Cap**

I support the active trap cap throughout all of area 3 beginning at 2000 traps in year one and ending at 1548 in year five.

The trap reductions should only start with the implementation of transferability.

### **3.2.4 Single Ownership Cap**

I support the implementation of a Single Ownership Cap (previously referred to as "banking.") This measure will allow for the accumulation of traps in excess of a permit's active trap allocation, thus giving lobster fishermen the ability to purchase the number of traps necessary, in one transaction if so desired, to ultimately bring their total trap allocation to the Single Ownership Trap Cap limit. I support the ability to have a Single Ownership Trap Cap of 1800 traps in Area 3. While the active trap cap will remain at 1548, having the ability to purchase up to 1800 traps (252 over the active trap cap) will begin to insulate and protect an Area 3 lobster fisherman from possible future trap

reductions. Further, conservation will be intensified and managers concerns regarding an influx of latent traps eased, by fishermen retaining an additional, unfishable 252 traps.

### **3.2.5 Aggregate Ownership Cap**

I support Option 2 of the Aggregate Ownership Cap.

On the date NOAA Fisheries control date is published in the Federal Register, any individual, company, entity or stock holder may own or legally increase their trap cap ownership, up to the total number of traps, allowed by five LCMA 3 federal lobster permits. At no time, after a new federal control date is published, shall a single LCMA 3 federal lobster permit holder increase his/her permit allocation to exceed the allowable trap cap for any individual LCMA 3 permit, or the total number of five Area 3 permits.

This is the only option that makes any sense given the length of time that has elapsed since the status quo option was drafted.

Finally,

The lobster industry has waited for the implementation of transferability for a very long time. It is critical that a thorough and expandable data base accompany the onset of transferability. This database should in no way become a restrictive component that would limit the flexibility of transferability in the future.

It is also critical that transferability be implemented for the 2014 fishing year. Further delays of implementation should not occur. In the event that there is no way to implement for the 2014 fishing year starting in June, I would suggest that the trap tag year be extended until such time as transferability can commence. Once transferability commences, the new trap tags could be deployed. We cannot simply wait another whole year for transferability if it is not ready for June 2014. Extending the life of the 2013 trap tags is a sensible way to allow transferability to start in mid year.

Thank you for the opportunity to comment,

David Spencer

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drspencer1@gmail.com



## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

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July 6, 2013

Kate Taylor  
Atlantic States Marine Fisheries Commission  
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Dear Kate:

I am writing on behalf of the Atlantic Offshore Lobstermen's Association (AOLA) regarding a request by the ASMFC Lobster Board, for public comments relative to Addendum XXI to Amendment 3 of the American Lobster Fishery Management Plan. My comments focus solely on Lobster Conservation Management Area 3, and are as follows:

We have concerns that the issue of transferability, confusing as it is, is complicated by the use of interchangeable terms (not using the same term for the same mechanism each time). Also instead of using different examples throughout the document, examples should be standardized for both LCMAs 2 and 3. We ask ASMFC staff to carefully review the document and make all categories, options and examples as consistent as possible when forwarding recommendations to NOAA Fisheries. Further, the term "banking," which has been purposely removed from the discussion remains in the document and should be omitted.

### **3.2.1 Trap Transfers**

We are in favor of option A, within Partial Transfers, option 1 – status quo, providing the recipient of a multi-LCM trap allocation the ability to choose only one area in which the traps can be fished. Within the category of Full Business Transfers, we support option 2, also authorizing only one area for designation. Under both options, we support the history of the permit/traps being retained in the database.

We believe this will lessen the administrative burden of transferring traps from multi-LCMA permits. Further, support for one area is centered on the fact that, given the ability to designate multiple areas, many permit holders would choose to activate an Area 3 trap allocation, which would not otherwise be activated. AOLA members feel the ability to designate multiple areas may compromise conservation efforts within the Area 3 fishery.

### **3.2.2 LCMA 3 Endorsement**

AOLA supports Option 1. Status Quo. This option maintains an intact Area 3 without separating-out a portion of Area 3, by labeling it LCMA 3-SNE.

**Under 3.2.2, Option 2**, a correction should be noted; the second paragraph in the public hearing document incorrectly states that a permit holder designating LCMA 3-SNE would be allowed to fish anywhere within LCMA 3, using the lower trap cap, and most restrictive rule. However, a designation of LCMA 3-SNE would restrict a permit holder from fishing outside/east of the 70° longitude line. **As noted, the AOLA does not support the creation of an LCMA 3-SNE sub area of Area 3.**

### **3.2.3 Active Trap Cap**

AOLA members support only one active trap cap throughout all of LCMA 3, beginning at 2000 at the commencement of Transferability, reducing after five years to an active trap cap of 1548.

As recommended in Addendum XVIII to the Interstate management plan for American Lobster, the AOLA supports an active trap cap of 2000 traps at the onset of NMFS Transferability Plan. Although this is 55 traps over the present active trap cap in Area 3, it is a mechanism by which ALL Area 3 lobster fishermen will be afforded the opportunity to make use of the transferability program without being precluded from the program. (If we begin Transferability at the current trap cap, approximately 4 Area 3 permit holders would already be at the highest level of traps, therefore prevented from taking advantage of increasing their allocation via transferability). We further support, as noted in our recommendations for Addendum XVIII, a 25% reduction in traps be implemented at a 5% reduction rate per year for five years, but only commencing simultaneously with the implementation of NMFS Transferability Plan. (See table below). The AOLA strongly supports a final Area 3 wide trap cap of 1548 and believes such to be a most important conservation mechanism.

There was much discussion among AOLA members regarding a differential trap cap, and in the end the need for conservation and sustainability of the resource prevailed. Members supported the single, Area 3-wide final trap cap of 1548.

Please note the addition of a new table below, indicating our preference for the singular active trap cap within the entirety of LCMA 3.

**Active Trap Cap table.**

Year	Trap Cap	Reduction
Start	2000	5%
1	1900	5%
2	1805	5%
3	1715	5%
4	1629	5%
5	1548	

**3.2.4 Single Ownership Cap**

AOLA supports the implementation of a Single Ownership Cap (previously referred to as "banking.") This measure will allow for the accumulation of traps in excess of a permit's active trap allocation, thus giving lobster fishermen the ability to purchase the number of traps necessary, in one transaction if so desired, to ultimately bring their total trap allocation to the Single Ownership Trap Cap limit. AOLA members support the ability to have a Single Ownership Trap Cap of 1800 traps in Area 3. While the active trap cap will remain at 1548, having the ability to purchase up to 1800 traps (252 over the active trap cap) will begin to insulate and protect an Area 3 lobster fisherman from possible future trap reductions. Further, conservation will be intensified and managers concerns regarding an influx of latent traps eased, by fishermen retaining an additional, unfishable 252 traps. (See Single Ownership Cap table)

**Single Ownership Cap.**

Year	Number of Traps
Yr 0	2,333
Yr 1	2,216
Yr 2	2,105
Yr 3	2,000
Yr 4	1,900
Yr 5	1,800

**3.2.5 Aggregate Ownership Cap**

Justification for Transferability within LCMA 3 was defined in Addendum IV, as a requirement to insulate the fishery from changes in geographic and cultural aspects due to trap reductions, and to maximize economic efficiency. Trap caps as noted earlier will help to limit consolidation within the fishery.

AOLA supports the definition of ownership as anyone having a full or partial interest in a permit or having ownership stock in any entity which has a full or partial interest in a permit. In addition we support the ASMFC Lobster Board recommending to NOAA Fisheries, the establishment of a current-day control date.

AOLA supports Option 2 under the Aggregate Ownership Cap provision. For purposes of simplification we suggest Option 2 (might) be reworded as follows:

**Option 2: Aggregate Ownership Cap**

On the date NOAA Fisheries control date is published in the Federal Register, any individual, company, entity or stock holder may own or legally increase their trap cap ownership, up to the total number of traps, allowed by five LCMA 3 federal lobster permits. At no time, after a new federal control date is published, shall a single LCMA 3 federal lobster permit holder increase his/her permit allocation to exceed the allowable trap cap for any individual LCMA 3 permit, or the total number of five Area 3 permits.

Aggregate Ownership Cap table

Year	Single Ownership Cap (SOC)	Reduction	Active Trap Cap	Aggregate Cap (SOC x 5)
Start	2,333	5%	2000	11,665
1	2,216	5%	1900	11,080
2	2,105	5%	1805	10,525
3	2,000	5%	1715	10,000
4	1,900	5%	1629	9,500
5	1,800		1548	9,000

**Grandfather Clause**

A "grandfather clause" is also required in this option to accommodate those individuals, companies, entities or stock holders who already possess a greater number of permits than five, prior to, or on the NOAA Fisheries present-day control date being published. Such individuals, companies, entities or stock holders may legally retain the greater



number of permits and traps over and above those documented in the table above; they will continue to have the ability to increase traps ONLY to the Trap Cap allowed by each individual permit. Any additional purchase of permits will be prohibited after the control date is published by NOAA Fisheries.

Finally, a few general, overarching statements regarding Addendum XXI and Transferability: It is imperative for the ASMFC Lobster Board to strongly recommend to NOAA Fisheries that Transferability must be implemented in the 2014 fishing year. ACCSP, ASMFC, States and the Federal Government must give great thought, and then collaborate and cooperate in order to complete a comprehensive database that will fill the needs of the present and future needs of the transferability plan. This is a necessary element to the management of the lobster resource and industry moving forward. Finally, Area 3 lobster fishermen have already reduced the number of active traps by 35%, while their plan calls for an additional 25% active reduction, the trap reduction plan must not commence until the implementation of transferability. If NMFS cannot implement transferability at the beginning of the 2014 fishing year, we recommend holding off the renewal of permits and trap tag allocations/purchases until further into the year, when NMFS is ready for implementation.

I appreciate the opportunity to comment on these most important issues as they pertain to the offshore American lobster resource and the offshore lobster industry. Please feel free to contact me should you have any questions relative to this correspondence or to any other issue.

Sincerely,

*Bonnie P. Hyler*

Bonnie P. Hyler  
Executive Director

cc: Peter Burns, NMFS  
Charles Lynch, NMFS

Cote Fisheries Inc.  
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Atlantic State Marine Fisheries Commission  
Lobster Addendum XXI  
July 8, 2013  
[ktaylor@asmfc.org](mailto:ktaylor@asmfc.org)

I would like to comment on the proposed management options for LCMA 3. I am an area 3 fisherman and will direct my comments to area 3 only.

### 3.2.1 Trap Transfer

#### A. Partial transfers of multi-LCMA trap allocations

Option 1; Status Quo choose one area and forfeit fishing any other area.

Option 1 will help to minimize any more latent effort coming into area3 and SNE and will be easier to enforce.

#### B. Full business transfers of multi-LCMA trap allocations

Option 2; only one area can be chosen to fish in and the other area designation would be forfeited.

Option 2 will help to minimize additional latent coming back into the area. It will be easier to enforce.

### 3.2.2 LCMA3 Endorsement

Option 1; status quo no change to current LCMA 3 area designation

Option 1 because initially the thought was that area 3 did not want to see a large change in historical fishing patterns and cause a large shift of trap effort to the east. The creation of the SNE stock area seemed to open an opportunity for different trap numbers in SNE from the rest of area 3. The thought was by allowing the larger trap numbers in the SNE portion of area would keep the boats fishing there, to stay in SNE. In rethinking that, it would go against area 3's efforts to continually work towards lowering trap numbers throughout area 3.

### 3.2.3 Active trap cap

Option 2; 2000 traps at the beginning of transferability with the active 5% trap reduction for 5 years with a maximum active trap cap of 1548 after the 5 years.

### 3.2.4 Single ownership trap cap

Option 2; be able to own traps over the 1548 active trap cap up to 1800 traps, but still only being able to fish up to the 1548 active trap level.

### 3.2.5 Aggregate ownership cap

Option 2; not sure if legally doable, but would not want to see 1 or 2 entities own the entire area 3 fishery.

Thank you for taking my comments

Bro Cote  
FV William Bowe



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July 10, 2013

Kate Taylor  
Atlantic States Marine Fisheries Commission  
1050 N. Highland St., Suite 200 A-N  
Arlington, VA 22201

Dear Kate:

I'm writing on behalf of the Shafmaster Fishing Company to provide you with our comments on Draft Addendum XXI to Amendment 3 to the American Lobster Fishery Management Plan, titled: SOUTHERN NEW ENGLAND REDUCTIONS IN FISHING CAPACITY FOR LOBSTER CONSERVATION MANAGEMENT AREA 2 AND 3 TRANSFERABILITY MEASURES. Specifically, I have chosen to limit my comments to Management Area 3 in as much as my boats do not fish in Area 2 and the issues there are different (and more complex) than Area 3.

Please note that the title of the Addendum, the description of the Public Comment Process, and the Introduction to the Addendum all state that the Addendum was initiated for the purpose of scaling the Southern New England (SNE) fishery to the size of the resource and "is designed to address the single discrete SNE stock unit..." Despite this intended focus on SNE, however, the most restrictive proposal currently in the Addendum applies only to the Georges Bank and Gulf of Maine portions of the Area 3 fishery, neither of which is depleted nor were they intended to be the subject of the Addendum. I do not understand how an addendum intended to conserve the SNE lobster resource could result in significant restrictions that apply only to the Georges Bank and Gulf of Maine fisheries. My suggestions for revisions to the draft Addendum are intended to return the Addendum to its intended purpose.

The Introduction to Addendum XXI points out that "managers working to recover the SNE stock face significant challenges since they must confront the complexity of administering and integrating six different management regimes crafted primarily (and largely independently) by the Lobster Conservation Management Teams (LCMTs)." It is my opinion that the proposal to create a new lobster management area would unnecessarily further complicate this challenge facing managers. My suggestions intend to eliminate the unnecessary complications that are currently included in Addendum XXI.

### 3.2.1 LCMA 3 Trap Transfers

I am in favor of Option 1 and the status quo whereby a permit holder must choose a single LCMA to fish in and fishing privileges for other LCMA's will be forfeited. This option enhances the goal of sustainability in all areas as it reduces total trap potential in any area.

### 3.2.2 LCMA 3 Endorsement

I oppose the creation of a new lobster management area for the sole purpose of imposing a lower active trap cap on the Georges Bank and Gulf of Maine fisheries. This purpose is not identified in the Addendum and contrasts with the explanation for the LCMA 3 endorsement provided in the Addendum. The Addendum implies that the purpose of the endorsement is to allow a larger active trap cap for the SNE fishery. The current active trap cap for all of Area 3 is 2000 traps. The only reason the SNE designation is being propounded seems to be to reduce the active trap cap for Area 3 to 1548, which would only apply to the Georges Bank and Gulf of Maine portions of Area 3 since the endorsement would give those fishing in SNE a higher active trap cap of 1800. If the restrictive 1548 active trap cap for Georges Bank and the Gulf of Maine is not needed and Addendum XXI was not intended to impose new restrictions on the healthy Georges Bank and Gulf of Maine lobster fisheries, the simple solution is to reduce the active trap cap from 2000 to 1548 for all of Area 3. There is no need to create an additional lobster management area with all of the administrative, enforcement, and operational concerns that go with a new area. The new area designation is only needed if the intent is to create a new, lower active trap cap for Georges Bank and the Gulf of Maine.

### 3.2.3 Area 3 Active Trap Cap (Maximum number of traps allowed to be fished)

I recommend that Option 2 under Section 3.2.3 be changed to reduce the active trap cap for Area 3 by 5% per year for five years, which would bring the active trap cap down to 1548 for all of Area 3. Whereas the current active trap cap for all of Area 3 is 2000, and the LCMT-3 proposes an active trap cap of 1800 for SNE, an active trap cap of 1548 for all of Area 3 would satisfy the intent of the Addendum. However, the 5% annual trap reduction program must be accompanied by concurrent transferability. It is essential to allow permit holders who are below the active trap cap to adjust their operation to an economically efficient and viable number of traps...which I believe is 1548.

I see no connection between the active trap cap and planned trap allocation reductions and I suggest that references to the trap allocation reductions required by Addendum XVIII be removed from section 3.2.3 to avoid confusion.

### 3.2.4 Single Ownership Cap or Individual Permit Cap

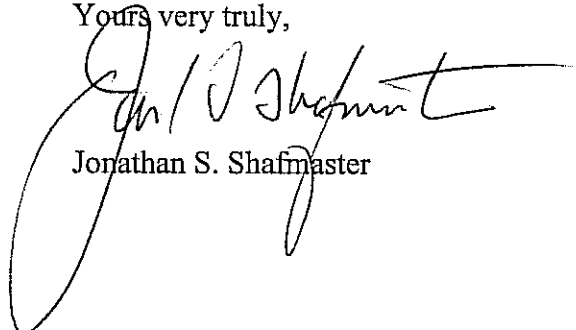
I recommend the elimination of the term "single ownership cap" from the Addendum. As it is used, the term is confusing and is followed in every instance by the more appropriate term, "Individual Permit Cap."

3.2.5 Aggregate Ownership Cap or Ownership Accumulation Limits

I support Option 2 of Section 3.2.5 regarding Ownership Accumulation Limits. This option limits a single company or individual to owning trap allocations that total no more than five times the Individual Permit Cap unless that company or individual owned more than the limit prior to a control date that ASMFC would ask NMFS to publish. I suggest removing the term "Single Ownership Cap" from Section 3.2.5 and replacing it with "Individual Permit Cap." Commissioners should recognize that the "Anti-monopoly Clause" referred to in Option 1 was never implemented and therefore had no effect on fishing businesses during the years from 2003 to 2013. For that reason it would be unreasonable, and likely illegal, for NMFS to implement Option 1 of Section 3.2.5 at this time. Permit ownership involves financing and tax considerations that should not be disrupted by any new ownership accumulation limits. Any limits imposed by Addendum XXI should incorporate a grandfather provision that would recognize and authorize ownership of permits and trap allocations that existed prior to the control date that NMFS would be asked to publish. Any future accumulation limits should apply to the acquisition of additional permits. However, an entity that falls under the grandfather provision should be allowed to acquire additional trap allocations up to the Individual Permit Cap for each of its grandfathered permits.

In closing I would like to suggest that the document, in its final form, include a glossary. There are numerous terms throughout which are very similar but have completely different meanings and there seems to be some inconsistency in how some of those terms are used interchangeably where they should not be. I have included an enclosure which will perhaps provide more precise and clearer definitions for some of those similar but different terms.

Yours very truly,

  
Jonathan S. Shafmaster

JSS/vo

## **Glossary of Terms**

**Active Trap Cap** – the maximum number of traps allowed to be fished by a permitted vessel.

**Aggregate Ownership Cap** – a limit on the number of permits or total trap allocations that a single company or individual may own or share in the ownership of.

**Individual Permit Cap** – the maximum trap allocation that may be assigned to a permit. The Individual Permit Cap may be higher than the Active Trap Cap to allow permit holders to purchase trap allocations in advance of planned reductions in trap allocations.

**Trap Allocation** – the number of traps assigned to a permit through a qualification process, generally based on historical trap use or catch history.

**Trap Banking** – refers to a rule that allows a permit's trap allocation to be higher than the active trap cap. Trap banking is intended to allow permit holders to purchase trap allocations in advance of planned reductions in trap allocations.



## Massachusetts Lobstermen's Association, Inc.

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July 15, 2013

Submitted via email: [ktaylor@asmfc.org](mailto:ktaylor@asmfc.org)

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Atlantic States Marine Fisheries Commission  
1050 N. Highland St. Suite 200A-N  
Arlington, VA 22201

RE: Lobster Draft Addendum XXI

Dear Kate,

The 1300 member Massachusetts Lobstermen's Association would like to submit the following comments with regard to the ASMFC's Lobster Addendum XXI. We are submitting these comments on behalf of our Lobster Area 2 fishermen and they are not being submitted from the Association as a whole.

In general and basically, our Area 2 lobstermen support being able to transfer their trap allocations. They've waited a long time to be able to do this. They further agree with the basic trap tax idea for those transfers. In trying to keep this as simple as possible, they indicated that the plan should not delineate between full and partial transfers. To do so will just confuse the fishermen and the managers. They do support the "Banking" proposal but differ on whether it should sunset at all but if it does, it should be allowed at least for the duration of the trap reductions. We believe this is a six year time period. They recommend that the overall allowance of traps being fished should stay at the maximum of 800 traps in Area 2.

Following down the Addendum XXI sections these are their recommendations some of which have already been noted above.

- 3.1.1 page 7-8 LCMA 2 Trap Allocation Transfer  
Section C Option 3

Never mind full or partial transfers, keep it simple. Let a fisherman fish in areas where he has a trap allocation using the most restrictive rule if he holds more than one trap allocation. Few of our Area 2 fishermen have two Area allocations.

- 3.1.2 page 8 Single Ownership Trap Cap or Individual Permit Cap  
Option 2

Allow trap banking

- 3.1.3 page 9 Sunset Provision for Single Ownership Cap  
Options 1, 2 or 3

Either no sunset for trap banking or allow banking until one year after the last trap reduction.



- 3.1.4 page 9 Aggregate Ownership Cap or Ownership Accumulation Limit Option 2

An entity could not own more than 1600 traps of which not more than 800 can be fished. They would be able to bank the rest and move some of them back to active status as their active traps are reduced. This reduces the allocated trap totals and yet allows a fisherman to keep enough traps active to maintain his business.

The Area 2 lobster fishermen also would like this to begin in 2014 rather than 2015. Their trap allocations in most cases have already been reduced and they were promised transferability. They've waited for the ability to transfer. Management should be able to get this up and running if the proposed plan, through this Addendum, is kept simple. Also, trap transferability should begin at the same time as trap reductions begin.

The LMA 2 lobster fishermen did not comment on the LMA 3 options so we have nothing to submit on these proposals (p 9-15).

Once again we are conveying these recommendations on behalf of the Massachusetts LMA 2 lobster fishermen.

Respectfully yours,

*William Adler*

Executive Director



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

JUL 12 2013

Mr. Robert E. Beal  
Executive Director  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200 A-N  
Arlington, VA 22201-2196

Dear Bob:

My staff reviewed the Atlantic States Marine Fisheries Commission's draft Addendum XXI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (Plan). The draft addendum proposes several management alternatives that could modify the Lobster Trap Transfer Program in Areas 2 and 3 to scale the Southern New England (SNE) lobster fishery to the size of the resource.

We greatly appreciate the work that went into the document's creation. Draft Addendum XXI is a significant document. Unfortunately, the significance of the document's proposed measures is concerning. Specifically, the document would add new details and change the Commission's Trap Transfer Program before NOAA's National Marine Fisheries Service (NMFS) and the Atlantic Coastal Cooperative Statistics Program (ACCSP) could complete and implement the originally recommended Trap Transfer Program.

As you know, NMFS is actively developing new regulations to implement the Trap Transfer Program based on the Commission's recommendations in the current Plan. This rulemaking predates draft Addendum XXI and, therefore, does not include analysis of the measures in the draft addendum, such as the modified trap caps, restrictions on permit ownership, retention of the multi-area trap history with the transfer of a partial trap allocation, and the differential trap caps for Area 3. Similarly, ACCSP's Trap Transfer Database, currently under development, has not been designed to incorporate Addendum XXI measures. If the Commission were to adopt measures that alter the basic elements of the Plan's Trap Transfer Program, it could challenge our ability to maintain consistency with the Commission's Plan and would compromise implementation of the Trap Transfer Program.

Sections 3.1.1 and 3.2.1 of draft Addendum XXI exemplify how the document deviates from the originally proposed Trap Transfer Program. These sections offer alternatives that would allow a Federal permit holder to claim the multi-area history of a trap when a partial trap allocation is purchased. In contrast, Addendum XII (section 4.3.3.3) clearly states that the recipient of a partial trap allocation with a multi-area trap history must choose only a single area that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other areas will be forfeited. The Commission's Lobster Board (Board) gave great thought before adopting that provision in Addendum XII and convened a Transferable Trap Subcommittee made up of





managers and industry experts. The subcommittee examined these issues and set forth its logic in an important White Paper presented to the Board in 2008-2009. The White Paper discussed the difficulty in administering multi-area traps, particularly as the traps are transferred year after year. Those difficulties that existed in 2009 (when Addendum XII was approved) still exist today.

However, should the Board decide to reverse direction on a management issue, Addendum XXI should provide more detail and rationale for doing so. At present, the rationale for many of the proposals in draft Addendum XXI is not clear. For example, the Commission's public document provides limited justification for the ownership cap proposal. The document states a purpose of the cap is "to keep one entity from exerting significant control over the markets" (Area 2) and "inhibit the excessive consolidation of industry" (Area 3). However, the document neither defines these concepts nor details how the measures are related to the problems they are designed to correct. It may be beneficial to consider an additional option, i.e., to have no restriction on the number of permits an entity may own, which would be the status quo option for Federal permit holders. Even if an unrestricted limit on permits were a non-preferred option, discussion of it might provide helpful context for Board members when they discuss what a proper cap number might be. At present, even if there is justification for having an ownership cap, the document is silent on why the cap should be two permits in Area 2 and five permits in Area 3. While an ownership cap of two permits might thwart monopolistic control (a stated concern by some), so too could an ownership cap set at 10 times that number or greater. Again, as we have stated in the past, monopolistic control of the domestic lobster industry by a limited number of Area 2 or Area 3 participants is unlikely, because combined landings from both areas account for only a small percentage of the overall domestic landings.

Some issues in the document may not logically fit into the Commission's Plan. One example is the splitting of Area 3 into two separate areas, as proposed in section 3.2.2. The Commission has worked diligently with industry, managers, and scientists to adopt measures to address the poor stock conditions in SNE; yet this addendum proposes to allow those on the SNE stock component of Area 3 to fish a higher trap allocation than those fishing on the Georges Bank stock. Further, the document does not explain how splitting Area 3 would impact the ability of permit holders to buy and sell traps within, or outside of, the Area 3 sub-areas. Additionally, this section explains that a permit holder who declares into the Area 3-SNE can fish anywhere in Area 3. This section, however, may not accurately represent the initial intention of this option, which was designed to restrict those who declare into the SNE component of Area 3 to only that sub-area, but allow them to fish a higher trap allocation than those in the Georges Bank portion of Area 3.

In sum, draft Addendum XXI presents multiple, complex management measures for two different management areas. Elements of the draft addendum conflict with the current Plan, as specified in Addenda VII and XII, and with existing Commission recommendations to NMFS to implement a uniform state/Federal Trap Transfer Program. Consequently, NMFS supports options in draft Addendum XXI that align with recommendations to us as previously outlined in earlier addenda. Further, as the Commission's Plan becomes more complicated and the multi-jurisdictional impacts of measures become more evident, the need for an effective Trap Transfer Database becomes increasingly critical. Obviously, to the extent Addendum XXI will require

major changes in database design—which would appear to be the case—delays will undoubtedly result in the implementation of the Commission’s Trap Transfer Program. As we have indicated on the record, a complete and operational interjurisdictional Trap Transfer Database is essential to the successful implementation of the Trap Transfer Program. Finally, regardless of the decisions made on Addendum XXI, we urge the Board to explain its rationale for its Addendum XXI choices in a more robust manner so the public is better informed and the administrative record is clear.

Thank you for the opportunity to comment on these important issues. If you have any questions, or if you would like to discuss our comments on draft Addendum XXI in more detail, please contact Peter Burns of my staff ([peter.burns@noaa.gov](mailto:peter.burns@noaa.gov) or (978) 281-9144).

Sincerely,



*for* John K. Bullard  
Regional Administrator

**Off the Shelf, Inc.**  
145 High St. # A  
Westerly, RI 02891

American Lobster Fishery Management Board  
Atlantic States Marine Fisheries Commission  
1050 North Highland St. Suite 200A-N  
Arlington, VA 22201

RE: Lobster Draft Addendum XXI

By email to: [ktaylor@asmfc.org](mailto:ktaylor@asmfc.org)

Dear Commissioners:

I'm writing on behalf of Off the Shelf, Inc. to provide you with our comments on Draft Addendum XXI to Amendment 3 to the American Lobster Fishery Management Plan. Off the Shelf, Inc. owns two federal lobster fishing permits with trap allocations for Area 3.

### **3.2.3 Area 3 Active Trap Cap (Maximum number of traps allowed to be fished)**

We do not support continuing reductions in the Active Trap Cap, which we consider to be more of a business efficiency issue than a lobster conservation issue. We do support continuing reductions in the total number of traps allowed to be fished in Area 3, implemented through reductions in individual trap allocations. The principle behind transferable fishing privileges is that the total can be reduced for conservation purposes while allowing individual businesses to continue to operate at the level that they consider to be most efficient. Each business should be free to make that determination. That principle has been recognized in statements in previous Addenda to the effect that "Industry members who envision improvements in the economics of the fishery are willing to undertake these trap reductions as long as the relief valve of trap allocation transfer is available to maintain a profitable fishery for the remaining participants." Continuing reductions in the Active Trap Cap eliminate this relief valve for permit holders who began the trap allocation reduction process with allocations higher than the proposed Active Trap Cap. In contrast to previous Addenda, Addendum XXI implies that the Active Trap Cap should be reduced as individual trap allocations are reduced. We

consider this to be contrary to the principles on which transferable fishing privileges are based.

Lowering the active trap cap has efficiency implications that have not been analyzed. National Standard 5 requires the National Marine Fisheries Service to consider efficiency in the promulgation of regulations. The NMFS National Standard Guidelines point out that “an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable” because efficient utilization of fishery resources is one way that a fishery can contribute to the Nation’s benefit with the least cost to society.

### **3.2.4 Single Ownership Cap or Individual Permit Cap**

We recommend the elimination of the term “single ownership cap” from the Addendum. As it is used, the term is confusing and is followed in every instance by the more appropriate term, “Individual Permit Cap.” We agree with Option 2 of Section 3.2.4, which would allow a permit to have a trap allocation larger than the active trap cap in effect at the time, in order to allow advance purchases of trap allocations intended to cover planned reductions in trap allocations (trap banking).

### **3.2.5 Aggregate Ownership Cap or Ownership Accumulation Limits**

We don’t believe that an Aggregate Ownership Cap is necessary for the Area 3 lobster fishery. We are not aware of any analysis that shows that there would be any public benefit from an Aggregate Ownership Cap for Area 3. Neither has there been any analysis of the potential losses in efficiency that may occur if lobster fishing firms are prevented from achieving economies of scale that require more permits or traps than would be allowed by the ownership cap proposed in Addendum XXI. The Area 3 lobster fishery provides a small fraction of the overall supply of American lobster. It is inconceivable that concentration of ownership in the Area 3 lobster fishery could have a detrimental impact on consumers.

Thank you for your consideration of our comments.

Sincerely,

Richard B. Allen, President

Off the Shelf, Inc.

Robert Beal, Executive Director  
Atlantic State Marine Fishery Commission  
1050 N Highland St, Arlington, V.A. 22201

Sunday, July 14, 2013

Dear Bob:

The following include the comments of the Rhode Island Lobstermen's Association in regards lobster Addendum 21. We appreciate the opportunity to comment and look forward to providing additional input at the Lobster Board meeting. Our comments follow the same format as the addendum.

**Area 2:**

**Part 3.1.1 LCMA 2 Proposed Management Options-Partial Transfers**

**Section A:**

Option 1: Choose a single area -We are totally opposed to this option. We have summarized our comments into one section which applies to both sections of the addendum (Areas 2 and 3 by reference). We note that as a general rule, partial transfers of traps are not currently allowed in State or federal waters so it does a disservice to the management process to characterize this option as status quo. The Commission approved an addendum which requires this but that addendum has not been fully implemented to date. This might appear a picky point but it is extremely important for Board members to realize that the only State which allows partial transfers is Massachusetts and we believe that practice only applies to the state waters fishery. NMFS currently allows the transfer of all multi-LCMA trap allocations as part of a full transfer. Reasons for our opposition to this proposal are listed below.

Options 2, 3, and 4: These three options all provide the industry with varying degrees of flexibility to retain multi-area trap allocations, and all are preferable to option 1. Of the three we prefer option 4, which would continue the current NMFS practice of allowing individuals to retain fishing rights for all areas. That practice only exists for transfers of full federal permits but we think it appropriate to also extend the policy to partial transfers of traps. This policy allows individuals to retain fishing rights for all areas that the permit originally qualified for when the trap allocation program was put in place. Fishermen would then select areas annually, and fish under the most restrictive rule.

Of the remaining two options ((2 or 3) we prefer three and then two, in that order of preference. We believe that lobstermen should retain the flexibility to select areas annually and fish under the most restrictive rule. If it becomes necessary to limit the flexibility of the industry to simplify the tag administration/transfer process then we would reluctantly support option 2, which forces individuals to select a maximum of two areas, but they should be allowed to make the selection annually in association with the tag issuance process.



## Detailed reasons for opposing option 1, and for supporting option 2, 3 and 4

- All of the multi area trap allocations were originally based on fishing history (actual performance within an area), so it is patently unfair to limit fishing rights to a single area (option 1), when they were based on actual fishing performance. In the case of Area 3, the original trap allocations were made in 1999, so individuals have been buying and selling permits and trap allocation, with multi area trap allocations, since that time. We also offer that some of the qualification criteria for these areas were very significant. For example in Area 3 an individual had to prove that they landed 25,000 lbs. of lobsters during the appropriate timeline/qualifying timeline in order to obtain a trap allocation. This is an extremely high performance standard, and the fishing rights should be retained by the vessel, even during the partial transfer of traps. The same logic applies to Area 2.
- The flexibility to retain multi-area trap allocation is important to the economic survival of the inshore lobster industry and coastal communities. This is particularly true for Area 2 fishermen, but also applies to all of the other inshore management areas including those in Areas 1, 4, 5, and 6. If the scientific guidance is correct, and the inshore lobster fishery is collapsing, then some of the larger vessels in Area 2 will need the flexibility, at least seasonally, to fish in Area 3 for lobster and other species. Otherwise they will not survive economically. The same logic applies to the other fishing area should they consider adopting transferability.
- This addendum will set a precedent for other LCMA's if they desire to implement transferability in the future. We offer the observation that the fishermen in Areas 1, 4, 5 and 6 will want to retain the same flexibility as Area 2 fishermen so that they can adjust to environmental change in the near shore waters, and also be able to access developing fisheries such as the offshore crab fishery, which is currently unregulated. In order to do so, they will need to be able to retain their multi – LCMA lobster trap allocations.
- No compelling management justification has been presented in support of option 1 other than it requires more work on the part of management staff. We dispute this rationale since the number of permit holders and traps in Areas 2 and 3 are declining, and fairly dramatically. We do not think the current rationale adequate justification for taking fishing rights and opportunities away from fishermen
- Some individuals have paid a great deal of money to purchase vessels with multi-area trap allocations, in order to retain future fishing flexibility. The multi area allocations form the basis of the current value of some permits, and that value should not be eroded due to a restriction that limits multi area permits to a single fishing area, upon transfer. If the process eliminates fishing rights away when they transfer, then the value of a permit will decline significantly. That value should remain with the vessel so that individuals can recover their investment when they sell /transfer traps in the future.
- We also question the legal basis for any proposal (option) that requires individuals in one LCMA to surrender history based fishing rights (upon the transfer of traps)



but allow other similarly situated federal permit holder in other LCMA areas to retain those same rights. NMFS staff has repeatedly reminded us of the federal requirements for equal treatment of similarly situated federal permit holders, and Option 1 appears to violate that guidance. This last point also raises the issue of equal treatment under the law for similarly situated State and Federal permittee/individuals. For example, individuals who fish with federal permits in Area's 1, 4, 5, and 6 will still be allowed to retain their multi area fishing privileges and fish under the most restrictive rule. By contrast, a similarly situated federal permittee in Areas 2 or 3 will be required to possibly select a single area, and forfeit fishing privileges in the other areas. This situation does not appear fair or equitable.

- Individuals with small allocations of Area 3 traps should be allowed to gradually add Area 3 traps in small increments, as opposed to purchasing an Area 3 vessel in its entirety. Not many Area 2 fishermen have the financial resources or access to capital needed to purchase an entire Area 3 allocation or Area 3 vessel/trap allocation. We note that there are a number of Area 1 and 2 fishermen with small allocations of Area 3 tags, and they might find it desirable to gradually add to that allocation. Also keep in mind that there are economies of scale for entering the offshore fishery as most individuals need to fish at least 400 traps to justify the travel cost due to distance constraints. This means that it will take a long time for an individual to purchase trap tags for Area 3, during which time they will be precluded from fishing in the area due to travel costs.
- The major portion of the crab resource is located in Area 3, and some of the Area 2 vessels will also need the flexibility to fish in that fishery. They will need multi area traps tags to do so, and need the flexibility to fish under the most restrictive rule during the summer and fall, and then inshore in the winter.
- The Commission adopted, but has not actually implement, the proposal to limit transfers of traps to single area. That provision was included in Addendum 12, yet it has not been implemented on a coast wide basis to date (we understand that Mass. is the only state to adopt it for state waters). Addendum 12 was adopted in Feb 2009 and the needs of the industry and scientific conclusions have changed substantially since that time, particularly in light of well documented environmental changes in NE waters, and the technical committee recommendation to close the fishery. We also point out that the Board did not adopt the requirement for a 50 % trap cut in Area 2 until recently. Finally a number of recent NMFS reports have developed compelling conclusions documenting environmental change, and spatial changes in species distribution, since 2009. All of these developments have had a major impact on our thinking on the issue, and result in us concluding that the industry needs more flexibility to fish in multiple areas, particularly offshore areas. The only way the industry can accomplish this, is if they retain their multi area allocations and fishing rights (option 4).
- NMFS currently allows the transfers of all fishing rights for all federal LCMA's. The agency currently tracks all of the changes now, and has done so ever since they adopted a history based system for Areas 3, 4, and 5. This means that NMFS has been tracking multi- area trap allocations since 1999. The lobster industry believes

that it reasonable to require the management system to continue this practice. The only change being proposed by the industry is to allow individuals with partials trap transfer to get the same rights. From a purely factual perspective it is important for the Board to realize that the industry is consolidating and getting smaller in the process. As the data will show, the number of permittee's is declining , the number of traps fished is dropping, and overall traps allocated in Area's 2 and 3 are scheduled to be reduced by up to 50 % ( from their baseline value ). It is therefore quite inconceivable that our preferred options (adoption of option 4 for partial transfers and option 3 for full transfers) will impose a significant new administrative burden on the management agencies.

- We also note, that the majority of the vessels/ permittee's in the in Area 2 fishery are small inshore vessels that lack the capacity to fish 60 miles offshore. Given that fact, how likely is it that a large number of inshore vessels y will actively fish in Area 3, or even purchase trap tags for that area. One also need consider the fact that Area 3 tags are the most expensive to purchase which further discourages inshore vessels from entering the Area 3 fishery. It is equally improbable that a considerable number of offshore vessels will purchase inshore trap tags given the status of the inshore fishery and resource. If the administrative burden is the primarily driver of the decision, then the Board should adopt Option 2 which limits multi area tags to two area or the Board could also consider raising the minimum trap transfer allotments from 10 to a higher value which would discourage/lessen the number of transfers. We recognize that NMFS has administrative concerns but those concerns should be addressed by these approaches.

## **Section B; Full Business Transfers**

### Option 1: Status Quo

We support this proposal and again point out that this is the current NMFS policy for federal waters, and further believe that the practices should be extended to partial transfers of traps in all areas of state and federal waters in Areas 2 and 3.

### Option 2: 1 Area can be fished

We oppose this alternative for the reasons noted above.

## **Section C; Transfers of Multi LCMA trap allocation partial or full business**

Option 1: Two Areas Can Be Fished- Of the three alternatives this is our lowest preference

Option 2: Two Areas Can Be Fished/designate areas annually- This alternative is less desirable than option three but we would reluctantly support it if it is necessary to lessen the administrative burden on the management agencies

Option 3: All areas can be fished – We support this option and alternative for the reasons noted in this letter.

### **Area 2-Section 3.3.2-Single Ownership Cap**

Option 1: Status Quo- We believe it is desirable to cap the level of consolidation in the Area 2 industry so we oppose this alternative.

Option 2: Single Ownership Cap or Individual Permit Cap

We support this alternative. Simple logic for our position is that we do not want to repeat the mistakes in the NE groundfish catch share program and have a few individuals own access to the entire Area 2 lobster fishery. A secondary reason is that the 50 % cut in traps is designed to lower fishing pressure on the resource but will have the inevitable affect of forcing the consolidation of some aspects of the industry. In order for individuals to plan their business in a multi year timeframe it will be necessary to purchase traps in advance of the cuts, rather than annual increments or purchases.

### **Section 3.1.3 Sunset Provision**

No comments

### **Section 3.1.4 Aggregate Ownership Cap**

Option 1: Status Quo – Opposed to this alternative- This is really a mischaracterization of status quo as the federal government (NMFS) does not limit the number of federal lobster permits that an individual can own. We can site dozens of examples of individuals who own multiple federal lobster permits in both the fix gear and mobile gear sections Area 2 and 3.

Option 2: We support option 2. As noted earlier the consolidation of the industry is inevitable, but we would like to retain the ownership characteristics of the current industry. Limiting the degree of consolidation is desirable but individuals also need the ability to purchase and own more than a single allocation of traps in Area 2 in order to plan their business for the future and adjust to the trap cuts. This alternative provides the needed flexibility to the industry.

### **Area 3:**

(Note: Most of the logic for the positions that follow are the same as for Area 2 and therefore have not been repeated for brevity sake.)

### **Part 3.2.1 LCMA 2 Proposed Management Options-Partial Transfers**

#### **Option A Partial Transfer of Multi-area allocations;**

Option 1: Status quo – Opposed for same reason as noted for Area 2;

Option 2, 3, and 4: These three options all provide the industry with varying degrees of flexibility to retain multi-area trap allocations, and all are preferable to option 1. Of the three we prefer option 4, which would continue the current NMFS practice of allowing individuals to retain fishing rights for all areas. Logic same as Area 2.

## **Section B; Full Business Transfers**

### Option 1: Status Quo

We support this proposal and again point out that this is the current NMFS policy for federal waters, and further believe that the practices should be extended to partial transfers of traps in all areas of state and federal waters in Areas 2 and 3.

### Option 2: 1 Area can be fished

We oppose this alternative for the reasons noted above for Area 2.

## **Section C; Transfers of Multi LCMA trap allocation partial or full business**

Option 1: Two Areas Can Be Fished- Of the three alternatives this is our lowest preference

Option 2: Two Areas Can Be Fished designated-designate areas annually- This alternative is less desirable than option three but we would reluctantly support it if it is necessary to lessen the administrative burden on the management agencies

Option 3: All areas can be fished – We support this option and alternative for the reasons notes in this letter.

### **Alternative 3.2.2. LCMA Endorsement;**

No comment.

### **Trap and Permit Caps on ownership;**

Option 1: Status quo - Opposed as will not reduce traps as proposed by the industry.

Option 2: Active trap cap- support as this is the Area 3 proposal to respond to the SNE stock decline.

### **3.2.4 Single Ownership Cap or Individual Permit Cap**

Option 1: Status quo- opposed;

Option 2: Single Ownership cap – we support this option, as it was suggested by the Area 3 industry as a mean of responding to the declining resource condition in SNE.

### **3.2.5 Aggregate Ownership Cap**

Option 1: Totally opposed- as this is completely unenforceable as written. Numerous individuals already exceed this limit with multiple federal permits (one in particular has in excess of 30 permits in various corporate identities). Although this provision is included in an ASMFC addendum, we note it has not been implemented to date by NMFS, nor has it been implemented by the states. States limit the number of State licenses to one but do not limit

access to federal permits. As we did for Area 2, we also raise the same point on the proposed 2003 deadline, and would suggest that is totally unrealistic to expect NMFS to revoke permits, issued in excess of the limit, after 2003. The only way to adopt this concept / regulation is to do it prospectively (date of implementation foreword) and not retroactively.

Option 2: Aggregate ownership cap- we support this proposal as it was crafted by the Area 3 LCMT after extensive debate and discussion. It is designed to be implemented in conjunction with the trap cuts that have been proposed for Area 3 as a means of limiting the excessive consolidation of the offshore industry.

**Final point: Implementation deadline.** The following comments apply to both Area 3 and 2. History based trap allocation programs were adopted in Area 3 in 1999 and in Area 2 in late 2004. Both areas formally requested that the management process adopt and implement trap transferability in late 2004. There has been little or fleeting progress on this concept for almost nine years. Some individuals have suggested delaying implementation of the current proposal until 2015 for a range of administrative reasons. We disagree with that suggestion/ strategy, as some individuals in Area 2 were disadvantaged by the original allocation criteria, and have waited nine years to improve their plight. In our view any strategy that delay implementation is illogical, unwarranted, nor in the best interest of the SNE lobster resource. It is critical to get on with the trap cuts before inactive traps get reactivated.

As an alternative we propose the following concept. Example: If the management system needs an additional 3 months to implement the trap cuts and trap transfer program, then we suggest delaying the issuance of trap tags for three months. That will result in linkage between the new trap allocations, the trap cuts, and the next tag issuance cycle.

Thank you for the opportunity to comment and I am happy to answer any questions in regards our positions.

Lanny Dellinger,

President

RI Lobstermen's Association

- 3. Amend § 17.40 by:
- a. Revising paragraph (c)(1); and
- b. Removing paragraph (c)(3).

The revision reads as follows:

#### § 17.40 Special rules—mammals.

(c) \* \* \*

(1) Except as noted in paragraph (c)(2) of this section, all provisions of § 17.31 apply to the lesser slow loris (*Nycticebus pygmaeus*); Philippine tarsier (*Tarsius syrichta*); white-footed tamarin (*Saguinus leucopus*); black howler monkey (*Alouatta pigra*); stump-tailed macaque (*Macaca arctoides*); gelada baboon (*Theropithecus gelada*); Formosan rock macaque (*Macaca cyclopis*); Japanese macaque (*Macaca fuscata*); Toque macaque (*Macaca sinica*); long-tailed langur (*Presbytis potenziani*); purple-faced langur (*Presbytis senex*); and Tonkin snub-nosed langur (*Pygathrix [Rhinopithecus] avunculus*).

\* \* \* \* \*

Dated: May 31, 2013.

**Daniel M. Ashe,**

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013-14007 Filed 6-11-13; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 080219213-3470-01]

RIN 0648-AT31

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes new Federal American lobster regulations that would control lobster trap fishing effort by limiting access into the lobster trap fishery in Lobster Conservation Management Area 2 (Federal nearshore waters in Southern New England; Area 2), and in the Outer Cape Cod Lobster Conservation Management Area (Federal nearshore waters east of Cape Cod, MA; Outer Cape Area). Additionally, this action would implement an individual transferable trap program for Area 2, the Outer Cape Area, and Lobster Conservation Management Area 3 (Federal offshore

waters; Area 3). The proposed trap transfer program would allow Federal lobster permit holders to buy and sell all or part of a permit's trap allocation, subject to the restrictions set forth in the proposed rule.

**DATES:** We must receive your comments no later than July 29, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2012-0244, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2012-0244, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to: Peter Burns, Fishery Policy Analyst, Sustainable Fisheries Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Lobster Transferable Trap Proposed Rule."
- **Fax:** (978) 281-9135; Attn: Peter Burns.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

You may obtain copies of the Draft Environmental Impact Statement (DEIS), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), prepared for this action at the mailing address specified above; telephone (978) 281-9180. The documents are also available online at <http://www.nero.noaa.gov/sfd/lobster>.

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to the mailing address listed above and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Peter Burns, Fishery Policy Analyst, phone (978) 281-9144, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

These proposed regulations would modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C 5101 *et seq.*, which states that in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission) and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

##### Purpose and Need for Management

The purpose of these proposed measures is to manage the American lobster fishery in a manner that maximizes resource sustainability, recognizing that Federal management occurs in consort with state management. To achieve this purpose, NMFS must act in response to the Commission's recommendations in several addenda to the Commission's ISFMP for American Lobster (Plan, Lobster Plan) to control lobster trap fishing effort in a manner consistent with effort control measures already implemented by the states. The proposed measures seek to (1) promote economic efficiency within the fishery while maintaining existing social and cultural features of the industry where possible, and (2) realize conservation benefits that will contribute to the prevention of overfishing of American lobster stocks.

##### Background

The American lobster resource and fishery is managed by the states and Federal government within the framework of the Commission. The role of the Commission is to facilitate cooperative management of interjurisdictional fish stocks, such as

American lobster. The Commission does this by creating an ISFMP for each managed species or species complex. These plans set forth the management strategy for the fishery and are based upon the best available information from the scientists, managers, and industry. The plans are created and adopted at the Commission Management Board level—e.g., the Commission's Lobster Board created the Commission's Lobster Plan—and provide recommendations to the states and Federal government that, in theory, allow all jurisdictions to independently respond to fishery conditions in a unified, coordinated way. NMFS is not a member of the Commission, although it is a voting member of the Commission's species management boards. The Atlantic Coastal Act, however, requires the Federal government to support the Commission's management efforts. In the lobster fishery, NMFS has historically satisfied this legal mandate by following the Commission's Lobster Board recommendations to the extent possible and appropriate.

The Commission has recommended that trap fishery access be limited in all Lobster Conservation Management Areas (LCMAs or Areas). The recommendations are based in large part on Commission stock assessments that find high lobster fishing effort as a potential threat to the lobster stocks. Each time the Commission limits access to an area, it recommends that NMFS similarly restrict access to the Federal portion of the area. NMFS received its first limited access recommendation in August 1999 when the Commission limited access to Areas 3, 4, and 5 in Addendum I. NMFS received its last limited access recommendation in November 2009, when the Commission limited access to Area 1 in Addendum XV. NMFS has already completed rules that limit access to Areas 1, 3, 4, and 5. This proposed rule responds to the Commission's limited access recommendations for Area 2 and the Outer Cape Area. It also responds to the Commission's recommendation to implement a trap transferability program in Areas 2 and 3 and the Outer Cape Area. The specific Commission recommendations, and NMFS's response to those recommendations, are the subject of this proposed rule and are discussed below.

## Proposed Changes to the Current Regulations

### 1. Outer Cape Area

#### a. Outer Cape Area Commission Recommendation

In 2002, the Commission recommended that the states and NMFS limit entry into the Outer Cape Area based upon certain criteria developed by the Commission. The Commission adjusted the specifics of those criteria in 2008, and those adjusted criteria remain in place today. Specifically, the Commission recommended that the states and NMFS limit Outer Cape Area access to those permit holders who could demonstrate a prior fishing history (1999–2001) within the area. Further, the Commission recommended that the states and NMFS allocate traps to the qualifiers based upon “effective traps fished” during the years 2000–2002. In short, “effective traps fished” was to be the lower value of the maximum number of traps reported fished for a given year compared to the number of traps predicted to catch the reported poundage of lobsters for those years based upon a scientifically reviewed regression formula. The specific recommendations are contained in Commission Addendum III (February 2002) and Addendum XIII (May 2008).

The Commission's Outer Cape Area recommendations were the product of significant public debate and discussion. The Commission initiated discussion of Addendum III in July 2001 and sent a draft addendum to the various Area Lobster Conservation Management Teams (LCMTs) for discussion and refinement. An LCMT is a team of industry representatives—each Lobster Management Area has one LCMT—who provide industry expertise and perspective on potential management measures. The addendum was approved in draft form in October 2001 and presented in Commission public hearings in November 2001 before the Commission ultimately approved it at a public meeting in February 2002. Addendum XIII went through a similar public process before the Commission adopted it in May 2008.

NMFS responded to the Commission's Outer Cape recommendations with a public process of its own. Ever since the transfer of lobster management to the Commission, NMFS has notified Federal permit holders that regulatory actions in the lobster fishery could potentially involve limiting access to Federal Lobster Conservation Management Areas (64 FR 47756, September 1, 1999). Moreover, NMFS published an Advanced Notice of Proposed

Rulemaking seeking comment on the issue on September 5, 2002 (67 FR 56800). When the Commission added effort control as a component of the Area 2 plan, NMFS published further Advanced Notices of Proposed Rulemaking documenting the agency's decision to combine the Outer Cape Cod and Area 2 limited entry program rulemakings and to separate the effort control rulemakings from lobster brood stock protection rulemakings (70 FR 24495, May 10 2005, and 70 FR 73717, December 13, 2005). Further, NMFS analyzed the Commission's recommendations in a DEIS made available to the public on May 3, 2010 (75 FR 23245). NMFS also presented its analysis at a series of DEIS public hearings from Maine to New Jersey, at which it received numerous comments. Those comments and NMFS' responses are set forth in this proposed rule.

#### b. Outer Cape Area—NMFS's Response to Commission Recommendations and Proposed Outer Cape Area Rule

NMFS proposes to limit access into the Outer Cape Area in a manner consistent with the Commission's recommendations. NMFS intends to qualify individuals for access into the Outer Cape Area based upon verifiable landings of lobster caught by traps from the Outer Cape Area in any 1 year from 1999–2001. Doing so will satisfy the Outer Cape Area Plan's purpose, as stated by the Commission in February 2002 (when the Commission approved the Outer Cape Area amendment) to “. . . control the expansion of fishing effort in the Outer Cape Area and to establish Outer Cape trap levels at a targeted level (approximately 33,000 traps).”

The choice of 2001 as a cut-off year is reasonable for many reasons. First, Commission lobster limited access plans typically use a cut-off date after which access is restricted to avoid speculators from declaring into an area after-the-fact in an effort to gain access to an area that they typically did not fish. Second, area individuals knew or should have known about the potential date because the Commission's intentions were known at the time: Addendum III was drafted, debated, and the subject of public hearings in 2001. Third, and most importantly, the involved states have already used that same date as the cut-off for state lobster licenses, and NMFS' choice of that date will allow for better alignment between the states and Federal Government. The Commission Plan added qualifying years before the cut-off date (i.e., 1999 and 2000) to provide the fishing industry flexibility without subverting the plan's desire to

cap current effort. That is, in any given year, lobster fishers may have altered their fishing effort in response to external issues (e.g., health, family, and/or other personal reasons). An additional 2 qualifying years helps mitigate the potential for an allocation to be based upon an aberrant year's fishing history.

NMFS also proposes to allocate Outer Cape Area traps according to a Commission regression analysis formula that calculates effective trap fishing effort based upon verifiable landings of lobster caught by traps from the Outer Cape Area in any one year from 2000–2002. The Commission recommended using a different 3-year period at the request of Massachusetts' Director of Marine Fisheries, who at public hearings learned that use of the 2000–2002 data would better reflect existing effort and obviate the need for a hardship appeal process. The Commission's use of the regression formula in Addendum III and XIII to establish effective traps fished is also reasonable. In the absence of reliable trap effort data, state scientists sought to develop an effective method to predict the maximum number of traps fished. Since annual audits had shown that, on average, lobstermen more accurately reported their total lobster landings on their state data collection forms (1–2 percent variance), when compared to their reported maximum number of traps fished, a regression analysis was developed based on total reported lobster landings. The use of the regression formula removes the possibility that someone will benefit from simply reporting more traps than were actually fished. The Commission's Technical Committee peer reviewed the regression analysis, and although they noted the formula tended to favor full-time fishermen, the Technical Committee confirmed its validity. NMFS analyzed the formula and its rationale in the DEIS and concluded that the formula and its rationale were scientifically sound. NMFS also notes the importance of consistency in the state and Federal limited access programs, and that the potential for regulatory disconnects would be increased were the states and Federal government to allocate traps according to different criteria and formulas.

NMFS proposes two types of appeals to its Outer Cape Area Limited Access Program. The first appeal is a Clerical Appeal. The second is a Director's Appeal.

The Clerical Appeal would allow NMFS to correct clerical and mathematical errors that sometimes inadvertently occur when applications

are processed. It is not an appeal on the merits and would involve no analysis of the decision maker's judgment.

Accordingly, the appeal would not involve excessive agency resources to process. NMFS used an identical appeal with identical criteria to great success in its Area 3, 4, and 5 Limited Access Program.

The Director's Appeal would allow states to petition NMFS for comparable trap allocations on behalf of Outer Cape Cod applicants denied by NMFS. The appeal would only be available to Outer Cape Cod applicants for whom a state has already granted access. The state would be required to explain how NMFS's approval of the appeal would advance the interests of the Commission's Lobster Plan. The rationale for this appeal is grounded in the desire to remedy regulatory disconnects. NMFS knows that states have already made multiple separate decisions on qualification, allocation, and at least in some instances, trap transfers for the state portion of dually permitted fishers. NMFS is, therefore, faced with the task of making these same decisions and reaching identical results based upon Federal criteria that attempts to mirror the state criteria, which themselves might contain slight differences. As noted throughout the DEIS, the potential for regulatory disconnects is significant. While NMFS expects to achieve identical results for the vast majority of dually permitted fishers, it would be unreasonable to expect perfect matching in such circumstances. The Director's Appeal will help prevent the potential damage that such a mismatch could create.

The Director's Appeal would allow more effort to qualify and enter the fishery than would otherwise occur. NMFS, however, does not expect that this potential additional effort would negatively impact the fishery. First, the number of appeals is capped by the number of individuals who have already qualified under their state permit. These individuals, therefore, are already exerting fishing pressure on the lobster stock, albeit limited to state waters. Second, the DEIS analysis suggests good correlation between state qualifiers and potential Federal qualifiers. In other words, although some disconnects will likely occur, the DEIS predicts that the number will be relatively low. Finally, even if NMFS encounters a greater than predicted number of Director's Appeals, NMFS asserts that synchronicity is so crucial as to be the overriding factor in proposing the appeal.

The proposed rule also adopts the Commission's 2-month winter trap haul-out recommendation. The exact dates of

the 2-month closure are less important than making sure that the Federal Outer Cape Area closure corresponds with the state Outer Cape Area closure. That is, so long as the state and Federal closures correspond, it matters less whether those dates are January 1st through February 28th, February 1st through March 31st, or some other 2-month combination. Here, NMFS follows the Commission's Addendum XIII recommendation to require removal of all traps from Outer Cape Area waters from January 15th to March 15th. NMFS notes that Massachusetts is proposing a law that would adjust those closure dates to February 1st through March 31st. If the Massachusetts law passes, then NMFS would consider adjusting this proposed closure to that same time in its final rule.

There are numerous benefits to the trap haul-out provision, including benefits to lobster and marine mammals if trap gear is limited, as well as enforcement benefits. These benefits are discussed in greater detail in the response to Comment 22 in the Comment and Responses Section later in this proposed rule. The choice of the dates is reasonable because fishing effort is typically minimal during that time period. Failure to implement a similar trap restriction in the Federal Outer Cape zone could have deleterious effects because the restriction already exists in state waters. Accordingly, there would be great incentive for state-Federal dually permitted fishers to transfer their traps into Federal Outer Cape Area waters during the restricted season, thus greatly increasing effort there, absent similar Federal restrictions. The closure would apply only to traps set in the Outer Cape Area; those authorized to set traps in other areas would not be affected.

NMFS recognizes that establishing qualification and allocation criteria and drawing lines creates the potential for somebody to be left out. However, including additional or different qualification and allocation criteria in the Commission's Outer Cape Plan would create problems. First, doing so would introduce new variables that would have the potential to skew the Plan's ability to achieve its goals. Second, it would introduce a significant mismatch between the state and Federal Outer Cape Area limited entry programs wherein the state and NMFS could reach different determinations on identical permit histories. NMFS examined this issue extensively in its DEIS and concluded that disparate treatment of like individuals had the potential to so complicate future management as to render present and



future management measures (e.g., trap transferability) unworkable.

#### c. Outer Cape Area Potential Qualifiers

The NMFS DEIS predicts that approximately 26 Federal permits would qualify to receive an Outer Cape Cod Area trap allocation. This figure represents only 15 percent of the 170 permit holders who designated the Outer Cape Area as a potential fishing area on their permits in 2007. Of those 170 permit holders, however, only 38 purchased trap tags, which suggests that the vast majority (132 permits) designated the Outer Cape Area, but did not actively fish. Additionally, 12 of the 38 trap tag purchasers hailed from ports so distant from the Outer Cape Area that it seems unlikely that those 12 actively fished in the Outer Cape Area. The DEIS sets forth a detailed discussion on why an individual might designate an area without ever intending to fish there. Significantly, of the 26 individuals who designated the Outer Cape Area, ordered trap tags, and lived within steaming distance of the Area, the DEIS predicts that all 26 would qualify.

#### d. Outer Cape Area Rejected Actions

NMFS analyzed numerous alternatives to the Outer Cape Area proposed rule, including a “no action” alternative and qualifying lobster vessels but not allocating traps to them. Both were rejected as creating regulatory disconnects and potentially undermining the Commission’s Lobster Plan. NMFS also considered but rejected qualifying SCUBA divers for trap allocations, in part because it would add new trap fishing effort from those (SCUBA divers) who did not fish with traps during the involved time period. A more detailed discussion of potential alternatives is identified in NMFS’s DEIS [see **ADDRESSES**].

### 2. Area 2

#### a. Area 2 Commission Recommendation

In November 2005, the Commission recommended that the states and NMFS limit access into Area 2 to those lobster fishers who could document past fishing history in the Area. Specifically, the Commission recommended qualifying permit holders into Area 2 if they could document Area 2 landings history from 2001 to 2003. This landings history would be fed into a scientifically-reviewed regression formula to determine the number of traps allocated to the individual. If an Area 2 fisher had been incapable of fishing during the 2001 to 2003 fishing years, then that individual could apply for a hardship consideration that would

allow them to use landings from 1999 and 2000 as the basis for qualification. The specific recommendations are contained in Commission Addendum VII (November 2005).

The Commission’s Area 2 recommendation was the product of significant public debate that was even more involved than the public process that went into the creation of the Outer Cape Area Plan. The Area 2 Plan originated in October 2002, when the Lobster Board’s scientific Technical Committee reported the basis of what ultimately was considered to be a lobster crisis in Area 2. The Board became so concerned about the poor condition of the lobster stock that it took emergency action in February 2003 (a gauge increase) as an immediate stop-gap measure while it developed a more thorough plan to respond to the situation. For more than 7 years, the Lobster Board and its sub-committees publicly deliberated over its Area 2 plan. The Board adopted measures (Addendum IV), then re-thought its position, rescinded measures (Addendum VI), proposed new measures (Addendum VII), then later added detail to the measures (Addendum XII). Because NMFS’s Area 2 rulemaking is being done at the same time as its Outer Cape Area rulemaking, the Federal public process for the Area 2 plan is the same as was previously discussed for the Outer Cape Area.

#### b. Area 2—NMFS’s Response to Commission Recommendations and Proposed Area 2 Rule

NMFS proposes to limit access into the Area 2 in a manner consistent with the Commission’s recommendations. NMFS intends to qualify individuals for access into Area 2 based upon verifiable landings of lobster caught by traps from Area 2 from 2001–2003. The choice of the 2001–2003 time period reflects an effort to cap fishing effort in Area 2 as it existed while the Commission was developing its Area 2 Limited Access Plan. The dates also reflect an attempt to capture the attrition that occurred in the fishery during the downturn years in 2001–2003. Consequently, NMFS’s Area 2 rationale is similar to the rationale it is employing in setting the access dates for the Outer Cape Area, by granting access to those with past trap fishing history, while excluding speculators and/or individuals who might have a history of Area 2 permit designations, but no actual fishing history in Area 2 during the qualification period.

NMFS also proposes to allocate traps according to a Commission formula that calculates effective trap fishing effort based upon landings during 2001, 2002,

and 2003. The Commission chose landings as the appropriate metric because landings better reflected actual effort than the reported maximum number of traps fished. The Commission’s Technical Committee peer-reviewed the regression analysis formula and, although they noted the formula tended to favor full-time fishermen, the Technical Committee confirmed its validity. NMFS analyzed the formula and its rationale in the DEIS and concluded that the formula and its rationale were scientifically sound.

NMFS proposes to adopt the Commission’s recommendation to restrict allowable landings to those from ports in states that are either in or adjacent to Area 2, i.e., Massachusetts, Rhode Island, Connecticut, and New York. The Commission, in Addendum VII, found that the location of Area 2 prevented fishers from far away ports from actively fishing in Area 2. NMFS agrees with the Commission’s conclusion.

NMFS proposes to adopt the Commission’s recommended Hardship Appeal. Specifically, if an Area 2 fisher had been incapable of fishing during the 2001–2003 fishing years due to documented medical issues or military service, NMFS proposes to allow that individual to appeal the qualification decision on hardship grounds, allowing the individual to use landings from 1999 and 2000 as the basis for qualification. NMFS is also proposing a second appeal, the Director’s Appeal, that would allow a state’s marine fisheries director to petition for a trap allocation on behalf of a dual permit holder who was granted a state allocation but denied a similar Federal allocation. The Director’s Appeal would be limited to those who qualified for a trap allocation under the state program, but who were denied that allocation under the Federal program. The third Area 2 appeal would be a clerical appeal. Both the Director’s Appeal and Clerical Appeal are identical in form and rationale to the Director’s Appeal and Clerical Appeal being proposed for the Outer Cape Area. NMFS acknowledges the potential for appeals to create unwieldy loopholes that undermine the rule, but the DEIS analysis suggests that few permit holders would need to avail themselves of such an appeal. Further, DEIS analysis suggests reasons for even greater concern should NMFS diverge from the states and not attempt to implement appellate criteria that would assist in state-federal compatibility.

### c. Area 2 Potential Qualifiers

NMFS's DEIS predicts that approximately 207 Federal permit holders will receive a Federal Area 2 allocation. This figure represents approximately 48 percent of the 431 permit holders who designated Area 2 on their permits in 2007. Of those 431 permit holders, however, only 182 purchased trap tags, which suggests that the majority (249 permits) designated Area 2 but did not actively fish there (or anywhere else). Even more significant is the DEIS finding that of the 182 Federal permit holders that both designated Area 2 and purchased trap tags in 2007, approximately 167 permit holders would qualify—a figure that suggests over 90 percent of the present Area 2 fishers fished during the qualification years and would still be allowed to fish Area 2 with traps in the future.

### d. Area 2 Rejected Actions

NMFS analyzed numerous alternatives to the Area 2 proposed rule, including a no-action alternative, and qualifying participants, but not assigning them individual trap allocations. Both of these alternatives were rejected as creating regulatory disconnects, and potentially undermining the Commission's Lobster Plan. NMFS's DEIS contains a more detailed discussion of potential alternatives.

NMFS also chooses to put off the Commission's recommended Area 2 ownership cap. This cap would limit the number of Federal lobster permits that an Area 2 participant could own at any one time. At this time the Commission does not appear to have reached a definitive policy on ownership caps. For example, ownership cap options were included in Commission draft Addendum XVIII, but were pulled out of the addendum before it was approved in August 2012. NMFS intends to participate in the Commission's dialog on this issue, but NMFS asserts it imprudent to implement such a cap before the Commission completes its deliberation.

### 3. Individual Transferable Trap Program (ITT, Trap Transfer Program)

#### a. ITT Commission Recommendation

In February 2002, the Commission recommended a first of its kind Trap Transferability Program in the Outer Cape Area. The initial recommendation was overly simplistic, which hampered its implementation. In short, the Commission sought to allow qualified Outer Cape permit holders to buy and sell their trap allocations during a

designated time period up to certain trap cap.

The Commission followed its Outer Cape Transferability Plan with new trap transfer plans in two other areas: One for Area 3; another for Area 2. With each recommendation, the Commission's transferability plans became more detailed. All recommendations, however, contain the following three basic elements: (1) Individuals could buy and sell traps up to a set trap cap during a designated time period; (2) only individuals with qualified area allocations could sell traps; and (3) each trap transfer would be taxed by 10 percent, payable in traps.

The specific Outer Cape recommendations are set forth in Addendum III (February 2002) and XIV (May 2009). The Area 3 recommendations are contained in Addenda IV (January 2004), V (March 2004), and XIV (May 2009). The Area 2 recommendations are contained in Addendum VII (November 2005) and Addendum IX (October 2006).

Each area trap transfer plan was crafted after considerable public debate and comment. Industry-based Lobster Conservation Management Teams in Areas 2, 3, and Outer Cape Area were the original proponents and architects of their respective area plans. The plans were further refined in public meetings and hearings by the Lobster Board. Ultimately, after Board approval, the trap transfer plans were forwarded to NMFS, at which time additional public notice and hearing occurred. Because NMFS's Trap Transfer rulemaking is being done at the same time as its Area 2 and Outer Cape Area rulemaking, the Federal public process for the Trap Transfer Plan is the same as was previously discussed for the Area 2 and Outer Cape Area limited access plans.

#### b. ITT Program—NMFS's Response to Commission Recommendations and Proposed ITT Rule

NMFS proposes to implement trap transfer programs in Areas 2, 3, and the Outer Cape Area in a manner consistent with the Commission's recommendations. NMFS intends to offer an optional trap transfer program in Areas 2, 3, and the Outer Cape Area. The program would allow qualified permit holders to sell portions of their trap allocation to other Federal permit holders. Buyers could purchase traps up to the area's trap cap, with 10 percent of the transferred allocation debited and retired from the fishery as a conservation tax. NMFS asserts that a trap transfer program is reasonable and will help mitigate the economic impacts to individuals who do not qualify, or

who qualify, but only for a small allocation. In other words, individuals could increase their allocation by purchasing additional traps through this program. As a result, the proposed trap transfer program will allow buyers and sellers to scale their businesses to optimum efficiency.

NMFS does not, however, view the trap transfer programs without concern. As a preliminary matter, trap transferability has the theoretical potential to increase actual trap effort. Specifically, qualified lobster fishers could maximize their income by transferring "latent" traps—the portion of their allocation that they might not be using—to other fishers who would use the allocation more actively, thereby increasing the overall level of fishing effort. This theoretical increase, however, will not likely be seen on the water (see responses to Comments 7, 13, and 14). Nevertheless, NMFS proposes to offset this potential impact by implementing a conservation tax on trap transfers to retire 10 percent of the traps included in the transfer. The DEIS examined this issue, as well as other potential counter measures. NMFS expects that, on balance, the proposed measures will afford appropriate balance against undue activation of latent effort.

The use of area trap caps is another measure that restricts the potential to increase effort through trap transfers. In short, this proposed rule would restrict transfers so that permit holders may not receive a trap allocation that would put their overall trap allocation above the area trap cap. The trap cap in Area 2 and the Outer Cape Area is 800 traps. Area 3 has numerous trap caps, depending upon the allocation bin into which the Area 3 permit holder initially qualified. The highest Area 3 trap cap is 1,945 traps. Commission Addendum XIV and Addendum XVIII, however, make it clear that the Commission intends to have a single universal trap cap in Area 3. NMFS, therefore, proposes to set the Area 3 trap cap at 1,945 traps. NMFS notes that the Commission and Area 3 LCMT are in discussions about either increasing or decreasing that trap cap. NMFS will consider modifying the Area 3 trap cap if and/or when the Commission and Area 3 LCMT have completed their discussions and recommend amendments to NMFS.

Yet another measure to offset effort expansion is NMFS's proposal to allow three-party transfers involving dual state and Federal permit holders. This proposal differs from the Commission's proposal to limit trap transfers to a bin system that restricts a dual state and

Federal permit holder to transferring only with another dual permit holder of that same state. Under the Commission's system, permit holders from states with few qualifiers would find their participation options limited, and the economics skewed toward the few with allocations. NMFS's Trap Transfer Program, however, would allow a dual state and Federal permit holder to purchase Federal trap allocation from any other dual Federal Lobster permit holder. NMFS would still require that the transferring parties' state/Federal allocation be synchronized at the end of the transaction. Accordingly, a dual permit holder could purchase a Federal allocation from an individual in another state, as well as an equal state-only allocation from a third individual in his or her own state and the resulting allocation numbers for that dual permit holder would match. In such a scenario, there would be no added trap effort to the dual permit holder's state, but there would be a decrease of trap fishing effort in the state waters of the dual permit holder selling the original state/Federal trap allocation.

NMFS's greatest concern with a Trap Transfer Program is that it heightens the potential for regulatory disconnects. Regardless of which limited access option NMFS ultimately chooses, there will, undoubtedly, be a certain number of dually permitted lobster fishers—i.e., individuals fishing under both a state and a Federal permit—for whom the state and Federal decision-making will not align; they will either be qualified by one jurisdiction, but not another, or qualified by both, but allocated different numbers of traps. Although the DEIS confirms that the number of disconnects under the proposed rule will likely be small and of negligible impact to the overall limited access programs, creating additional layers of decision-making—i.e., trap transfers—has the potential to exacerbate disconnects with each successive transfer.

NMFS believes it can resolve the regulatory disconnect problem by requiring that potential participants agree to certain parameters before opting into the Trap Transfer Program. The Trap Transfer Program is not mandatory; rather, interested participants can choose to opt in. Any participants holding both state and Federal lobster permits ("dual permit holders") with different trap allocations would have to agree to abide by the lower of the two trap allocations to take part in the program. In this way, permit holders would not be obliged to forfeit their higher trap allocation, but they would not be able to participate in the transferability program if they chose to

retain it. This alternative would synchronize the dual permit holder's allocations at the initial opt in time, thus greatly facilitating the tracking of the transferred traps. Further, as trap allocations are transferred, a centralized trap transfer data base accessible by all jurisdictions will keep track of trap transfers, thus ensuring that all jurisdictions are operating with the same numbers at the beginning and end of every trap transfer period. The centralized trap transfer database is being created by the Atlantic Coastal Cooperative Statistics Program (ACCSP) and is a critical, foundational prerequisite to the Trap Transfer Program. As of the date of this proposed rule, the database has not been finalized and its progress bears watching. NMFS analyzed potential trap transfer programs in its DEIS and, assuming that the database is complete and functioning as designed, NMFS found the proposed Trap Transfer Program to be the most prudent of the alternatives.

Finally, the timing of the Trap Transfer Program is also of great concern. Industry and Commissioners are counting on trap transferability as a foundational element of their business and management plans and cannot move forward on these plans until NMFS implements its Trap Transfer Program. Accordingly, they urge NMFS to start its Trap Transfer Program as soon as reasonably possible (see Comment 8 in comment/response section below). However, the details of how this program will operate are not yet completely known. First, the Commission's Trap Transfer Program is novel and will require intensive coordination at state and Federal levels. Such coordination would involve, at a minimum, a trap tracking system, i.e., the ACCSP's centralized trap transfer data base, that has been tested and upon which state and Federal managers have been trained. As discussed above, however, the centralized trap transfer data base remains under development and, therefore, the state-Federal coordination protocols are, as yet, unwritten. Second, before traps can be transferred, they must first be allocated, yet doing so will take time. NMFS expects that it will be able to qualify and allocate traps for the majority of Area 2 and Outer Cape Area trap fishers quickly, but future developments could easily delay the qualification and allocation process. NMFS is concerned that beginning the Trap Transfer Program without having first processed a majority of its qualification applications will complicate the trap transfer market and create derby-style

pressures in the qualification/allocation process. It might also cause NMFS to have to siphon off resources from the qualification process to satisfy the transfer process, leaving neither process with sufficient resources. Ultimately, NMFS proposes to begin the first year of its Trap Transfer Program 120 days after the publication of its final rule, which NMFS expects is a sufficient amount of time for it to complete the majority of its qualification and allocation decisions. Whether the time period should be advanced (e.g., 90 days after the final rule) or delayed (e.g., 180 days after the final rule, or longer) will depend in large part on the development of the as yet incomplete infrastructure necessary to carry out the program. NMFS is greatly interested in any comments from the public, the states, and Commission on this timing issue.

#### c. Potential ITT Participants

At present, there are 3,152 Federal Lobster Permits. This proposed rule would allow any of these permit holder to purchase Area 2, 3, or the Outer Cape trap allocations through the Trap Transfer Program. Accordingly, any of the 3,152 individuals with a Federal Lobster Permit could opt into the proposed Trap Transfer Program and purchase qualified and allocated traps.

NMFS gave careful consideration to its proposal to allow all Federal Lobster Permit holders to purchase trap allocations. While there is some utility in limiting the number of participants fishing in an area, there exist numerous reasons to open the Trap Transfer Program to all Federal Lobster permit holders. First, a primary purpose in limiting fishery access is to limit trap fishing effort, which will have been done regardless of who is ultimately allowed to transfer traps. That is, if the total overall trap allocation for an LCMA is set, there is less biological importance to which, or how many, permit holders fish that allocation. Second, allowing all permit holders to purchase allocated traps helps to offset potential negative impacts to those individuals who did not initially qualify into the area. Third, allowing unqualified buyers to purchase allocated traps allows younger, newer lobster fishers to enter the fishery in a scaled fashion, which was a desire voiced to NMFS by the lobster industry during the DEIS public hearings. Fourth, the greater the number of potential buyers, the greater the market and potential transactions, and thus the greater the potential biological benefit through the 10 percent trap conservation tax.

Notably, the proposed rule restricts trap transfers for individuals that have also qualified into Area 1. Specifically, although Area 1 permit holders may opt into the Trap Transfer Program and transfer traps, doing so may result in a forfeit of that permit holder's ability to fish in Area 1 to the extent that person sells or transfers away part of his or her trap allocation. This prohibition originally involved Area 1 being the last open access lobster area at the time the Commission was developing its trap transfer recommendations (i.e., 2002–2010). At that time, there was concern that as other areas limited fishing access, displaced fishing effort would flood into Area 1 because Area 1 was open access; i.e., anybody with a Federal lobster permit could designate Area 1 on their Federal lobster permit and fish with 800 traps. The fear was that an individual would sell their entire Area 2, 3, or Outer Cape Area trap allocation and then move their business to Area 1 and start fishing with another 800 traps, effectively doubling effort. Since that time, however, Area 1 developed and implemented a limited access program in their area. As a result, Area 1 is no longer open access and Area 2, 3, and/or Outer Cape Area permit holders will not be able transfer traps and start fishing anew in Area 1. Accordingly, the concern is now largely moot. One problem, however, remains: Although the 800 trap limit applies to all Federal permit holders in Area 1, there is no individual permit-based Area 1 trap allocation. As such, there is no Area 1 allocation to debit should a multi-area qualifier (i.e., a person who has qualified into Area 1 as well as another area) sell allocated traps from that other area. Consequently, an Area 1 fisher who also qualified into other areas could transfer their Area 2, 3, and/or the Outer Cape Area allocation and still fish with 800 traps in Area 1. This would create an overall increase in trap fishing effort beyond what was historically fished. A simple regulatory fix—e.g., giving all Area 1 participants an individual 800 trap allocation—could resolve this issue, but the Commission has not, as yet, amended its earlier recommendation to NMFS. Accordingly, this proposed rule retains the Commission's original recommendation that Area 1 qualifiers be allowed to purchase transferable traps from Areas 2, 3, and the Outer Cape; however, by selling any of their transferable allocation, they would forfeit their eligibility for Area 1 trap fishing because the Area 1 allocation cannot be equally reduced along with

the transferable allocation if transferable traps are sold.

#### d. ITT—Rejected Actions

NMFS analyzed numerous alternatives to the proposed Trap Transfer rule, including a no-action alternative, allowing the program only in Area 3, and implementing the Commission's Trap Transfer Program. The Commission's Trap Transfer Program is substantially identical to NMFS's proposed program, except that the Commission's program is immediately and automatically open to all participants. Accordingly, because permit holders can participate in the Commission's program without opting in, the Commission's program lacks the synchronizing mechanism that NMFS proposes. The other above-mentioned alternatives reduce the potential for regulatory disconnects, but offer none of the proposed program's mitigation benefits. A more detailed discussion of potential alternatives is identified in NMFS DEIS, section 4.4.

NMFS also rejected the Commission's proposal to tax full business transfers at 10 percent. As a preliminary matter, full business transfers have been happening for decades and are independent of trap transferability. Second, the greatest number of full business transfers occur, not surprisingly, in Area 1, which is the Lobster Management Area with the largest number of permit holders. As discussed above, however, Area 1 does not have a trap allocation from which to apply a 10 percent trap transfer retirement tax. Applying a tax, therefore, is not feasible under existing regulations. Further, NMFS notes that the Commission is continuing to deliberate upon what it considers to be a separate business entity for the purpose of determining ownership caps. NMFS will monitor these deliberations and as the issue evolves will consider additional recommendations on the matter should the Commission determine it necessary.

#### 4. Regulatory Streamlining

NMFS proposes to remove certain old, out-dated paragraphs of regulatory text from its Federal Lobster Regulations. Specifically, this action would remove the Area 3, 4, and 5 qualification and appeals criteria from § 697.4 and remove outdated sections of the trap cap regulations in § 697.19. The Area 3, 4, and 5 limited access program qualification and allocation process was completed many years ago (the last appeal being finalized in approximately 2006). The paragraphs to be removed from § 697.19 also relate to outdated trap cap provisions (e.g., trap caps

before and after August 2003). In short, the principal measures in this proposed rule (i.e., limited access programs in Area 2 and the Outer Cape Area, as well as a Trap Transfer Program) caused NMFS to review § 697.4 and § 697.19 and identify paragraphs that are old, irrelevant, and that bog down the reader. Removing these paragraphs will keep the regulations fresh and assist the public's understanding of the section going forward.

#### Related Lobster Rulemakings

The measures taken in the Lobster Plan are separate efforts that are designed to build off of one another so that the overall whole is greater than the sum of its parts. The Lobster Plan is also ever-changing, which as noted in the DEIS can present challenges to NMFS. Often, the Commission builds upon its Plan so quickly that its recommendations become bedrock Lobster Plan principles and the foundation of future measures that are often recommended before NMFS can complete its analysis of the initial recommendation. Such is the case here.

There are two general categories of measures that the Commission has or will likely recommend to NMFS for future rulemaking. This proposed rule would be consistent with both categories of measures. The first category relates to the Commission's response to the Southern New England stock recruitment failure. The Commission decided to address the recruitment failure in two phases: First, by reducing lobster exploitation by 10 percent; and, second, by reducing effort by 50 percent in Area 2 and 25 percent in Area 3, the principal southern New England Stock areas. The Commission's measures to reduce exploitation by 10 percent include changing the minimum and maximum size limits for harvestable lobster and/or implementation of closed seasons. The measures to reduce effort by 50 percent include an immediate 25 percent trap allocation reduction, for Area 2, followed by 5 years of trap allocation reductions at 5 percent reductions per year. For Area 3, traps will be reduced by 25 percent in total, with 5 percent reductions per year for 5 consecutive years. This proposed rule not only complements these other potential rulemakings, but failure to implement the proposed rule might actually undermine Commission efforts in these other matters. For example, the Commission's willingness to implement a 10 percent exploitation reduction largely depended on its willingness to implement subsequent trap cuts in Areas 2 and 3. The trap reductions

depend on affected fishers being able to mitigate the impacts of such cuts by purchasing additional trap allocation through trap transfers, and in turn a trap transfer program depends on there being a limited access program in the involved lobster management areas.

The second category of potential recommendations involves measures to more finely tune the Trap Transfer Program. These measures could include capping the number of permits (i.e., determining what “ownership” means and then capping permit ownership levels), changing trap caps in Area 3, as well as creating a trap banking program, which would allow fishers to purchase trap allocations above their trap cap and place them in a bank where they would not be fishable unless their overall trap allocation number fell below the area trap cap. These potential measures are still being deliberated upon by the Commission, but largely depend on NMFS implementing a Trap Transfer Program as proposed in this rule.

#### Comments and Responses

*Comment 1:* One individual expressed their displeasure on the length of time it has taken to implement this rulemaking.

*Response:* NMFS understands and, to an extent, even shares in this frustration. It is important to understand, however, that lobster rules are not made in isolation. Changing circumstances in the fishery have necessitated a slower, more deliberate pace. For example, since receiving the Commission’s first rulemaking recommendation, the Commission has declared an emergency on an area lobster stock (the Southern New England (SNE) lobster stock in 2003). Then, in 2010 the Commission declared a lobster recruitment crisis on that same lobster stock. The Commission and commentators alike urged NMFS to delay its rulemaking process until the crisis was better understood. Further, the Commission’s rulemaking recommendations have themselves changed: The Outer Cape Plan, initially approved in Addendum III in 2002, was amended by Addendum XIII in 2008. The Area 2 Plan was approved in 2003 (Addendum IV), rescinded in 2006 (Addendum VI), and a new plan approved in later that year (Addendum VII). Important details to all plans (including transferability) were not added until 2009 (Addendum XII). Ultimately, given the ever-changing context, NMFS has been forced to proceed in a more cautious, deliberate fashion, which although perhaps frustrating in the time it takes,

nevertheless appears to be the most prudent approach.

*Comment 2:* A number of commenters noted that NMFS was “several years behind” in implementing the Commission’s Plan and urged that NMFS proceed with this rulemaking, as its measures were already being implemented in state waters and compatible measures are needed in Federal waters.

*Response:* NMFS understands that implementation delays by the states and NMFS can make it more difficult for the Commission to plan new measures to respond to new crises. Lobster management is not a static process; new issues are always arising. Often, by the time the Commission completes one part of its Lobster Plan, additions, edits, and amendments to that same part are already in development. In fact, the Commission’s Lobster Plan sometimes builds upon itself so quickly that new Plan measures are sometimes adopted that depend on earlier Plan measures, which have not yet been analyzed, much less adopted, by NMFS. Nevertheless, a speedy response is not always the best response. A balance needs to be struck because hastily crafted plans can have unintended and unwelcome consequences. Quite often, in attempting to more speedily address lobster issues, the Commission’s Lobster Board left out important plan details to be addressed at some later date. For example, although the Commission recommended the rudiments of its Outer Cape Area limited access program and trap transferability in 2002 and the Area 2 limited access program in 2004, critically important details were not added until later (see e.g.: Addendum V–2004; Addendum VII–2005, Addendum IX–2006, Addenda XII & XIV–2009). Fortunately, the later added details were within the scope of what had been originally proposed (limited access program based upon past participation in the fishery) and thus NMFS did not need to start the rulemaking over. Now that those added details are known, and now that the SNE stock crisis is better understood, NMFS is better able to proceed with this rulemaking.

*Comment 3:* In public meetings of the SNE stock crisis and Addendum XVII deliberations in 2010 and 2011, the Commission’s Lobster Board noted that the SNE stock crisis introduced tremendous uncertainty into lobster management, which complicated and delayed complementary Federal rulemaking until the crisis was better understood and the potential Commission response became clearer.

*Response:* NMFS agrees and notes that the originally recommended Lobster Board response to the SNE crisis in 2010 suggested a 5-year moratorium on lobster fishing—an option some on the Board described as a “nuclear option” because of its potential to put many fishers out of business and radically change the character of the SNE fishery. To proceed with this rulemaking at such a time seemed counter-productive and ill-advised (e.g., would potentially qualified permit holders even bother to apply for entry into a fishery in the midst of a 5-year moratorium?). As such, NMFS felt it imprudent to proceed with this rulemaking in the face of such widely varied and uncertain responses. The Commission, however, now has a strategy to respond to the SNE lobster stock crisis and approved the first phase of that response in February 2012 (Addendum XVII). The second phase of the response is identified in draft Addendum XVIII. Accordingly, NMFS now has a better understanding of the state of the fishery—both biologically and managerially—and the agency is able to continue on with its rulemaking.

*Comment 4:* One industry representative indicated that concerns over the SNE lobster stock made it difficult to comment on “where transferability should be going or how it should end up.” They urged that NMFS proceed cautiously with this rulemaking.

*Response:* NMFS agrees and notes that the commenter’s recommendation was repeated by members of the public during past Commission Lobster Board meetings. It was not possible to proceed more quickly given the number of additions that the Commission made to its plan and given the potential plan changes that the Commission were contemplating as recently as 2012. Nevertheless, delays are always a concern insofar as they have the potential to render a rulemaking stale and cause stakeholders to disengage from the process. NMFS, however, does not consider that to have happened here. Throughout this process, stakeholders have been continually reminded of the proposed measures, be it through the numerous agency **Federal Register** Notices, or reminders in permit holder letters, or through the agency’s DEIS public hearings conducted in the Northeast in 2010. Additionally, the limited access and transferability plans have been reported steadily in the news media. The recent SNE stock recruitment failure generated tremendous interest in this rulemaking, not only from the lobster industry, but from their representatives in

government, managers, non-governmental organizations, and the public in general. In addition, most of the affected Outer Cape Area and Area 2 Federal Lobster permit holders recently underwent a similar limited access program application process with their state permits. Accordingly, NMFS asserts that this rulemaking remains fresh and current with the stakeholders actively engaged. The delays, while frustrating, were unavoidable and necessary to draft a workable proposed rule.

*Comment 5:* Numerous commenters, both in writing and at the DEIS public hearings, supported the rule's proposed limited access measures, and further urged that NMFS enact rules that mirror the states' rules as closely as possible to avoid regulatory disconnects.

*Response:* NMFS's DEIS analysis supports such comments. NMFS believes that creating an Area 2 and Outer Cape Area limited entry program that is substantially identical and coordinated with the Commission's limited entry program offers the most prudent way forward for the lobster fishery in those areas. In fact, failing to do so would likely create a mismatched and disconnected management program that could undermine and even threaten fisheries management in those areas. Regardless, despite the greatest efforts of NMFS, the Commission, and the states to have identical programs, some differences and some discrepancies will undoubtedly occur. NMFS's analysis, however, suggests that the number of disconnects will be few and have negligible social and environmental impacts. Nevertheless, this proposed rule includes additional elements, such as a Director's Appeal and a voluntary Trap Transfer Program, which would allow NMFS and the states to further coordinate and reconcile irregularities should they occur on individual permits. These additional elements are discussed in greater detail in Comment 20.

*Comment 6:* One state agency wrote in support of NMFS's proposed Trap Transfer Program and explained that such a program was critical to the success of the overall limited access plan. The state indicated that effort control plans sometimes resulted in fishermen being allocated far fewer traps than they desired or needed. The "relief valve" to accommodate some individual fisherman's need to increase trap allocation was the Trap Transfer Program.

*Response:* NMFS analyzed this issue in detail in its DEIS and agrees that its proposed Trap Transfer Program would allow individual lobster businesses the

flexibility to scale their business up or down according to individual business plans. Obviously, not all lobster businesses fish the same number of traps. Although an increase in the number of traps fished may increase the amount of lobster harvested, it will also increase fishing costs, including costs for bait, fuel, and time to tend the additional traps. Each fishing business calculates the benefits and costs of fishing at certain trap levels when deciding how many traps to fish. In this proposed rule, however, initial trap allocations will be based on levels of participation during a qualification period that occurred in the past. The qualification period does not factor into what the lobster fisher is fishing presently or what the fisher may want to fish in the future. As a result, some vessels may receive allocations that do not reflect their current business plan, with some receiving higher trap numbers and others receiving lower. Transferability will make it possible for trades to take place, thereby allowing lobster fishers a better chance to scale their businesses to their most appropriate and economically viable level.

*Comment 7:* Numerous lobster fishers and lobster businesses commented in favor of NMFS's proposed Trap Transfer Program. They point out that failure to implement a Federal Trap Transfer Program will have serious negative consequences for the inter-jurisdictional management of the fishery. The Trap Transfer Program increases flexibility for lobster businesses and that benefit far outweighs the biological negative of increased trap production by breaking large inefficient trap allocations and transferring them to businesses that will make them more productive.

*Response:* NMFS analyzed this issue in its DEIS and concluded that the proposed Trap Transfer Program makes good sense and will be an overall benefit to the fishery. Specifically, the Trap Transfer Program would likely improve the overall economic efficiency of the lobster industry by allowing businesses to scale up or down according to whatever trap number works best for their particular business. For example, some previously inactive traps, i.e., traps that were not being fished ("latent traps"), could be sold to individuals who would likely fish the traps more actively. Theoretically, doing so might increase effort in the area, although likely not on a scale that would produce negative impacts on the lobster population (see responses to Comments 13 and 14). NMFS's proposed rule, however, includes trap transfer taxes (which would retire 10

percent of the traps involved in any transfer) and trap caps on the number of traps a business could accumulate, to balance against the activation of latent effort. NMFS asserts that these protection measures mitigate the possibility for an increase in trap effort. NMFS further notes that Commission Addendum XVIII calls for further trap cuts in SNE, and provides an additional buffer against the possibility of increased effort due to the activation of previously latent traps.

*Comment 8:* Members of industry and the Commission asked that NMFS implement its Trap Transfer Program as soon as reasonably possible.

*Response:* NMFS considered many alternative start times before deciding that its preference is to start the program 120 days after the publication of the final rule. Many alternatives exist. On one extreme, NMFS could attempt to begin the Trap Transfer Program immediately in Area 3 (where trap allocations have already been decided), and then begin it in Area 2 and the Outer Cape Areas on a continuing, rolling basis as the permit holders are qualified. Such an alternative, while speedy, has significant down-sides. For example, were Area 3 to transfer traps before the other areas, it could create disconnect issues because many Area 3 traps will also likely be qualified into Area 2 and Outer Cape Area. Further, giving one group a head start over another group—especially allowing Area 2 and Outer Cape Area qualifiers to enter the program on a first come, first served basis—could create a race to transfer that might unduly advantage early qualifiers and skew market forces. At the other extreme is an alternative that delays the Trap Transfer Program until NMFS makes initial decisions on every Area 2 and Outer Cape Area application and/or appeal. Waiting would allow NMFS to start the Trap Transfer Program with all participants on equal terms, and would likely allow NMFS to proceed at a more deliberate, thoughtful, and less chaotic pace. However, NMFS's lobster limited access program experience in other areas (i.e., Areas 1, 3, 4, and 5) suggests that it often takes years to finish making decisions on all applications and all appeals. Delaying trap transfers until all limited access decisions are made would create unacceptable delays to permit holders relying on the Trap Transfer Program and to lobster managers who are waiting for the Trap Transfer Program so they can implement other lobster management measures.

Ultimately, NMFS proposes a middle ground alternative: Beginning the Trap Transfer Program in all three areas 120

days after the publication of the final rule. NMFS's lobster limited access program experience suggests that it will be able to process and complete the great majority of the applications in 120 days. This would allow the Trap Transfer Program to begin with a larger group of initial qualifiers and, thus, allow the program to proceed under more normal market conditions. Ultimately, however, the program's start time will be heavily dependent upon infrastructure being in place to properly account for and manage the transfers. At present, the ACCSP is in the process of developing a tracking system to account for all transfers. That system, however, has not yet been completed.

*Comment 9:* Numerous commenters were concerned about discrepancies between an individual's potential state and Federal trap allocations. These individuals supported NMFS's alternatives—such as the proposed voluntary Trap Transfer Program—that would synchronize state and Federal allocations. These commenters also uniformly agreed with the need for a centralized trap transfer data base so that all transfers could be catalogued and tracked by all relevant jurisdictions.

*Response:* NMFS agrees that it is critical to synchronize the state and Federal limited access and transferability programs to the greatest extent practicable. NMFS's DEIS analysis indicates that the threat presented by incongruent state and Federal regulatory programs is significant and real. This is, in fact, one of the many reasons in support of a Federal Trap Transfer Program—i.e., if the states allowed trap transfers (the states have already approved trap transferability programs of their own), but NMFS did not, then trying to follow and determine the number of traps on a state/Federal dually-permitted entity's allocation would quickly become an impossible task as that individual transferred his or her state allocation. NMFS's proposed Trap Transfer Program follows the trap transfer recommendations in the Commission addenda, including Addendum XII, and thus is substantially identical to the trap transfer programs of the states. To the extent that discrepancies occur, NMFS's Trap Transfer Program attempts to synchronize with the states by mandating that participants reconcile their state and Federal trap allocations before they are allowed to transfer traps. NMFS agrees that a centralized database is necessary to keep track of all transfers and the agency has actively advocated for such a database in Commission Lobster Board discussions.

*Comment 10:* Lobstermen at the DEIS public hearing in Narragansett, Rhode Island (June 2, 2010), expressed concern that management restrictions were going to cause this already aging industry to further lose its youth and vitality. As access to lobster permits and fishing areas becomes increasingly restricted (especially with that access being determined by fishing history that potentially occurred before younger fishers may have begun fishing in earnest), younger lobstermen have the potential to be squeezed out, both because they are newer and thus lack the history, and because they are younger and often lack the up-front capital to buy whole fishing operations.

*Response:* NMFS's proposed Trap Transfer Program should benefit young lobstermen such as those who commented at the DEIS public hearing in Narragansett, Rhode Island. The proposed Trap Transfer Program would allow participants to build up their businesses as time and capital allow (e.g., newer fishermen could start with smaller numbers of traps and build up) instead of having to incur the great expense of buying a whole, fully-established business all at once. In other words, any Federal lobster permit holder could buy into an area regardless of whether they initially qualified into that area (e.g., again, starting with a smaller, less expensive business plan that allows for expansion if necessary), which would allow younger individuals access to an area despite potentially lacking the requisite fishing history to initially qualify into that area.

*Comment 11:* Some people expressed concern at NMFS's DEIS public hearings that the proposed Trap Transfer Program might cause excessive consolidation of effort and allow monopolies to form. Individuals also commented that NMFS should only allow Federal permit holders who have already been qualified into an area to buy and sell traps in that area.

*Response:* Well over 80 percent of the United States' harvest of American lobster comes from lobster management areas lacking transferable trap programs, such as Area 1. As such, even in the unlikely event that trap effort becomes so consolidated in Areas 2, 3, and the Outer Cape that a few entities control all traps—an impossibility under the proposed plan—those entities would still not be able to so control the markets as to constitute a monopoly. Regardless, NMFS's proposed Trap Transfer Program would maintain current trap caps (800 traps in Area 2 and the Outer Cape Area and 1,945 in Area 3), to prevent excessive trap accumulation. In addition, the proposed rule would allow

any Federal lobster permit holder, not just Federal lobster permit holders who qualify into the area, to buy allocated traps, thereby increasing the pool of potential buyers so that buying power would not be consolidated in a smaller number of area qualifiers.

*Comment 12:* One lobsterman stated at the DEIS public hearing in Chatham, Massachusetts, that he opposed allowing lobster management area non-qualifiers to gain access into a lobster management area by buying traps that were allocated to that management area. Other lobstermen, however, suggest that individuals not qualified into an area should be allowed to purchase area qualified traps.

*Response:* NMFS proposes to allow non-qualifiers to purchase qualified area lobster traps. Doing so will increase the pool of potential buyers and thus better facilitate the economic advantages to both buyer (e.g., access to fishing the area at a level appropriate to their business model) and seller (e.g., a larger pool of potential buyers). Allowing non-qualifiers to purchase qualified traps will also help younger entrants into the fishery participate at an economically-viable level (see response to Comment 10). Additionally, allowing non-qualifiers to purchase qualified traps will help offset impacts to individuals who might have fished the area in the past, but failed to qualify, or qualified at a lower trap allocation. The proposed rule would not go so far as to suggest that any individual—even those without federal lobster permits—could purchase qualified traps and fish in the area. Thus, the number of potential participants is greater than if limited solely to area qualifiers, but would be limited, nonetheless. Specifically, the total number of possible participants is limited to individuals with Federal lobster permits (there are presently about 3,152 Federal lobster permit holders). Additionally, geographical, economic, and regulatory considerations would prevent those participants from concentrating in one area. Requiring a purchaser to have a Federal lobster permit makes sense and provides some counter-balance: It restricts the number of purchasers to a finite pool and would allow NMFS to maintain management through its permits rather than shifting to a trap-based management paradigm. Further, limiting participation in the Trap Transfer Program to Federal lobster permit holders helps ensure the social and industry characteristics of the fishery insofar as purchasers would be existing lobster fishers rather than the general public, thereby ensuring that potential purchasers have at least some understanding of the fishery.



*Comment 13:* Some commenters expressed concern, both in writing and at NMFS's DEIS public hearings, that trap transferability programs sometimes allow latent effort to be activated.

*Response:* This proposed rule would not increase effort. Critical to understanding this point is using the current lobster fishery as a proper frame of reference. At present, any of the 3,152 existing Federal lobster permit holders can fish in Area 2, in the Outer Cape Area, or in both areas. Further, every one of those 3,152 permit holders could fish any number of traps up to the current trap cap of 800 traps. Under the proposed rule, however, the number of potential trap fishery participants is expected to drop from 3,152 to 207 in Area 2, and to 26 in the Outer Cape Area. NMFS knows that the number of permit holders actually fishing in Area 2 and the Outer Cape Area is far less than 3,152, but nevertheless, restricting access to approximately 233 permit holders (207 in Area 2 and 26 in the Outer Cape Area) based upon past fishing history represents a massive reduction in potential effort. Further, of the 233 permit holders expected to qualify, many, if not most, will be allocated less than the full 800-trap allocation, because many fishers did not fish with every possible trap during the qualifying years. Accordingly, not only will the number of Area 2 and Outer Cape Area fishers be reduced, but the number of traps that the area qualifiers can fish will also be reduced. Even those who receive the maximum 800-trap allocation will, at most, receive an allocation equal to, but not greater than, the number of traps currently allowed. In other words, whereas the present regulations allow anybody to fish up to 800 traps in these areas, the proposed regulations will allow only certain qualifiers to fish up to 800 traps, with many qualifiers allocated at trap levels below those allowed today. Again, this allocation would be tied to actual fishing history and, thus, result in a further reduction in potential effort.

Unfettered trap transferability, however, does have the theoretical potential to slightly increase actual effort as unused, latent traps in one business are sold to a different lobster business which could fish them more actively. But, that increase would only be relative to the administratively-created fishery occurring immediately after permit holders are qualified and allocated, not as compared to effort as it exists on the water today. Notably, the proposed rule's post-qualification/allocation characterization does not represent today's actual effort either: It represents actual effort as it existed in

the early 2000's. Some of the qualifiers would receive an allocation greater than they now fish, others smaller than they now fish. When the parties transfer traps back and forth to get to their current-day business models, some presently latent traps might become active. But, many of these activated latent traps would be doing nothing more than replacing currently active traps that were not allocated during the allocation process—at most, a zero-sum gain. Nevertheless, the proposed rule offers a number of measures to balance against the activation of latent effort including: Permanently retiring 10 percent of all traps involved in transfers (sometimes referred to as a “transfer tax” or “conservation tax”); requiring dually-permitted entities (those with both a state and Federal lobster permit) to reconcile inconsistent allocations by choosing the more restrictive number; and retaining trap caps on individual allocations. Accordingly, NMFS does not expect a great amount of latent effort to be activated through transfers, and asserts that its mitigation measures will offset any potential activation of latent effort.

*Comment 14:* Members of the public commented at the DEIS public hearings and in writing that latent traps should not be allowed to be transferred.

*Response:* Latent effort is potential effort. In the lobster fishery, latent effort represents the number of traps that could be fished, but that are not actually being fished at a specific point in time. For the purposes of this proposed rule, the specific point of time is the qualification/allocation time period set forth in the Commission's Lobster Plan. The Commission's Lobster Plan calculates trap allocation based upon a scientific regression formula to ensure that trap allocation correlates with fishing activity. Accordingly, every trap initially allocated can be considered active—or at least was active during the qualifying years chosen in the Commission's Lobster Plan. If, however, the commenters are suggesting that NMFS further restrict transfers of traps that have become latent since the qualification/allocation time period, then NMFS must point out the many problems with such a suggestion. First, although the commenters generally speak about latency, they have not provided a specific time period within which to determine latency. Latency is not static. It changes year-to-year, month-to-month, and even day-to-day. Traps that are active one month might become inactive the next and then reactivated the third month. Without a temporal context, latency cannot be determined with any degree of

specificity. Second, even if a time period was given, there is no mandatory record-keeping to easily determine which traps were active at any given time and which traps were not. In other words, because it is seldom possible to precisely determine whether a trap is active or latent (or partially active/partially latent) it is extraordinarily difficult to craft a management program that allows only the transfer of active traps while preventing transfers of latent traps. Third, even were NMFS to somehow determine a trap's activity level in recent seasons, restricting its transfer would result in disconnects with the states because there is no restriction on the transfer of latent traps in the Commission's Lobster Plan. Ultimately, NMFS concludes that the Commission's Lobster Plan does a good job of preventing latent traps from being activated. To the extent that latency nevertheless exists, NMFS asserts that mitigation measures such as the 10 percent retirement of trap transfers will compensate for potential latent trap activation (see response to Comment 13).

*Comment 15:* One Outer Cape Area trap fisherman commented in a DEIS public hearing that if non-qualifiers could buy traps in the Outer Cape Area, then non-qualified gill-netters would buy small amounts of traps just to enter the area, but fish for lobster with gillnets.

*Response:* An individual's ability to fish for lobster is derived from his or her permit, not from the traps. The proposed rule would not change this. As a result, anybody fishing for lobster in the Outer Cape Area still must possess a Federal lobster permit. Therefore, the commenter's scenario would not occur under this proposed rule. That is, a Federal lobster permit holder would not need to buy traps as a ruse to get into the area because that permit holder could fish for lobster in the area with gillnets without a trap allocation if they already had a Federal lobster permit. If a person does not have a Federal lobster permit, only then would he or she not be allowed to participate in the proposed Trap Transfer Program to buy Outer Cape Area traps.

*Comment 16:* One industry group suggested that only traps that fished within the SNE area be transferrable within the SNE area.

*Response:* Areas 2, 3, and the Outer Cape all overlap multiple lobster stock areas. To further divide those lobster management areas by stock area would be akin to creating new sub-management areas, which is something the Commission's Lobster Plan neither does nor contemplates. Additionally,



existing documentation lacks sufficient clarity and precision to determine which stock area, within a given management area, a trap has been fished. Consequently, NMFS has determined that this suggestion cannot be implemented, and even if it were, it would likely result in inconsistencies with the Commission's Lobster Plan.

*Comment 17:* One organization representing Area 3 lobstermen recommended that Addendum XIII's 2,000-trap cap for Area 3 remain in place, although the commenters acknowledged that trap caps can and should be adjusted in later addenda. One lobsterman and his counsel opposed Addendum XIII's Area 3 2,000-trap cap as being too low and argued that upon allocating, and thus establishing, the total number of Area 3 traps in the qualification process, there is little reason to set individual trap caps on permits, especially a cap as low as 2,000 traps.

*Response:* At present, trap caps exist in every LCMA. In Area 2 and the Outer Cape Area, the cap is 800 traps. In Area 3, the highest trap cap is 1,945 traps. NMFS does not propose to change these limits in this proposed rule. First, most fishers have been fishing within the existing traps caps for over a decade. In May 2000, the Area 2 and Outer Cape Area trap caps were established at 800 traps and the Area 3 trap cap was set at 1,800 traps. After the initial Area 3 qualification and allocation process in 2003, the Area 3 trap cap jumped to 2,656 traps (very few permit holders qualified at that level), but was subject to a graduated yearly decrease so that no Area 3 fisher now deploys 2,000 traps, and most have an allocation far below that cap. Accordingly, failure to increase the cap in this rulemaking should not create any new impact on lobster businesses. Second, the mitigation provided by the Trap Transfer Program for lower allocations remains, regardless of the trap cap. Finally, and of great importance, the trap caps and their impacts on newer, more novel lobster management measures, such as controlled growth and banking, are being analyzed in great detail in draft addenda that have yet to be approved by the Commission's Lobster Board. Accordingly, it would be premature and imprudent to change trap caps in the Federal lobster regulations before having the opportunity to analyze and incorporate the proposals in the Commission's Addendum XVIII. NMFS intends to address the trap cap issue in a rulemaking that follows this present rulemaking.

*Comment 18:* One Area 2 lobsterman commented that he had a medical

condition that drastically curtailed his lobster fishing activity during the qualifying years, and that he favored an appeal process that would allow him to qualify for access into Area 2, with a trap allocation reflecting his trap fishing history prior to his medical condition.

*Response:* NMFS's proposed rule contains provisions for hardship appeals in Area 2 based upon certain limited situations, such as situations in which medical incapacity or military service prevented a Federal lobster permit holder from fishing for lobster in 2001, 2002, and 2003. NMFS acknowledges the difficulties that such an appeal creates. Specifically, appeals based upon hardship can be extraordinarily subjective. What constitutes a hardship to one individual might not be so to another, and vice-versa. And short of hiring medical experts and cross-examination in a trial-type hearing—an expensive, resource intensive, and subjective process—it can be difficult to glean the applicant's state-of-mind to determine whether the matter truly prevented him or her from fishing. Accordingly, such appeals are difficult to manage by regulation and potentially introduce an exception that can threaten to engulf the rule. Lobster management, however, is a bottom to top process. In this case, the Area 2 lobster fishing industry, as well as the Commission's Lobster Board, decided after lengthy public input and debate that a limited medical hardship appeal was appropriate for Area 2. Further, Rhode Island allowed this type of appeal in its qualification process and found it manageable and just. In proposing a hardship appeal provision here, NMFS gives weight to the lobster management process, and the experience of the industry and Board in making the proposal and finds the rationale for their appeal to be reasonable.

*Comment 19:* An Area 2 commenter suggested that NMFS provide for a medical appeal that mirrored Rhode Island's medical appeal so that there would not be a discrepancy between his state and Federal trap allocation. He claimed that he fished state and Federal waters as a single entity and that a trap discrepancy between his state and Federal allocations would disrupt his business.

*Response:* Commission Addenda VII (2005) and XII (2009) both establish the premise that a single fishing operation will be considered to have developed a single indivisible fishing history even if that history was established under jointly held state and Federal fishing permits. NMFS's DEIS further acknowledged the importance of this

premise and discussed the problems created by regulatory disconnects if a state and NMFS were to make inconsistent qualification and allocation decisions on that single fishing history. As a result, NMFS's proposed rule attempts to align itself with the regulatory processes already established by the states, including the appeals process set forth by Rhode Island, to the greatest extent practicable, acknowledging, of course, the difficulties in creating a Federal regulation that is consistent with state regulations that are themselves not always completely aligned.

*Comment 20:* Members of the public, lobstermen, the Massachusetts Lobstermen's Association, state and Federal legislators, as well as the Massachusetts Division of Marine Fisheries were concerned about unavoidable regulatory disconnects between NMFS and the states and urged NMFS to address these discrepancies in an appeals process or by grandfathering in earlier trap transfers.

*Response:* NMFS analyzed this issue in detail in the DEIS and shares these concerns. For this reason, NMFS introduces a Director's Appeal in this proposed rule. The Director's Appeal would allow states to petition NMFS for comparable trap allocations on behalf of Area 2 and Outer Cape Area applicants denied by NMFS. The appeal would be available only to Area 2 and Outer Cape Area participants for whom a state has already granted access. The Director's Appeal would allow more effort to qualify and enter the EEZ than would otherwise occur. NMFS, however, does not expect this potential additional effort to negatively impact the fishery. First, the number of appeals is limited to individuals who have already qualified under their state permit. These individuals, therefore, are already exerting fishing pressure on the lobster stock, albeit limited to state waters. Second, the DEIS analysis suggests strong correlation between state qualifiers and potential Federal qualifiers so, although some disconnects will likely occur, the DEIS predicts that the number will be relatively low. Finally, even if NMFS encounters a greater-than-predicted number of Director's Appeals, NMFS nevertheless concludes that synchronicity is so crucial as to be the overriding factor in proposing the appeal. To the extent that the extra qualified effort becomes a problem, which given the scale of the fishery seems unlikely, this effort can be further reduced in future Commission addenda rule recommendations.

*Comment 21:* Members of the public, lobstermen, the Massachusetts

Lobstermen's Association, state and Federal legislators, as well as the Massachusetts Division of Marine Fisheries, all indicate that Massachusetts allowed permit holders to transfer traps in the Outer Cape Area. As a result, even if NMFS were to allocate traps consistent with a state's initial allocation, the initial Federal allocation might not match the current state trap allocation because of the state allocation transfers that have subsequently occurred. The commenters recommend that NMFS grandfather in transactions that have already occurred, or adopt some other process to ensure that businesses with state and Federal permits have consistent allocations.

*Response:* NMFS agrees that the potential for disparate allocations amongst dually-licensed permit holders exists in any dually-administered allocation program. As a result, this proposed rule offers numerous safeguards without having to grandfather in earlier transactions. First, as discussed in response to Comment 20, NMFS's DEIS analysis suggests that the number of disconnects will be low. More recent Massachusetts Division of Marine Fisheries information confirms the DEIS conclusion and indicates that Massachusetts only allowed a negligible number of dually-permitted trap transfers (less than 1,000 traps) before freezing further transactions. Accordingly, NMFS expects that its proposed Director's Appeal will resolve most, if not all, of the problems. Additionally, although individuals with inconsistent allocations will not be forced to relinquish a state or Federal allocation, they will not be allowed to exacerbate the inconsistency by participating in the Federal Trap Transfer Program and transferring portions of the disparate trap allocations.

*Comment 22:* Massachusetts Division of Marine Fisheries, the Commission and members of the fishing industry commented in support of the Outer Cape Area January 15th to March 15th area closure.

*Response:* NMFS proposes to adopt the Commission's recommended closure and prohibit lobster traps in the Federal waters of the Outer Cape Area from January 15th to March 15th of each fishing year. There are numerous benefits to such a closure. Not only would it provide the lobster resource with a 2-month respite from fishing pressure, but the closure would also provide a bright-line enforcement standard: A 2-month period where no lobster trap can be legally set in the area. Thus, any traps encountered in the area during this time period would be

either illegal or abandoned, and, in either case, can be easily removed by law enforcement agents. Removing illegal gear is important because it removes excess gear, which benefits lobster by decreasing effort on the resource. It also makes cheating (fishing a number of traps in excess of the allowable trap limit) harder to do, which benefits the vast majority of lobster fishers who abide by the regulations, and lends credence to the overall management process. Removing abandoned gear (also called "ghost gear") would benefit the lobster resource because abandoned gear still traps, and potentially kills, lobster. NMFS notes that Massachusetts currently is proposing to alter the dates of this 2-month winter closure to February 1st through March 31st. Ultimately, NMFS considers it more important that the involved state and Federal governments coordinate the dates of their 2-month Outer Cape Area closure, than for NMFS to stick to its presently proposed January 15th to March 15th timeframe. If Massachusetts implements this proposed law, then NMFS will consider altering its proposed 2-month closure to correspond with the state law.

*Comment 23:* The Marine Mammal Commission commented that NMFS needs to be mindful of its responsibilities to consult under section 7 of the Endangered Species Act.

*Response:* NMFS is aware of its responsibilities under the Endangered Species Act and is in the process of consulting with its Protected Resources Division on this matter.

*Comment 24:* The Marine Mammal Commission was concerned that the proposed measures could alter the level and distribution of effort, particularly in Cape Cod Bay and the Great South Channel, which could increase entanglement risks for whales.

*Response:* As a preliminary matter, the proposed measures are specific to Area 2, Area 3, and the Outer Cape Area. The measures are not expected to increase lobster fishing effort in Cape Cod Bay, which is in Area 1 and to which lobster fishing access was limited by a final rule dated June 1, 2012 (77 FR 32420). As for the Great South Channel, this proposed rule has the potential to decrease whale entanglement. First, the proposed rule should not expand effort, but decrease effort, because it would limit lobster fishing access in Area 2 and the Outer Cape Area to approximately 233 permit holders (207 in Area 2 and 26 in the Outer Cape Area), as opposed to all 3,152 Federal lobster permit holders who can currently fish in Area 2 and the Outer

Cape Area—including portions of the Great South Channel. Thus, the proposed rule would restrict effort shift because traps would be restricted to being fished only in those areas in which they have fished in the past. Second, the proposed rule would allow for a more precise quantification of fishing effort as it would allocate a finite number of lobster traps, which would allow managers to better manage the lobster resource in each area. Third, although an unfettered trap transferability program might have the potential to increase effort to the extent latent traps become transferred and activated, the proposed rule offers measures to minimize this risk. For example, NMFS does not propose to give all qualifiers a flat 800-trap allocation (which is the number of traps permit holders can currently fish). Instead, NMFS would establish their initial allocation at the level of their demonstrated fishing history, thus decreasing the prospects that latent traps will become activated through the allocation process. In addition, the proposed Trap Transfer Program has set trap caps and a 10 percent conservation tax per trap transfer. Finally, NMFS proposes that all lobster traps be removed from the Outer Cape Area—including involved areas of the Great South Channel—for a 2-month period in late winter. NMFS discusses these issues in greater detail in the DEIS and further discusses latency issues in its responses to Comments 7, 13, and 14.

*Comment 25:* The Marine Mammal Commission recommended that NMFS require Federal lobster permit holders to provide data on their fishing practices to help evaluate the risk of interactions with whales and the effectiveness of related management actions.

*Response:* Although the nature of the request is vague, NMFS interprets the intent of the comment to suggest that additional data would help whale conservation and lobster resource management. NMFS generally agrees, but notes that the Commission's Lobster Board has struggled with this issue and has not yet reached consensus on how to best accomplish data needs in the fishery. The Board took an important step in Addendum X, which mandated lobster dealer reporting, and which NMFS implemented in 2009 (74 FR 37530). NMFS considers it important for the Lobster Board to provide direction so that all the managing states and Federal governments are operating in synergy. The Lobster Board did not recommend further lobster reporting in this action and, as a result, the request of the commenter is beyond the scope of this rulemaking. Nevertheless, better

data and understanding of the fishery is expected to result from this action. Specifically, this action would allow Federal managers to more precisely know actual fishing effort in Area 2 and the Outer Cape Area, which should aid in both the management of lobster and conservation of whales. This action also requires the creation of a centralized lobster trap tracking system that might also provide better data and understanding of the fishery. The significance of the lobster trap tracking system is discussed in greater detail earlier in this proposed rule in the section entitled: *ITT Program—NMFS's Response to Commission Recommendations and Proposed ITT Rule*.

*Comment 26:* The Environmental Protection Agency noted that the DEIS discussed the significance of water temperature on lobster and suggested that the Final Environmental Impact Statement contain the most current science on how temperature affects lobster.

*Response:* NMFS intends for the Final Environmental Impact Statement to contain the best available scientific information.

*Comment 27:* One commentator suggested that leasing of traps be allowed in addition to being sold during the trap transferability process, because doing so would provide industry with greater flexibility.

*Response:* NMFS does not propose to add leasing traps to its Trap Transfer Program. The Commission did not recommend leasing when it proposed its trap transferability program and to do so without the Commission and states also doing so would increase the potential for disconnects amongst the states, Federal government, and industry.

#### Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism implications as defined in E.O. 13132. The proposed measures are based upon the Lobster ISFMP that was created by and is overseen by the states. The proposed measures are a result of multiple addenda, which were approved by the states, recommended by the states through the Commission for Federal adoption, and are in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP, which makes recommendations for Federal action. Additionally, these proposed measures would not pre-empt state law and

would do nothing to directly regulate the states.

This proposed rule contains a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). A PRA analysis, including a revised Form 83i and supporting statement, has been submitted to OMB for approval. The PRA analysis evaluates the burden on Federal lobster permit holders resulting from the application and appeals process, as well as the Trap Transfer Program.

#### Burden on the Public

Prior to the start of the eligibility and allocation application process, NMFS will contact all Federal lobster permit holders and inform them of whether or not the agency has information on hand to demonstrate that a permit meets the eligibility requirements based upon the review of data provided by the states.

There are five types of respondents characterized in the PRA analysis. Group 1 applicants are those for whom NMFS has data on hand to show that their permits meet the eligibility criteria for one or both of the Outer Cape Area and Area 2. These permit holders would still need to apply by submitting an application form to NMFS agreeing with the NMFS assessment of their eligibility based on the state data. Group 2 applicants are the subset of Group 1 pre-qualifiers who do not agree with the NMFS pre-determination of the areas they are eligible for and/or the corresponding trap allocations. These applicants would be required to submit the application form, but would also need to provide additional documentation to support their disagreement with NMFS's assessment of their permits' eligibility. Group 3 applicants are those Federal lobster permit holders for whom there are no state data available to show that their permits meet the eligibility criteria for either Area 2 or the Outer Cape Area and who, consequently, have no trap allocation for either areas based on NMFS's review of the state-supplied data. Permit holders in this group may still apply for eligibility, but must submit, along with their application forms, documentation to support their claim of eligibility and trap allocation for the relevant areas. Group 4 are those who apply for access to either Area 2 and/or the Outer Cape Area, are deemed ineligible (a subset of Groups 2 and 3), and appeal the decision based on a military, medical, or technical issue. Group 5 consists of those who fall under the Director's Appeal. The Director's Appeal process was established to

address those Federal lobster permit holders who were qualified into either Area 2 and or the Outer Cape Area by their state, but their eligibility is not based on the qualification criteria set forth by the Commission's Lobster Plan. The Director's Appeal allows a state's fisheries director to appeal on behalf of such permit holders and advocate for their qualification to avoid disconnects that could occur if they were qualified by their state, but not by the Federal Government.

The PRA requires NMFS to estimate the individual and overall time and economic cost burdens to the affected public and the Federal Government. To apply, Group 1 applicants would need only to check off the area(s) they are seeking access to on an application form, sign the form, and submit it to NMFS for review. The burden for each applicant is estimated at 2 minutes. We expect about 202 applicants from this category, totaling 6.7 hours of burden for all Group 1 applicants combined. Each Group 1 application is expected to cost the applicant \$0.95 for postage, paper, and envelopes, totaling about \$192 for all 202 Group 1 applicants.

Because they are not pre-qualified, the application process for Group 2 and 3 applicants is expected to take 22 minutes: 2 minutes to complete and sign the application form; and 20 minutes to locate documentation to support the eligibility criteria. We expect about 31 Group 2 applicants and 79 Group 3 applicants. Consequently, the overall burden for all Group 2 and Group 3 applicants is estimated at 11.4 hours, and 29 hours, respectively. Group 2 and 3 applications are expected to cost each applicant about \$1.75 for paper, postage, and envelopes, totaling about \$193 for all 110 Group 2 and 3 applicants.

Group 4 applicants, those whose appeal a NMFS decision to deny their application, would require about 30 minutes to prepare and submit an appeal. Twenty-one appellants are expected from this group, totaling 11 hours of time for all 21 appellants to complete the appeal. The cost to each appellant to prepare and submit an appeal is \$4.42, with a total of about \$93 for all 21 Group 4 appeals.

Group 5 appellants, those who appeal under a Director's Appeal, would require 20 minutes of time to complete and file the appeal. With 40 expected appellants, the total burden for this group is estimated at 13 hours. Each Director's Appeal is estimated to cost each appellant about \$1.90, totaling \$76 for all 40 permit holders expected through the Director's Appeal.

Once the area eligibility decisions have been made and a specified

majority of the Area 2 and Outer Cape Area permits have been qualified and allocated traps, a trap transferability program will begin, allowing all Federal lobster permit holders, regardless of whether their permit qualified for the Area 2, Area 3, or Outer Cape Area trap fisheries, to purchase lobster trap allocations and gain access to these exclusive areas. Permit holders whose permits qualified for these areas may sell all or some of their trap allocation to other Federal lobster permit holders, and also may buy additional traps for these areas, up to an area-specific trap limit. Trap transfers for all interested permit holders would be restricted to a specified period. For each transaction, a buyer and a seller must complete a trap transfer form indicating the number of traps to be transferred, the permit information for each affected vessel, the amount of traps to account for the conservation tax, and other information needed to fully process and account for the transaction.

Prior to the implementation of the trap transfer program, a joint state/Federal database is expected to be on line to allow state agencies and NMFS to track the transfers by their respective permit holders—this is especially critical for tracking transfers between dual permit holders (those holding both a state and Federal lobster permit), because all agencies must have current and consistent records of a permit holder's trap allocation for tracking and enforcement. NMFS anticipates that such a system would likely allow permit holders to transfer traps using a Web site, which would feed into the joint state/Federal database as well as the relevant in-house state and Federal permit databases to facilitate submission and tracking. Regardless of the on-line option, we may accept hard copy trap transfer forms, depending upon the operational status of the inter-agency centralized trap transfer data base at the time the transfer program commences.

We estimate that the time needed for a permit holder to submit a transfer transaction online is the same amount of time as filling out and submitting a hard copy, but the costs of an electronic submission could be \$0.00, because those choosing that option may already have access to a computer and the Internet. Nevertheless, because this is a new program and we have no exact method for determining the percentage of permit holders who would conduct their trap transfer transactions on-line we will assume, for the purposes of public burden estimation, that all participants will conduct their transactions with hard-copy submissions. We estimate that it would

take 10 minutes to complete a trap transfer request. We expect that each year, about 432 Federal lobster permit holders will apply to buy or sell traps. Each transfer transaction requires two permit holders: A buyer and a seller. Therefore, the number of expected participants is twice the number of expected transactions. Accordingly, about 216 trap transfer applications are expected, with a total permit holder burden of 36 hours. Costs for each transfer transaction are the combined costs of paper, envelopes, and postage, calculated at \$5.62 per transfer application, totaling \$1,214 for all 216 transfer requests.

Total cost to the affected permit holders for all applications, appeals, and the first year of the trap transfer program are the combined costs of all these categories, totaling about \$1,768.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Sustainable Fisheries Division at the ADDRESSES above, and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### **Economic Impact of the Proposed Rule on Small Entities**

##### *1. Regulatory Flexibility Act: Background*

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Such an analysis requires an initial finding that (1) small entities are involved; and (2) that economic impacts would result. Both factors occur here.

NMFS prepared this IRFA in tandem with the DEIS, which was made

available in 2010. The DEIS and IRFA are based on 2007 data, which was the most recent and best available when these analyses were initiated. All lobster permit holders are being considered small business entities for the purposes of the analysis. The Small Business Administration's size standard for commercial fishing (NAICS 1141) is \$4 million in gross sales. The proposed action would potentially affect any fishing vessel using trap gear that holds a Federal lobster permit. During 2007, a total of 3,287 Federal lobster permits were issued. Of these permits, 699 were issued only a non-trap gear permit, 2,168 were issued only a trap-gear permit, and 420 held both a trap and a non-trap gear permit. According to dealer records, no single lobster vessel exceeded \$4 million in gross sales. Some individuals own multiple operating units, so it is possible that affiliated vessels would be classified as a large entity under the SBA size standard. However, the required ownership documentation submitted with the permit application is not adequate to reliably identify affiliated ownership. Therefore, all operating units in the commercial lobster fishery are considered small entities for purposes of analysis.

The second required finding—that economic impacts would result—also occurs here. In fact, a primary reason in proposing this rule is to have an economic impact, i.e., to establish regulations that "...promote economic efficiency within the fishery..." (see Supplementary Information—Purpose and Need for Management). The DEIS analysis of preferred and non-preferred alternatives and this proposed rule's discussion of proposed and rejected actions are largely an analysis of the economic impacts of the proposed measures and their alternatives on small business entities. This section is only a summary of the full impact analysis NMFS completed for this action. Although this section attempts to provide a broad sense of the IRFA, NMFS advises the public to review its DEIS as well as earlier sections of this proposed rule for a more detailed understanding of the economic impacts.

##### *2. Regulatory Flexibility Act—Overview of Economic Impacts Analysis*

The economic impacts of the proposed limited entry program for the Outer Cape Area and Area 2 cannot be quantified with any meaningful precision. The economic viability of a lobster business is not simply dependent on the amount of lobster harvested, but is also dependent on the cost of resources expended to harvest

lobster (such as fuel, bait, boat mortgages, etc.). Information about the costs is not collected and, therefore, is not available for this analysis. Even if the information were available, human factors, such as skill of the captain, decisions on when and where to fish, and when to bring the harvest to market so impact lobster economics that quantification would still not be possible. Nevertheless, a qualitative analysis of potential economic impacts is both possible and helpful to better understand the impacts of the proposed rule and its alternatives.

In the Outer Cape Area and Area 2, the proposed action would implement a limited access program with individual trap allocations. This action would mean that any Federal permit holder who did not qualify for limited access would not be able to set traps in either area now or in the future. Based on preliminary estimates, a total of 207 Federal lobster trap vessels would qualify for Area 2 and 26 Federal lobster trap vessels would qualify for limited access in the Outer Cape Area. Conceptually, then, more than 2,000 Federal lobster permit holders would not qualify. However, the majority of these non-qualifiers either do not currently participate in any lobster trap fishery, or they set traps in other LCMA's.

Past Federal lobster regulations allowed individuals to select any lobster management area on their annual permit renewal. For a variety of reasons, some vessel owners elect multiple areas, yet have no history or intent of actually setting traps in all of them. Election of an LCMA may be thought of as representing an option to set traps in an area, whereas the purchase of trap tags may reflect an indication of the intent to actually fish there. For example, during 2007, a total of 431 permit holders elected Area 2 on their permit application and 170 elected the Outer Cape Area. Only 38 of the 170 vessels electing the Outer Cape Area in 2007 purchased Outer Cape Area trap tags, while in Area 2, only 182 of 431 vessels purchased Area 2 trap tags. For purposes of further discussion, vessels that have elected to fish in either Area 2 or the Outer Cape Area will be considered participating vessels.

As noted above, in 2007, there were 182 participating businesses engaged in the Area 2 trap fishery, whereas the proposed action would qualify a total of 207 permitted vessels. Whether all of the participating vessels would be included in the 207 vessels that would qualify for limited access in Area 2 is uncertain. Nevertheless, the number of qualifying vessels under the proposed

action would likely exceed the number of currently participating vessels. By contrast, the number of qualifying vessels in the Outer Cape Area would be less than the number of currently participating vessels. Specifically, participating vessels from both Rhode Island (nine) and New Jersey (three) might no longer be allowed to participate in the Outer Cape Area lobster trap fishery. Note that the actual level of participation by these non-qualified vessels is uncertain because, in the absence of mandatory reporting, we cannot verify whether or not any traps were actually fished in the area, which also means that the economic impacts on any non-qualified participating vessels cannot be reliably estimated.

In the absence of action (i.e., the no-action alternative identified in the DEIS) a shift in effort could likely occur into Area 2 and the Outer Cape Area because the two areas would be the only remaining open-access lobster management areas. In other words, under the no-action alternative, any Federal lobster permit holder could fish in those two areas, including permit holders who have no trap fishing history during the qualification period, and those excluded from fishing in nearby areas. In such a scenario, the most likely economic impact would be a dilution in profitability for current and future participants in the lobster fishery. Increasing the number of participating vessels and traps fished in either area may result in higher landings overall, but unless landings linearly increase with traps fished, landings, and average gross stock per vessel would be likely to go down. In effect, limited access would insulate the majority of current participating vessels from the external diseconomies that typify open access fisheries.

NMFS's proposed qualification process should aid small lobster businesses by streamlining what might otherwise be a cumbersome application process. NMFS proposes to allow applicants to provide their state qualification and allocation decision as proof of what their Federal allocation should be. In contrast, in its earlier limited access programs for Areas 3, 4, and 5, NMFS required that all applicants provide documentation, including an affidavit, which was a time-consuming and relatively burdensome, albeit necessary, process. Here, NMFS reviewed the applicable regulations for the involved states and determined that the state criteria was substantially identical to the proposed Federal criteria, which is not surprising because the Commission proposed that

the states and NMFS implement compatible regulations based upon Commission recommended addenda. Thus, NMFS will accept state allocation information as the best evidence of its decision unless NMFS had reason to think the underlying state decision was incorrect.

NMFS proposes a limited number of appeals to its Area 2 and Outer Cape Area limited access programs. These appeals have economic benefit to small lobster businesses because they afford an opportunity for lobster businesses to qualify and receive a trap allocation they otherwise would be denied. NMFS considered the alternative of having no appeals. Having no appeals would likely result in a smaller number of qualifiers, which could result in some economic advantage to existing qualifiers in that they would receive a proportionately greater share of access to the resource. The DEIS, however, predicts that the number of appeals will be low, and as such, excluding appeals would likely result in little measurable economic advantage to the other qualifiers. In contrast, failure to include appeals could result in negative economic impacts. Certainly, denying access to a permit holder who might otherwise qualify through an appeal would have a direct negative impact to that permit holder. Further still, the states and Commission recommended that appeals be implemented in their addenda. NMFS's failure to similarly include appeals would result in regulatory disconnects. The DEIS discusses in further detail the negative impacts that a disjointed regulatory program would have on small businesses, government managers, and the lobster resource.

As noted previously, the proposed action would create individual trap allocations and would implement a transferable trap program. Conceptually, initial allocations would preserve the relative competitive position among qualifying lobster trap fishing businesses, but transferability would provide regulated lobster trap vessels with the flexibility to adjust trap allocations as economic conditions and business planning warrant. This program would be an overall economic benefit to lobster businesses. Failure to implement such a transferable trap program (e.g., by selecting the no-action alternative identified in the DEIS) would likely result in negative economic impacts. First, non-qualifiers would be excluded from future trap access into the areas, while qualifiers with low allocations might lack sufficient traps to operate profitably according to their selected business model. Second, qualifiers with

sufficient allocation would lose the opportunity to derive profit from the incremental sale of traps as they scale down and retire their business. Third, failure to implement a transferable trap program would create regulatory disconnects between NMFS, the states, and Commission, given that some states have already implemented a trap transfer program, and because the Commission is relying on trap transferability as a foundational element to its effort reduction measures identified in Addendum XVIII.

The proposed Trap Transfer Program differs from that of the Commission's recommended alternative in that once initial qualifications for trap allocations have been made in each LCMA, the ability to purchase traps to fish in the area under the proposed Trap Transfer Program would not be limited to only individuals that qualified for limited entry. This program feature affords small lobster trap fishing businesses the flexibility to scale their businesses up or down, and acquire and set traps in any LCMA in which trap allocations have been established and trap transferability has been approved (presently, Areas 2, 3, and the Outer Cape Area). This feature has several economic advantages. Without this feature, under the no-action alternative, the only way a non-qualified Federal lobster permit holder could fish in Areas 2, 3, and/or the Outer Cape Area, would be by purchasing someone else's qualifying vessel and traps. The proposed action would, in effect, implement a single Trap Transfer Program for Areas 2, 3, and the Outer Cape Area. This feature would not only reduce the administrative costs of running the Trap Transfer Program, but would also simplify the Program for potential lobster trap fishery participants. However, while the purchase of less than a full complement of transferable traps would be allowed, the ability to fish traps would be impacted by enforcement of the Most Restrictive Rule set forth in § 697.3 and § 697.4. In cases where a trap allocation in a specific LCMA would be low, lobster fishing businesses electing to fish/utilize those traps in that area would be bound or capped to that low allocation of traps for all LCMA's they intend to fish in for the entire fishing year.

#### List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: June 4, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

#### **PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

■ 1. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.4, remove paragraphs (a)(7)(ix) through (a)(7)(xi), and revise paragraphs (a)(7)(ii), (a)(7)(vii) and (a)(7)(viii) to read as follows:

#### **§ 697.4 Vessel permits and trap tags.**

(a) \* \* \*

(7) \* \* \*

(ii) Each owner of a fishing vessel that fishes with traps capable of catching lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. The ability to declare into Lobster Conservation Management Areas 1, 2, 3, 4, 5, and/or the Outer Cape Management Area, however, will be first contingent upon a one-time initial qualification, as set forth in paragraphs (a)(7)(vi) through (a)(7)(viii) of this section.

\* \* \* \* \*

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

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

(1) That the applicant possesses a current Federal lobster permit;

(2) That the applicant landed lobster caught in traps from the Outer Cape Area in either 1999, 2000, or 2001. Whichever year used shall be considered the qualifying year for the purposes of establishing the applicant's Outer Cape Area trap allocation;

(B) *Trap allocation criteria.* To receive a trap allocation for the EEZ portion of the Outer Cape Area, the qualified applicant must also establish with documentary proof the following:

(1) The number of lobster traps fished by the qualifying vessel in 2000, 2001, and 2002; and

(2) The total pounds of lobster landed in 2000, 2001, and 2002.

(C) *Trap allocation formula.* The Regional Administrator shall allocate traps for use in the Outer Cape Area based upon the applicant's highest level of Effective Traps Fished during the qualifying year. Effective Traps Fished shall be the lower value of the maximum number of traps reported fished for that qualifying year compared to the predicted number of traps that is required to catch the reported poundage of lobsters for that year as set forth in the Commission's allocation formula identified in Addendum XIII to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster.

(D) *Documentary proof.* To satisfy the Outer Cape Area Qualification and Trap Allocation Criteria set forth in paragraphs (a)(7)(vii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the Federal lobster permit in its data base, which would at a minimum include: The applicant's name and address, vessel name and permit number.

(2) As proof of traps fished the Outer Cape Area and lobsters landed from the Outer Cape Area in either 2000, 2001, or 2002, the applicant must provide the documentation reported to the state of the traps fished and lobsters landed during any of those years as follows:

(i) *State records.* An applicant must provide documentation of his or her state reported traps fished and lobster landings in 2000, 2001, or 2002. The Regional Administrator shall presume that the permit holder was truthful and accurate when reporting to his or her state the traps fished and lobster landed in 2000, 2001, and 2002 and that the state records of such are the best evidence of traps fished and lobster landed during those years.

(ii) *State decision.* An applicant may provide their state's qualification and allocation decision to satisfy the documentary requirements of this section. The Regional Administrator shall accept a state's qualification and allocation decision as prima facie evidence of the Federal qualification and allocation decision. The Regional Administrator shall presume that the state decision is appropriate, but that

presumption is rebuttable and the Regional Administrator may choose to disallow the use of the state decision if the state decision was incorrect or based on factors other than those set forth in this section. This state decision may include not only the initial state qualification and allocation decision, but may also incorporate state trap transfer decisions that the state allowed since the time of the initial allocation decision.

(iii) *States lacking reporting.* An applicant may provide Federal vessel trip reports, dealer records or captain's logbook as documentation in lieu of state records if the applicant can establish by clear and convincing evidence that the involved state did not require the permit holder to report traps or landings during 2000, 2001, or 2002.

(E) *Application period.* Applicants will have 180 days to submit an application. The time period for submitting an application for access to the EEZ portion of the Outer Cape Area begins on the date 30 days after publication of this final rule (application period start date) and ends 210 days after the publication of the final rule. Failure to apply for Outer Cape Management Area access by that date shall be considered a waiver of any future claim for trap fishery access into the Outer Cape Area.

(F) *Appeal of denial of permit.* Any applicant having first applied for initial qualification into the Outer Cape Area trap fishery pursuant to this section, but having been denied access or allocation may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing. Appeals may be submitted in the following two situations:

(1) *Clerical error.* The grounds for administrative appeal shall be that the Regional Administrator erred clerically in concluding that the vessel did not meet the criteria in paragraph (a)(7)(vii) of this section. Errors arising from oversight or omission such as ministerial, mathematical, or typographical mistakes would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error. If the appealing applicant does not clearly and convincingly prove that an error occurred, the appeal must be denied.

(2) *Director's appeal.* A state's marine fisheries agency may appeal on behalf of one of its state permit holders. The only grounds for a Director's Appeal shall be

that the Regional Administrator's decision on a dual permit holder's Federal permit has created a detrimental incongruence with the state's earlier decision on that permit holder's state permit. In order to pursue a Director's Appeal, the state must establish the following by a preponderance of the evidence:

(i) *Proof of an incongruence.* The state must establish that the individual has a state lobster permit, which the state has qualified for access with traps into the Outer Cape Area, as well as a Federal lobster permit, which the Regional Administrator has denied access or restricted the permit's trap allocation into the Outer Cape Area. The state must establish that the incongruent permits were linked during the year or years used in the initial application such that the fishing history used in Federal and state permit decisions was the same.

(ii) *Proof of detriment.* The state must provide a letter supporting the granting of trap access for the Federal permit holder. In the support letter, the state must explain how the incongruence in this instance is detrimental to the Outer Cape Area lobster fishery and why granting the appeal is, on balance, in the best interests of the fishery overall. A showing of detriment to the individual permit holder is not grounds for this appeal and will not be considered relevant to the decision.

(G) *Appellate timing and review.* All appeals must be submitted to the Regional Administrator in writing and reviewed as follows:

(1) *Clerical appeals timing.* Applicants must submit Clerical Appeals no later than 45 days after the date on the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator in writing of his or her intent to appeal within the 45 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted.

(2) *Director's appeals timing.* State Directors must submit Director's Appeals on behalf of their constituents no later than 180 days after the date of the NMFS Notice of Denial of the Initial

Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 180 days of the date of the Notice of Denial will preclude any further appeal. The Director may notify the Regional Administrator in writing of his or her intent to appeal within the 180 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 180-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadline will not be accepted.

(3) *Agency response.* Upon receipt of a complete written appeal with supporting documentation in the time frame allowable, the Regional Administrator will then appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(H) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish with traps in the Outer Cape Area during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in the Outer Cape Area during the pendency of the appeal. The Regional Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial, or 15 days after the date on the notice of appellate denial, whichever occurs first.

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

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

- (1) That the applicant possesses a current Federal lobster permit;
- (2) That the applicant landed lobster caught in traps from the Area 2 in either



2001, 2002, or 2003. Whichever year used shall be considered the qualifying year for the purposes of establishing the applicant's Area 2 trap allocation;

(B) *Trap allocation criteria.* To receive a trap allocation for the EEZ portion of Area 2, the qualified applicant must also establish with documentary proof the following:

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

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

(C) *Trap allocation formula.* The Regional Administrator shall allocate traps for use in Area 2 based upon the applicant's highest level of Effective Traps Fished during the qualifying year. Effective Traps Fished shall be the lower value of the maximum number of traps reported fished for that qualifying year compared to the predicted number of traps that is required to catch the reported poundage of lobsters for that year as set forth in the Commission's allocation formula identified in Addendum VII to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster.

(D) *Documentary proof.* To satisfy the Area 2 Qualification and Trap Allocation Criteria set forth in paragraphs (a)(7)(viii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(1) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the Federal lobster permit in its data base, which would at a minimum include: The applicant's name and address, vessel name, and permit number.

(2) As proof of traps fished in Area 2 and lobsters landed from Area 2 in either 2001, 2002, or 2003, the applicant must provide the documentation reported to the state of the traps fished and lobsters landed during any of those years as follows:

(i) *State records.* An applicant must provide documentation of his or her state reported traps fished and lobster landings in 2001, 2002, or 2003. The landings must have occurred in a state adjacent to Area 2, which the Regional Administrator shall presume to be limited to Massachusetts, Rhode Island, Connecticut, and/or New York. The Regional Administrator shall presume that the permit holder was truthful and accurate when reporting to his or her state the traps fished and lobster landed in 2001, 2002, and 2003 and that the state records of such are the best

evidence of traps fished and lobster landed during those years.

(ii) *State decision.* An applicant may provide their state's qualification and allocation decision to satisfy the documentary requirements of this section. The Regional Administrator shall accept a state's qualification and allocation decision as prima facie evidence of the Federal qualification and allocation decision. The Regional Administrator shall presume that the state decision is appropriate, but that presumption is rebuttable and the Regional Administrator may choose to disallow the use of the state decision if the state decision was incorrect or based on factors other than those set forth in this section. This state decision may include, not only the initial state qualification and allocation decision, but may also incorporate state trap transfer decisions that the state allowed since the time of the initial allocation decision.

(iii) *States lacking reporting.* An applicant may provide Federal Vessel Trip Reports, dealer records, or captain's logbook as documentation in lieu of state records if the applicant can establish by clear and convincing evidence that the involved state did not require the permit holder to report traps or landings during 2001, 2002, or 2003.

(E) *Application period.* Applicants will have 180 days to submit an application. The time period for submitting an application for access to the EEZ portion of Area 2 begins on the date 30 days after publication of this final rule (application period start date) and ends 210 days after the publication of the final rule. Failure to apply for Area 2 by that date shall be considered a waiver of any future claim for trap fishery access into Area 2.

(F) *Appeal of denial of permit.* Any applicant having first applied for initial qualification into the Area 2 trap fishery pursuant to this section, but having been denied access, may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing. Appeals may be submitted in the following three situations:

(1) *Clerical error.* The grounds for administrative appeal shall be that the Regional Administrator erred clerically in concluding that the vessel did not meet the criteria in paragraph (a)(7)(viii) of this section. Errors arising from oversight or omission such as ministerial, mathematical, or typographical mistakes would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the

basis for the applicant's belief that the Regional Administrator's decision was made in error. If the appealing applicant does not clearly and convincingly prove that an error occurred, the appeal must be denied.

(2) *Medical or military hardship appeal.* The grounds for a hardship appeal shall be limited to those situations in which medical incapacity or military service prevented a Federal lobster permit holder from fishing for lobster in 2001, 2002, and 2003. If the Federal lobster permit holder is able to prove such a hardship, then the individual shall be granted the additional years of 1999 and 2000 from which to provide documentary proof in order to qualify and fish for traps in Area 2. In order to pursue a Hardship Appeal, the applicant must establish the following by a preponderance of the evidence:

(i) *Proof of medical incapacity or military service.* To prove incapacity, the applicant must provide medical documentation from a medical provider, or military service documentation from the military, that establishes that the applicant was incapable of lobster fishing in 2001, 2002, and 2003. An applicant may provide their state's qualification and allocation appeals decision to satisfy the documentary requirements of this section. The Regional Administrator shall accept a state's appeals decision as prima facie evidence of the appeals Federal decision. The Regional Administrator shall presume that the state decision is appropriate, but that presumption is rebuttable and the Regional Administrator may choose to disallow the use of the state decision if the state decision was incorrect or based on factors other than those set forth in this section.

(ii) *Proof of Area 2 trap fishing in 1999 and 2000.* To prove a history of Area 2 lobster trap fishing in 1999 and/or 2000, the applicant must provide documentary proof as outlined in paragraph (a)(7)(viii)(D) of this section.

(3) *Director's appeal.* A state's marine fisheries agency may appeal on behalf of one of its state permit holders. The only grounds for a Director's Appeal shall be that the Regional Administrator's decision on a dual permit holder's Federal permit has created a detrimental incongruence with the state's earlier decision on that permit holder's state permit. In order to pursue a Director's Appeal, the state must establish the following by a preponderance of the evidence:

(i) *Proof of an incongruence.* The state must establish that the individual has a state lobster permit, which the state has



qualified for access with traps into Area 2, as well as a Federal lobster permit, which the Regional Administrator has denied access or restricted the permit's trap allocation into Area 2. The state must establish that the incongruent permits were linked during the year or years used in the initial application such that the fishing history used in Federal and state permit decisions was the same.

(ii) *Proof of detriment.* The state must provide a letter supporting the granting of trap access for the Federal permit holder. In the support letter, the state must explain how the incongruence in this instance is detrimental to the Area 2 lobster fishery and why granting the appeal is, on balance, in the best interests of the fishery overall. A showing of detriment to the individual permit holder is not grounds for this appeal and will not be considered relevant to the decision.

(G) *Appellate timing and review.* All appeals must be submitted to the Regional Administrator in writing and reviewed as follows:

(1) *Clerical appeals timing.* Applicants must submit Clerical Appeals no later than 45 days after the date on the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator in writing of his or her intent to appeal within the 45 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted.

(2) *Medical or military appeals timing.* Applicants must submit Medical or Military Appeals no later than 45 days after the date on the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator in writing of his or her intent to appeal within the 45 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as

extending 30 days beyond the initial 45-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted.

(3) *Director's appeals timing.* State Directors must submit Director's Appeals on behalf of their constituents no later than 180 days after the date of the NMFS Notice of Denial of the Initial Qualification Application. NMFS shall consider the appeal's postmark date as constituting the submission date for the purposes of determining timing. Failure to register an appeal within 180 days of the date of the Notice of Denial will preclude any further appeal. The Director may notify the Regional Administrator in writing of his or her intent to appeal within the 180 days and request a time extension to procure the necessary documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 180-day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadline will not be accepted.

(4) *Agency response.* Upon receipt of a complete written appeal with supporting documentation in the time frame allowable, the Regional Administrator will then appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(H) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish with traps in Area 2 during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in Area 2 during the pendency of the appeal. The Regional Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial or 15 days after the date on the notice of appellate denial, whichever occurs first.

\* \* \* \* \*  
■ 3. In § 697.7, add paragraph (c)(1)(xxx) to read as follows:

§ 697.7 Prohibitions.  
\* \* \* \* \*  
(c) \* \* \*

(1) \* \* \*  
(xxx) The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from January 15th through March 15th.

(A) Lobster fishing with traps is prohibited in the Outer Cape Area during this seasonal closure. Federal trap fishers are prohibited from possessing or landing lobster taken from the Outer Cape Area during the seasonal closure.

(B) All lobster traps must be removed from Outer Cape Area waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Outer Cape Area waters during this seasonal closure. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Outer Cape Area waters during this seasonal closure unless the vessel is transiting through the Outer Cape Area pursuant to paragraph (c)(1)(xxx)(D) of this section.

(C) The Outer Cape Area seasonal closure relates only to the Outer Cape Area. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Outer Cape Area designation and another Lobster Management Area designation on their Federal lobster permit would not have to similarly remove their lobster gear from the other designated management areas.

(D) Transiting Outer Cape Area. Federal lobster permit holders may possess lobster traps on their vessel in the Outer Cape Area during the seasonal closure only if:

- (1) The trap gear is stowed; and
- (2) The vessel is transiting the Outer Cape Area. For the purposes of this section transiting shall mean passing through the Outer Cape Area without stopping to reach a destination outside the Outer Cape Area.

(E) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Outer Cape Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

- (1) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(2) That all lobsters caught in the subject traps will be immediately returned to the sea.

(3) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

\* \* \* \* \*

■ 4. Revise § 697.19 to read as follows:

**§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.**

(a) *Area 1 trap limits.* The Area 1 trap limit is capped at 800 traps. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 800 lobster traps in Area 1.

(b) *Area 2 trap limits.* The Area 2 trap limit is capped at 800 traps. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 800 lobster traps in Area 2.

(c) *Area 3 trap limits.* The Area 3 trap limit is capped at 1,945 traps. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 1,945 lobster traps in Area 3.

(d) *Area 4 trap limits.* The Area 4 trap limit is capped at 1,440 traps. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 1,440 lobster traps in Area 4.

(e) *Area 5 trap limits.* The Area 5 trap limit is capped at 1,440 traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 1,440 lobster traps in Area 5, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(f) *Outer Cape Area.* The Outer Cape Area trap limit is capped at 800 traps. Federally permitted lobster fishing vessels shall not fish with, deploy in, possess in, or haul back more than 800 lobster traps in the Outer Cape Area.

(g) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ management area.* A vessel owner who elects to fish in more than one EEZ Management Area is restricted to the lowest cap limit of the areas and may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(h) *Conservation equivalent trap limits in New Hampshire state waters.* Notwithstanding any other provision, any vessel with a Federal lobster permit

and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(i) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(j) *Maximum lobster trap tags authorized for direct purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) through (f) of this section plus an additional 10 percent to cover trap loss.

(k) *EEZ Management Area 5 trap waiver exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

■ 5. Add § 697.27 to read as follows:

**§ 697.27 Trap transferability.**

(a) Federal lobster permit holders may elect to participate in a program that allows them to transfer trap allocation to other participating Federal lobster permit holders, subject to the following conditions:

(1) *Participation requirements.* In order to be eligible to participate in the Federal Trap Transfer Program:

(i) An individual must possess a valid Federal lobster permit; and

(ii) If the individual is dually permitted with both Federal and state lobster licenses, the individual must agree to synchronize their state and Federal allocations in each area for which there is an allocation. This synchronization shall be set at the lower of the state or federal allocation in each area. This provision does not apply to Areas 1 and 6 as neither area have a Federal trap allocation.

(iii) Individuals participating in the Lobster Management Area 1 trap fishery may participate in the Trap Transfer Program, but doing so may result in

forfeiture of future participation in the Area 1 trap fishery as follows:

(A) Area 1 fishers may accept, receive, or purchase trap allocations up to their Area 1 trap limit identified in § 697.19 and fish with that allocation both in Area 1 and the other area or areas subject to the restrictive provisions of § 697.3 and § 697.4(a)(7)(v).

(B) Area 1 fishers with trap allocations in Areas 2, 3 and/or the Outer Cape Area may transfer away or sell any portion of that allocation, but in so doing, the Area 1 fisher shall forfeit any right to fish in Area 1 with traps in the future.

(2) *Trap allocation transfers.* Trap allocation transfers will be allowed subject to the following conditions:

(i) *State/federal alignment.*

Participants with dual state and Federal permits may participate in the Trap Transfer Program each year, but their state and Federal trap allocations must be aligned as required in paragraph (a)(1)(ii) of this section at the start and close of each trap transfer period.

(ii) *Eligible traps.* Buyers and sellers may only transfer trap allocations from Lobster Management Areas 2, 3, and the Outer Cape Area.

(iii) *Debiting remaining allocation.* The permit holder transferring trap allocations shall have his or her remaining Federal trap allocation in all Lobster Conservation Management Areas debited by the total amount of allocation transferred. This provision does not apply to Areas 1 and 6, as neither area have a Federal trap allocation. A seller may not transfer a trap allocation if, after the transfer is debited, the allocation in any remaining Lobster Conservation Management Area would be below zero.

(iv) *Crediting allocations for partial trap transfers.* In a partial trap transfer, where the transfer is occurring independent of a Federal lobster permit transfer, the permit holder receiving the transferred allocation shall have his or her allocation credited as follows:

(A) *Trap retirement.* All permit holders receiving trap allocation transfers shall retire 10 percent of that transferred allocation from the fishery for conservation. This provision does not pertain to full business transfers where the transfer includes the transfer of a Federal lobster permit and all traps associated with that permit.

(B) *Multi-Area trap allocation history.* To the extent that transferred trap allocations have been granted access into multiple management areas, the recipient must choose a single management area in which that transferred allocation will be fished. Upon choosing the single management

area, whatever multi-area fishing history previously associated with that transferred allocation shall be considered lost and shall not serve as a basis for future multi-area access. The trap allocation retirement percentages shall be calculated according to the area chosen.

(C) *Single management area trap allocation history.* A trap may only be fished in an area for which it was allocated.

(D) All trap allocation transfers are subject to whatever trap allocation cap exists in the involved lobster management area. No participant may receive a transfer that, when combined with existing allocation, would put that permit holder's trap allocation above the involved trap caps identified in § 697.19.

(v) Trap allocations may only be transferred in ten trap increments.

(vi) Trap allocation transfers must be approved by the Regional Administrator before becoming effective. The Regional Administrator shall approve a transfer upon a showing by the involved permit holders of the following:

(A) The proposed transfer is documented in a legible written agreement signed and dated by the involved permit holders. The agreement must identify the amount of allocation being transferred as well as the Federal lobster permit number from which the allocation is being taken and the Federal lobster permit number that is receiving

the allocation. If the transfer involves parties who also possess a state lobster license, the parties must identify the state lobster license number and state of issuance.

(B) That the transferring permit holder has sufficient allocation to transfer and that the permit holder's post-transfer allocation is clear and agreed to.

(C) That the permit holder receiving the transfer has sufficient room under any applicable trap cap identified in § 697.19 to receive the transferred allocation and that the recipient's post-transfer allocation is clear and agreed to.

(3) *Trap transfer period.* The timing of the Trap Transfer Program is as follows:

(i) Federal lobster permit holders must declare their election into the program in writing to the NMFS Permit Office. Electing into the Trap Transfer Program is a one-time declaration, and the permit holder may participate in the program in later years without needing to re-elect into the program year after year. Federal permit holders may elect into the program at any time in any year, but their ability to actively transfer traps will be limited by the timing restrictions identified in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) All trap transfer requests must be made in writing before September 30 each year, and if approved, will become effective at the start of the next fishing year. The Regional Administrator shall attempt to review, reconcile and notify the transferring parties of the

disposition of the requested transfer before December 31 each year. Transfers are not valid until approved by the Regional Administrator.

(iii) *Year 1.* The timing of the first year of the Transfer Program is impacted by the timing of the final rule implementing the program. As a result, in Year 1 of the program only, and notwithstanding paragraph (a)(3)(ii) of this section, NMFS will allow participation in the Program as follows:

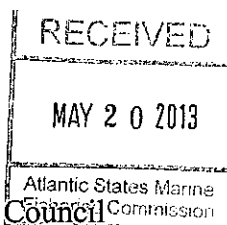
(A) Federal permit holders may elect into the Trap Transfer Program beginning 120 days after the publication of the final rule establishing the program;

(B) Federal permit holders may request trap transfers beginning 120 days after the publication of the final rule and ending 150 days after the publication of the final rule, and if approved will be effective at the start of the new fishing year. Transfer requests postmarked later than 150 days after the final rule will not be accepted. The Regional Administrator shall attempt to review, reconcile and notify the transferring parties of the disposition of the requested transfer within two months (within 210 days of the publication of the final rule). Transfers are not valid until approved by the Regional Administrator.

(b) [Reserved]

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**BILLING CODE 3510-22-P**



New England Fishery Management Council

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C.M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

May 15, 2013

RB  
TK  
KT

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

Dear Bob:

At its April 23-25, 2013 meeting, the New England Fishery Management Council (Council) discussed the inconsistency and related safety concerns of lobster gear marking regulations. The Council believes that some of the current gear marking requirements may be unobservable on the water's surface and, in some cases, not strictly followed.

The Council now requests that the Atlantic States Marine Fisheries Commission (Commission) work together with the Atlantic Large Whale Take Reduction Plan (ALWTRP) and arrange meetings with the State Directors of ME, MA and NH, fishermen and lobster associations to discuss differences in lobster gear marking requirements in territorial waters and the EEZ that may lead to unsafe conditions for fishing vessels and loss of lobster gear.

Inshore lobstermen are required to follow state laws which may differ from state to state and from EEZ requirements. Rules that should be reviewed include single buoys for three or less traps, a three-foot stick on only one end of traps-in-a-trawl (TIAT) in Massachusetts waters (see attached chart), the use of sinking groundlines that may pull surface markings underwater with local tides, and no middle surface markings for TIATs less than 6,000 feet long. Also, some inshore lobstermen, who previously followed their state water rules, but who now also fish in the EEZ, may not realize they now are subject to different rules in the EEZ. The Council recommends a minimum standard for fixed gear similar to the current EEZ regulations for TIATs with more than three traps. The regulations require a western-most radar reflector with pennant and an eastern-most radar reflector. Finally, any changes to gear-marking regulations should be given the widest dissemination.

Please contact me if you have any questions.


Sincerely,

Thomas A. Nies  
Executive Director

attachment

cc: Mr. David Gouveia, Atlantic Large Whale Take Reduction Plan  
Mr. Douglas Grout  
Mr. Terry Stockwell  
Mr. David Pierce



Gear in question	Federal Regs			Mass Regs			
	Gear marking	Surface gear	Additional Area-specific requirements	Gear marking	Surface gear	Additional Marking requirements	
<b>NMS/Monk (648.84)</b>	<b>Bottom tending Fixed Gear including/but not limited (i/bnl) gillnet and longline</b>	Owner/vessel name or Official Number visible on the surface permanently affixed	Western-most radar reflector with pennant Eastern-most radar reflector	GOM-GB 30 degree deviations must be marked with additional marker	Buoys permanently marked with owner's permit number	For gillnets the radar reflectors requirements are the same as federal with the exception that Mass does not specify the height of the flag	Buoy Line: green mark midway  Exception: regarding line color; when in conflict with code color, use a white mark
<b>Scup (628.123)</b>	<b>Pot and Trap</b>	Must be marked with Code ID: - may be assigned by Reg. Dir - or by State regs			<b>Single fish pots same as single lobster pots, for scup, sea bass, and conch. There is no red crab fishery in MA state waters.</b>  <b>99.9% of fish pots in MA are singles.</b>	<b>The Mass regulations listed below apply to lobster, fish, and conch pot trawls</b> (single pots tied together in a series and buoyed at both ends)  	
<b>Black Sea Bass (648.144)</b>	<b>Pot and Trap</b>	USCG Doc # or State Registration number					
<b>Red Crab (648.264)</b>	<b>Pot and Trap</b>	3" RC must be painted on top of each buoy 3" Vessel permit # on side of each buoy 3" Quantification number (#X of X amount of trawls)		As specified by the ALWTRP (229.32)			
<b>Lobster (697.21)</b>	<b>Pot and Trap</b>	Trap tag ID Code: - may be assigned by Reg. Dir - or by State regs	<b>3 or less traps in a trawl (TIAT):</b> Single buoy <b>More than 3 TIAT's:</b> Western-most radar reflector with pennant, Eastern-most radar reflector	As specified by the ALWTRP (229.32)	Buoys permanently marked with owner's permit number	<b>Single pot:</b> single 7"x7" or 5"x11" stick optional but, if used, no flag attached <b>Pot Trawl:</b> -West-end with single buoy (7"x7" or 5"x11"), 3' stick, and flag -East-end with double buoy combination (7"x7" or 5"x11")	Buoy Line: red mark midway