

Atlantic States Marine Fisheries Commission

American Lobster Management Board

February 19, 2013
9:30 a.m.-12:00 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 (*D. Grout*) 9:30 a.m.
2. Board Consent 9:30 a.m.
 - Approval of Agenda
 - Approval of Proceedings from October 2012
3. Public Comment 9:35 a.m.
4. Consider Draft Addendum XX for public comment (*T. Kerns*) **Action** 9:45 a.m.
 - Review options
 - Consider approval of Addendum XX for public comment
5. Consider Draft Addendum XXI for public comment (*T. Kerns*) **Action** 10:30 a.m.
 - Review options
 - Consider approval of Addendum XXI for public comment
6. Draft Addendum XIX for Final Approval (*T.Kerns*) **Final Action** 11:20 a.m.
 - Review options
 - Consider final approval of Addendum XIX
7. Law Enforcement Committee Report 11:30 a.m.
 - Lobster conservation management area 1 v-notch definition
8. Other Business/Adjourn 11:55 a.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, February 19, 2013
9:30 a.m.- 12:00 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: October 22, 2012
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 October 22, 2012

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.

7. Consider Draft Addendum XX for Public Comment (9:45-10:30 a.m.) Action
<p>Background</p> <ul style="list-style-type: none"> • The Board sent a letter to the NEFMC expressing concern regarding the potential opening of Closed Area II and possible impacts on lobster. The Board requested the opportunity to comment on the opening of Closed Area II before the Council took action due to concerns for mobile gear impacts to lobster, including impacts to berried females and gear conflicts. • The NEFMC is considering action on opening Closed Area II as well as other areas • The Offshore lobster industry entered into an agreement with the mobile gear sector for seasonal closures within Closed Area II. The Board initiated Draft Addendum XX to consider the terms of the fleet’s agreement as part of the FMP.
<p>Presentations</p> <ul style="list-style-type: none"> • Review of Draft Addendum XX options by T. Kerns (Briefing CD)
<p>Action for consideration</p> <ul style="list-style-type: none"> • Approve Draft Addendum XX for public comment

4. Consider Draft Addendum XXI for public comment (10-:30-11:20 a.m.) Action
<p>Background</p> <ul style="list-style-type: none"> • The Board delayed moving forward with the proposed measures regarding changes in the LCMA 2 and 3 transferability measures to allow for further clarity. • A subcommittee of industry and board members met in September to work on the Board task • The PDT had drafted a revised draft addendum for board consideration
<p>Presentations</p> <ul style="list-style-type: none"> • Review of Draft Addendum XXI options by T. Kerns (Briefing CD)
<p>Action for consideration</p> <ul style="list-style-type: none"> • Approve Draft Addendum XXI for public comment

5. Consider Draft Addendum XIX for final approval (11:20-11:30 a.m.) Action
<p>Background</p> <ul style="list-style-type: none"> • The Board approved Addendum XVIII, which contained trap reductions for area 2 and 3 at the August meeting. The Draft addendum XVIII also included proposed changes to both areas transferability programs, which were delayed to allow the PDT further clarify the issues. • The LCMA 3 proposed change to the area’s transfer tax was included in the issues that were delayed. Further clarification of this measure was not needed and this issue will be considered in the upcoming Federal rule-making process. • The Board should have a recommendation to NOAA Fisheries for the winter 2012 public comment period on the LCMA 3 transfer tax
<p>Presentations</p> <ul style="list-style-type: none"> • Review of draft Addendum XIX for public comment <i>T. Kerns</i> (Briefing CD)
<p>Action for consideration</p> <ul style="list-style-type: none"> • Approve Addendum XIX for public comment

6. Discussion of LMCA 1 v-notch definition (11:30-11:55 a.m.)
<p>Background</p> <ul style="list-style-type: none"> • Massachusetts Marine Fisheries and the MA Office of Law Enforcement have fielded numerous questions and complaints about the vagueness of the zero tolerance v-notch definition. The v-notch regulation as currently written appears to undermine the intent of the rule as compliance and enforcement wane. MA industry support has been building for the Commonwealth to consider applying the 1/8" standard to LCMA 1. • The Board directed the Technical Committee to evaluate the conservation impacts of changing the v-notch definition to the 1/8” in all or part of LCMA 1 • The Board tasked the Law Enforcement Committee to review the concerns with enforcement of zero tolerance vs. 1/8” at the Annual meeting in November 2012
<p>Presentations</p> <ul style="list-style-type: none"> • LEC report by M. Robson (Briefing CD)
<p>Action for consideration</p> <ul style="list-style-type: none"> • Approve a change in the v-notch definition for all or part of LCMA 1

10. Other Business/Adjourn

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

**Radisson Plaza-Warwick Hotel
Philadelphia, Pennsylvania
October 22, 2012**

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 that the board adopt Addendum XIX for public comment** (Page 4). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 4).
3. **Move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster fishery and sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing females and prevent gear conflicts. Limited changes to the agreement by the industry could be made through board action** (Page 12). Motion by Bill Adler; second by Bill McElroy. Motion carried (Page 17).
4. **Move to approve the FMP review, including the requests of North Carolina, Virginia, Maryland and Delaware for de minimis status** (Page 18). Motion by Bill Adler; second by Steve Train. Motion carried (Page 18).
5. **Move to appoint James Willwerth, New Hampshire, to the Lobster Advisory Panel** (Page 19). Motion by Dennis Abbott; second by Bill Adler. Motion carried (Page 19).
6. **Move that permit holders who fish both LMA 4 and LMA 6 must remove pots from the closed LMA, but they may fish in the open LMA during that time period** (Page 19). Motion by Jim Gilmore; second by Bill McElroy. Motion defeated (Page 19).
7. **Move to have the technical committee review the impact of the most restrictive measures in Addendum XVII for dual-permitted New York fishermen by the next meeting** (Page 19). Motion by Adam Nowalsky; second by Pat Augustine. Motion carried (Page 22).
8. **Move to have the Lobster Board recommend to the Coordinating Council that the ASMFC Biological Sampling Proposal be elevated to funded status** (Page 23). Motion by Mark Gibson; second by Bill Adler. Motion carried (Page 24).
9. **Move to adjourn by consent** (Page 24).

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)
Steve Train, ME (GA)
Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Dennis Abbott, NH, proxy for Rep. Watters (LA)
D. McKiernan, MA, proxy for P. Diodati (AA)
William Adler, MA (GA)
Rep. Sarah Peake, MA (LA)
Mark Gibson, RI, proxy for R. Ballou (AA)
Bill McElroy, RI (GA)
David Simpson, CT (AA)
Lance Stewart, CT (GA)
Rep. Craig Miner, CT (LA)
James Gilmore, NY (AA)

Pat Augustine, NY (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)
Peter Himchak, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)
Roy Miller, DE (GA)
John Clark, DE, proxy for D. Saveikis (AA)
Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Tom O'Connell, MD (AA)
Bill Goldsborough, MD (GA)
Russell Dize, MD, proxy for Sen. Colburn (LA)
Jack Travelstead, VA (AA)
Bill Cole, NC (GA)
Bob Ross, NMFS

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

Ex-Officio Members

Joe Fessenden, Law Enforcement Representative

Josh Carloni, Technical Committee Chair

Staff

Robert Beal
Toni Kerns

Kate Taylor

Guests

Peter Burns, NMFS
Bonnie Spinnazola, AOLA
David Spencer, AOLA
Nicola Meserve, MA DMF

Neil Mendelsohn, MA FWS
Janice Plante, Commercial Fisheries News
Kelly Denit, NMFS
Galen Tromble, NMFS

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Radisson Plaza-Warwick Hotel, Philadelphia, Pennsylvania, October 22, 2012, and was called to order at 9:25 o'clock a.m. by Chairman Douglas Grout.

CALL TO ORDER

CHAIRMAN DOUGLAS E. GROUT: Okay, the Lobster Board will convene. My name is Doug Grout; I'm the chairman of the Lobster Board.

APPROVAL OF AGENDA

CHAIRMAN DOUGLAS E. GROUT: The first item on the agenda is approval of the agenda. Are there any additional items to the agenda? Mark Gibson.

MR. MARK GIBSON: Mr. Chairman, I would like to suggest that at the end of the meeting under other business, time permitting, that the board have a discussion about the commission's proposal to ACCSP for lobster port sampling.

CHAIRMAN GROUT: Okay, we'll add that under other business. Are there any other items that members of the board would like to bring up under other business; any other changes to the agenda? Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, I wanted to perhaps discuss something about Closed Area 2 and the offshore. Is that under other business or can it be or whatever you need to do?

CHAIRMAN GROUT: It could either be under other business or we're also going to have an item where Josh Carloni, our technical committee chair, is going to provide a report from the technical committee on bottom-tending gear impacts on lobsters. If that dovetails with a request that we made of him because of the item under Closed Area 2, we could bring it up at that point if you have something.

MR. ADLER: Thank you; maybe that would be appropriate.

CHAIRMAN GROUT: Okay, any other items that anybody would like to bring up? Okay, any objection to approving the agenda as amended here with just one extra item under other business? Okay, we also have proceedings from our August 2012 meeting.

APPROVAL OF PROCEEDINGS

CHAIRMAN DOUGLAS E. GROUT: Are there any changes to the proceedings? Is there any objection to approving that? Without objection, the proceedings of the August 2012 meeting are approved.

PUBLIC COMMENT

CHAIRMAN DOUGLAS E. GROUT: Public comment; this is our opportunity for any items that are not on the agenda for someone to make a public comment. Is there anybody out there that would like to make public comment for something that is not on the agenda? Okay, seeing none, let's on. Toni and Bob Ross will have a discussion on federal rule-making timeline and development of progress of additional transferability measures.

REVIEW FEDERAL RULE-MAKING TIMELINE OF ADDITIONAL TRANSFERABILITY MEASURES

MS. TONI KERNS: After the last board meeting where we discussed Draft Addendum XVIII and then finalized Addendum XVIII with the trap reductions, the board asked a subcommittee of board members to go through the measures that were not included in XVIII. Those were the transferability measures that included things such as trap banking, different trap caps, aggregate caps, single caps, et cetera.

That subcommittee got together and started to do some clarification work, and we are moving forward with that information. I had asked Bob Ross to put together information for the board on the timing of upcoming federal rulemaking so that the board is well informed on that information. The subcommittee will come back to the board in February with a draft addendum that will have all of the transferability measures for Area 2 and 3 clarified for board consideration for public comments.

MR. BOB ROSS: Briefly I'd like to give you a real snapshot of what we have accomplished so far this year. We were recommended by the board to implement a limited access program in Lobster Management Area 1 based on working through the Area 1 LCMT and the commission process that culminated in Addendum XV, I believe.

We completed our final rulemaking in June on that action and have sent out notification to about 1,700 Area 1 permit holders indicating their likelihood to qualify based on the information we had at hand. That program is moving along very well. We've got

well over 90 percent of the applications back in hand, and at this time, in fact, have sent out notices to about 1,530 or 40 Area 1 permit holders, information that they did, in fact, qualify for continued access into the trap fishery in Area 1.

The application timeframe ends November 1st. We have reached out to all the impacted New England states and have tried to be in fairly routine conversation with them on this program. We think internally that it has worked very well to date.

Moving on to the topic of today's agenda item, this involves an action that is a multi-faceted action that has seemingly been going since the creation of the lobster management board. Basically what this action would do is based on recommendations from the states we would limit access in Area 2 and the Outer Cape Area based on historic participation criteria that were provided to us by the commission through various addenda.

The first step would be for NMFS to qualify and allocate individual trap allocations to federal permit holders fishing in Area 2 and the Outer Cape. Then as a followup to that, once those two areas have been qualified and allocated, we would then move on with the second phase of the process which would be to turn on a transferable trap program for three areas, for Area 2, the Outer Cape and Area 3.

Where we're at now on that process for a timeline, we are aggressively moving forward with a proposed rule; again bearing in mind that we were delayed in this action in part due to the determination of the recruitment failure in Southern New England. Back in May 2010, we had at that point issued an extensive environmental analysis of our action.

It was a draft environmental impact statement. That coincidentally came out the same month that the technical committee identified their recruitment failure for Southern New England. During the course of our public hearings as well as extensive discussion at the board level, we were advised – again reminding the board that at that time the recommendation was a five-year closure of all lobster fishing in Southern New England.

Based on the initial technical committee recommendations and recommendations from the board, we held off on moving forward with the Area 2, Area 3, Outer Cape action pending the outcome of the board's actions to address the Southern New England resource recruitment failure. We now again have been active in the process of developing

measures to address that Southern New England determination via the board's approval of Addendum XVII and then the follow-up recent August approval of Addendum XVIII.

Where we're at now is we feel that we have confidence in the direction that the board is heading towards addressing the Southern New England recruitment failure. Our intention now is to go forward with a proposed rule to be published by the end of this calendar year, which will spell out in detail our approach towards qualifying and allocating individuals in Area 2 and the Outer Cape. We have worked with the impacted states.

We feel that we have set up a program that will allow us to expedite this review so that we align our federal permit holders with what the key Area 2 and Outer Cape states have done, primarily using the same approach and the same data that the states used to qualify their applicants. We know that there have been some follow-up transfers.

We have again worked with the states to try to develop a program that will allow the states to make recommendations to NMFS on why those transfers went forward and the benefits of NMFS doing everything in its power to align the current trap allocations that we find from these dual state/federal permit holders.

Most of that would hinge off a reliance on the state fisheries agencies to justify their actions and provide recommendations to us for concurrent alignment of the permit holders and their trap allocations. We feel this would avoid a lot of appeals and disconnects going forward. We also intend to have a mechanism, if there are disconnects between the allocations, to work with the individual states and the impacted permit holders to resolve those disconnects.

Moving forward we're looking at a proposed rule by the end of this year. We hope to have a fairly long public comment period on this rule because it is a very complicated action. Then following that public comment and assuming general support for the direction we've headed in – because again we have tried to mirror what the commission and the states have recommended to us – we hope to have a final rule out by the beginning of the next federal fishing year, which is May 1.

At that point the rule would be final. Thirty days after that rule is final, we could move forward with the first step, which is to qualify and allocate a limited access program in Area 2 and the Outer Cape.

We assume that program will take a significant part of the 2013 fishing year. One of the concerns we have is even though we could potentially qualify a large component of the permit holders in these two area, we would not be receptive to turning on the transferability aspect of our plan until we feel the majority of the impacted permit holders in these areas have in fact been qualified by both the states and the federal government.

The reason in part for that is as soon as the transferability turns in based on mainly Massachusetts' experience in the Outer Cape area, there is an immediate rush to transfer a lot of traps. Our concern is if we turn it on as each individual permit holder is qualified, then the early qualifiers will have more access to the available transferable traps than those permit holders who various reasons we are not able to immediately qualify at the beginning of our program.

One of the issues we will looking for in our public comment process is at what level of qualification, 90 percent, 85, 95 percent of the entire pool of dual state/federal permit holders, will we need to have qualified and allocated through a limited access program before we would turn on the transferability aspect.

Should it be all 100 percent of all permit holders would need to be capped and limited and then we begin a transferable trap program or is there some lower number? Again, we will articulate this in greater detail in our proposed rule. Our assumption again is that there will be issues; that we do feel that the majority of those issues will be addressed through close cooperation with the impacted states, but we still feel it will take a good part of the 2013 fishing year.

Our intent at this time is to begin the transferable trap program for those areas with the beginning of our 2014 fishing year. That is also bearing in mind the same time that Addendum XVIII turns on the trap reduction programs for Area 2 and Area 3. Again, we're very much aware of the timing and the pending implementation of measures specified in Addendum XVIII to follow up with additional trap reductions for these areas.

By turning on transferability, the impacts of trap reductions could be mitigated through the ability of the permit holders to reach out and build up their business again or in fact for others to sell out and leave the fishery. That is a brief summary of our timeline to move forward with, first, the Area 2 and

Outer Cape Limited Access Program and then the initiation of a dual transferable trap program for those three areas. Thank you.

CHAIRMAN GROUT: Are there any questions for Bob about that right now? Okay, seeing none, thanks again. Next, Toni, we have an addendum we need to consider for action.

DISCUSSION OF DRAFT ADDENDUM XIX FOR PUBLIC COMMENT

MS. KERNS: One of the issues that the subcommittee of commissioners looked at was whether or not any of the measures from Addendum XVIII would need to have immediate implementation in order to align with the federal rule-making process. One issue that committee found that needed to be addressed was the Area 3 trap transfer tax for full and partial business sales.

As a reminder, this issue was included originally in Addendum XVIII and did go out, as I'm going to go over it, in Addendum XVIII for public comment prior. The board did approve and finalize Addendum XVIII and it only contained the consolidation program for Area 2 and 3, and it was the trap reductions that were addressed in that addendum.

It proposed a uniform trap tax as a part of it for Area 3 but did not specifically address it in Addendum XVIII. NOAA Fisheries, as Bob Ross just went over, will begin the public comment process for the transfer programs for Area 3 and Area 2 this winter. If the board is going to consider changes to the Area 3 transfer tax, it would need to provide public comment to NOAA Fisheries during that comment period.

It is possible that the comment period would be closed before the next board meeting in February, so the subcommittee of commissioners thought it would be best if we move forward with an addendum to allow the board to consider and finalize the Area 3 transfer tax before that public comment period closed so that we could have alignment on what the Area 3 transfer tax was with the National Marine Fisheries Service.

This addendum solely addresses that Area 3 transfer tax. Currently there are two taxes for Area 3 for conservation. One is for partial business sales and that is a 20 percent tax. The other is for full business sales and that is a 10 percent tax. Option 2 proposes that the conservation tax be consolidated and it is 10 percent for both full and partial business sales.

This is to help with ease of administration as well as that Area 3 has gone through several iterations of trap reductions and feels that with those reductions and having a 10 percent tax, it will address consolidation of the fishery. If the board does approve any changes to the FMP, it would need to decide whether or not it would make recommendations to NOAA Fisheries.

The subcommittee of board members did recommend that any changes be recommended to NOAA Fisheries. If the board does move forward with this document, the plan development team proposed the following timeframe. The board would consider the approval of the document here at this meeting. The public comment period would be open for 35 days.

Because we have already done hearings on this issue, the plan development team did not recommend to do additional hearings but just have it open for public comment. The board would consider final approval of the draft addendum through an e-mail vote some time in December; and if the board approved any changes, that we send a letter to NOAA Fisheries commenting during that comment period. This timeframe and the e-mail vote is strictly to address making sure we get a comment letter to NOAA Fisheries during their comment period for that issue. Does anybody have any questions?

MR. ADLER: So basically, as I read this over, this addendum is just to make things simpler; a 10 percent trap tax instead of the 20 and the 10. I understood your scheduling and I don't see the difficulty in sending this out as you proposed. If it does go out, how would the federal government change their thing? Would that be problematic? Let's say it goes out, we approve it December; does this throw any problems at the federal government to change the 20 to the 10? Maybe Mr. Ross could answer that.

MR. ROSS: Yes, this would actually help us by creating the administrative record that the commission does in fact want to go in this direction. What this would also do is standardize the transfer tax across all three areas. Area 3, Area 2 and the Outer Cape would then be consistent, which would benefit our regulatory process. We would support such an action.

CHAIRMAN GROUT: Are there any other questions for Toni? Do we have anybody who would like to put a motion on the table? Bill McElroy.

MR. WILLIAM A. McELROY: **Mr. Chairman, I would like to move that the board adopt Addendum XIX for public comment.**

CHAIRMAN GROUT: Seconded by Bill Adler. Is there any discussion on the motion? Yes.

MR. ADAM NOWALSKY: Mr. Chairman, I would just recommend that staff make a change in 3.1, Paragraph A, where it talks about downsizing the fleet. I believe "fishery" is the term that has been used throughout the rest of the document and what we've focused on here. If there is a particular reason staff chose to use the term "fleet" in this instance, I'd be happy to hear. Otherwise, I'd suggest we use "fishery".

CHAIRMAN GROUT: Do you have that, Toni?

MS. KERNS: Yes, I do.

CHAIRMAN GROUT: Okay, any other discussion on this motion? Seeing none, do you need time to caucus? I'm not seeing anybody that is indicating they need time to caucus, so we will move forward with a vote. All in favor of this motion raise your hand, 11 in favor; all those opposed, none; abstentions; null votes. **The motion carries unanimously.**

DISCUSSION OF LCMA 1 V-NOTCH DEFINITION

CHAIRMAN GROUT: Next on the agenda is a discussion of Conservation Management Area 1 V-notch Definition. I believe the technical committee is going to have a report. We asked them to evaluate a potential change in the V-notch definition and to give us a report on what the effect could be. This is in Area 1, just for you folks.

MR. JOSH CARLONI: This is the report the technical committee put together. It is a review of the LCMA 1 v-notch measures; the proposal by Massachusetts. The technical committee used sea-sampling data collected from both Maine and Massachusetts to assess the impacts of the one-eighth inch proposal. Both data sets had limitations.

The Maine data set, though it was done, had good spatial coverage that was done in both 511 and 512 statistical areas. It was limited in that it was done over a two-month time period. Massachusetts had good temporal coverage in that they sampled over a three-year time period, although they were limited in that the data all came from the southeast corner of Stat Area 514, which is on the LMA 1 and OCC Border.

The technical committee could not agree on the best way to analyze this data, so we did two separate analyses. The first one, and maybe the easiest to understand, is a three-step process. Basically the technical committee calculated the percent of legal-size females that would be currently protected with a zero tolerance.

Then we calculated the percent of legal-size females that would be protected under the eighth of an inch definition. The difference between the two, you just subtract the one-eighth inch from the zero tolerance to get your final number. Basically if 50 percent of legal-size females were protected by a v-notch under zero tolerance and 40 percent were protected under the eighth of an inch, your difference would be there would be a 10 percent conservation loss, so 10 percent of those animals would then be available for harvest.

This is just a table showing that analysis. If you look over to the percent difference column, you will see that Maine is the first row, the 2008, and they found that there would be a 12.7 percent difference; whereas, in Massachusetts, their three years of data, 2009-2011 – there is a typo in there. That should say 2010 and then 2011 – it is about 3 percent difference; so 3 percent fewer legal-size females would be protected, and in Maine they estimated 12.7 fewer legal-size females.

The second analysis that we did was basically looking at the v-notch population onto itself, meaning that the percentages were independent of the number of legal-size females. This was done by determining the total number of v-notched lobsters observed during sea sampling and then calculating the percent of that total that were marked with a notch of less than an eighth of an inch.

An example would be if you went out and found that there was a thousand v-notched lobsters under zero tolerance, what percent of that thousand would be protected with an eighth of an inch. If it was 200, then 20 percent few females would be protected with the eighth of an inch. What Maine found is that of their v-notch population, 33 percent would have a notch less than an eighth of an inch and then be available for harvest.; whereas, in Massachusetts that number ranged over the three-year time period from 13 to 16 percent.

The technical committee could not come to a consensus to provide a final recommendation to the board. Some members supported the proposal while others did not. Some technical committee members

strongly feel that the available data does not accurately characterize the effects that this proposal could have on 514 and that the Maine from Maine was limited in the amount of time the data was collected over.

Massachusetts' members feel that since that data was collected on the border of LMA 1 and LMA OCC, it may not be representative of things happening to the west and north of that region. Finally, Maine and New Hampshire are currently collecting additional v-notch data with regards to the eighth of an inch policy, and that would be available for review in 2013.

CHAIRMAN GROUT: Any questions for Josh? Dan.

MR. DAN McKIERNAN: Thanks, Josh, good report. My first question has to do with Table 1 where you show Maine sea-sampling data back in 2008 – and I understand those were five trips taken during the winter, in a narrow time period, as you said – the number 38.1 percent is the proportion protected under a zero tolerance definition. Since Maine is collecting sea-sampling data year round and many years, is that number typical of Maine's incidence of v-notched lobsters, 38 percent?

MR. CARLONI: Yes, it is. In New Hampshire and Maine it is pretty similar that it is roughly 40 percent of legal-size females are protected by a v-notch.

MR. McKIERNAN: I think what is going on here is there may be a subjectivity that goes into the denominator. Maybe we're a little bit low down our way and maybe you guys are a little bit high up your way in terms of the perfect flipper interpretation of zero tolerance. I'm not sure all of those lobsters are actually v-notch but would fall into this very conservative interpretation of any damage to the flipper. I guess that is my question and my comment for now.

MR. CARLONI: That may well be. It seems as though the technical committee just doesn't know what is going on here. That was brought up as a possibility, and it was a thought that in Maine you get just a little nick in a flipper and it could be considered a v-notch. In New Hampshire there is just the smallest nick that some fishermen will consider a v-notch. In Massachusetts maybe you guys aren't seeing that and that may just get thrown over as nothing. That is a possibility. There are also other possibilities that some members of the technical

committee just feel that additional data would be very beneficial in this case.

MR. G. RITCHIE WHITE: I have a question but it is probably not for Josh about the statement of the problem, so is that something you would want to hear later or do you want me to ask the question?

CHAIRMAN GROUT: Let's see if we go beyond what Josh's report is before we get into the statement of the problem. Does anybody else have questions for Josh on the report? Seeing none, then we have a place for a statement of the problem.

MR. WHITE: I'm still not clear on why this is a problem, and I guess I'd like to hear from Massachusetts why it is a law enforcement issue when zero tolerance, to my understanding, has been successfully enforced in Maine and New Hampshire for years without any problem. To my way thinking, an eighth inch is going to be more difficult to enforce than zero tolerance. Now you're measuring is it an eighth, is it close to an eighth where zero tolerance, if there is any mark on that flipper it goes back. It seems to me like this will create more enforcement problems and not less.

MR. McKIERNAN: I'm not a professional law enforcement officer; but if a fisherman sees a nick but doesn't think that nick was related to v-notching or mutilation and brings it in and the officer either busts him or does not bust him for the violation, that is a very subjective rule. I can't think of any other rule that this commission has on its books that is so subjective as a so-called zero tolerance.

Because it no longer has shape, it no longer has size and it is sort of like pornography, I know it when I see it, but let's be really transparent about this. I understand that Maine's Lobster Advisory Committee and Maine's law enforcement back in the spring discussed this and it was captured in the Commercial Fisheries News that we're talking about some serious penalties for possession of v-notched lobsters.

When some of these rules are vague or subjective, I think there are a lot of folks in the law enforcement community or even in the courts that aren't real comfortable assessing serious penalties to some of these marginal cases. But also let me be clear we're in favor of v-notching; we embrace v-notching.

You can see in the data that the proportion of our female population that is v-notched has gone up dramatically. We have also seen a recovery in Area

514 with increases seen in our ventless trap work and in our landings over the last few years, and a lot of that coincided with stronger year classes that came about after v-notching was mandated. We support this program, but the problem is we have different standards among the different LMAs. We just think it would be cleaner and if it wasn't a significant conservation loss in this one portion of the Gulf of Maine, then we think that it should be entertained.

MR. WHITE: It sounds to me like it is an industry buy into this program that is needed because you stated that the problem is a fisherman bringing in a lobster that has a nicked flipper that he doesn't think is a v-notch. If industry buys in and they see the nick, it goes over the side as in New Hampshire and Maine. It seems like there is no issue in court, there is no issue with the law enforcement person if the industry has bought into zero tolerance and is not bringing those lobsters back to interact with law enforcement.

CHAIRMAN GROUT: Is this in direct response to that? Okay, because I do have Terry Stockwell.

MR. McKIERNAN: I appreciate that point, Ritchie, but the problem is in commerce and our dealers we don't have the zero tolerance definition. I believe your state does and I believe Maine does, but we don't. It is more difficult. Because you have got these various standards, you can't go into a fish house and enforce that as a violation, so that is where is kind of falls apart.

MR. TERRY STOCKWELL: Following up on Dan, I can't think of any other rule in the state of Maine that has more support of the industry. Following the Lobster Advisory Council Meeting that Dan reported on, they voted unanimously to support zero tolerance. This zero tolerance was again reiterated through Commissioner Keliher and Colonel Fessenden to all the marine patrol officers and in correspondence to our industry.

Maine remains adamantly opposed to changing the definition of the zero tolerance v-notch definition. The technical committee's lack of consensus, the upcoming potential delay in the lobster stock assessment, the unknown impact on the lobster resource which in the state in the Maine is our number one coastal economic driver, this is not the time for the state of Maine to even consider any changes.

MR. ADLER: The fishermen do support the v-notch program. They did and it is proven because they

have actually done it when it wasn't at first mandatory. The proof was that they did support this and have done it. The statistics bear that out that they did jump on board this program.

The problem is interpretation when it is so vague that the wording is now it is a v-shaped notch of any size or a mutilation – mutilation; what is mutilation – mutilation of that flipper that could have hidden a v-notch. Okay, so we asked the judge what is mutilation, was this flipper mutilated? It's round; was it a mutilation, was it a V?

We have difference law enforcement officers interpreting it at the beach or at the landing in different ways. One guy says that it was a V; the fisherman says, no, it wasn't. We had one case where the law enforcement said that's a V, and fisherman said, "Well, I'm sorry I have to say this, but that is a male, if you look underneath."

The problem we also have besides what Dan indicated about it is a landing law and not a possession law is we happen to be at the junction of Area 1, Area 2, Area 3, Outer Cape. It would be great if we could have three and a half of those four areas with the same definition that could be better enforced.

Other states perhaps have one definition; fine, that is wonderful. We happen to have all those others, and we just was thinking that it would clearer – we still support it – be clearer if there was something that everyone could stick a little thing in – and they do exist – that says an eighth of an inch. The statistics that came out in the report did indicate that it wasn't going to be a big deal.

Since the stock is healthy, everyone is v-notching, that this little adjustment could make enforcement better rather than, well, the warden is not around today or nobody wants to do that. Make it simple just like a gauge; it is a short or it isn't a short. I think that this was the reason that the fishermen in our area are very upset, they're frustrated. They're frustrated because there is no definite decision that could stand up in court and all they're trying to do is make this better without hurting the resource. I'll stop there for now. Thank you.

MR. PETER HIMCHAK: I had a question. Are we going to get a Law Enforcement Committee Report on this? They don't have it on their agenda this week. Boy, I'd sure like to hear about the enforcement ramifications here.

CHAIRMAN GROUT: We don't have a report from them; but if the board would like, we could potentially task them with evaluating this.

MR. PETER HIMCHAK: Well, a follow up, Mr. Chairman; isn't it premature for the board to take action on this without referring it to the Enforcement Committee?

CHAIRMAN GROUT: We're not taking action on this. This was simply a technical committee report. There was no action item here.

MR. STEPHEN R. TRAIN: Mr. Chairman, both Dan and Bill referred to questioning is this a V or is this not? I'd say I probably throw – three days ago I probably threw 700 lobsters overboard that were notched or nicked or bent or twisted or deformed. The answer to the question is this a V or not is, yes, it is a V every time. If it is not a perfect flipper, it is a V.

It is not, well, did somebody notch this or is this caused by natural. No, it is a V. That is what half the lobsters we punched and thrown back are. They were never notched, but now they're protected and they're back in. I think Ritchie said it very well; and if the fishermen don't believe in it in your area, that is the problem because the fishermen in our area by a vote of the Lobster Advisory Council in Maine are 100 percent behind it at this point. There are some disgruntled people but we're supporting this, and I would hate to see the Area 1 definition changed because of that.

MR. McKIERNAN: Yes, it is not my intent to change the Area 1 definition for all jurisdictions. It is really just to give each state options; and I would urge, if we ever got down the road to that point, that Maine and New Hampshire would want to maintain that I guess for cultural reasons. We understand the v-notching practice and the biology of regeneration.

It is hard to swallow a perfect flipper rule. I think I can accelerate this debate or this discussion really quickly and boil it down to the essential points. This is a long-standing issue in Massachusetts. I guess I was somewhat inspired by seeing that this was getting some traction at least I thought in Maine, and so I tried to schedule this for an LCMT discussion at a spring meeting. Just prior to the LCMT discussion, I learned that members of the technical committee from always one state were advising members of the LCMT not to vote to approve this because if you did you were going to have to pay back the conservation

– whatever the loss was on paper, you were going to have to pay it back.

I didn't expect that and so I posed the question to the board or the plan coordinator or to the chairman who makes a call on that because in our view the Gulf of Maine Lobster Stock is clearly very healthy. We think this is a minimal change. It would only affect an area that covers 10 percent of the landings; and is it possible to get this enacted for enforcement purposes and compliance purposes if it risk the stock?

If it is not going to result in any significant change in the stock status relative to F or abundance, is this something the board can approve in the future over the objections of some members, but what is the test?

CHAIRMAN GROUT: Well, one, I think we've had a report from the technical committee and obviously there is some disagreement or at least they could not come to a consensus at this point on what the effect is. Two, I think we have heard some concerns from at least one state that we're about four years out from a stock assessment, and it looks like we're going to be six years out and so that the status may or may not be changing.

I think once we get some consensus from the technical committee on what the impact to the stocks would be and then find out what the current status of the stocks would be and to see if indeed this change will have minimal impact, I think there is something that could be considered by this board. I mean, it can be considered at any time.

Dan, I see your issue and I have always said to you that I respect the problem that Massachusetts has – it is very unique – and that is you have got three different v-notch definitions in the state, and that to me is also an enforcement issue. In addition to having the technical committee continue to try and evaluate this thoroughly – and a couple of states now are adding on to collect information that the technical committee feels is needed to try and evaluate this, New Hampshire and Maine are doing that – maybe Massachusetts could expand on that into the entire area of 514 and so we would have a complete Area 1 evaluation of what the impacts would be.

At that time the stock assessment may be moving forward and we may have information on that; and if we could task the Law Enforcement Committee with also looking at this issue, one, from the perfect – your concern that you brought out, the problem with interpretation of the flipper rule, to see if there is if

there is an issue there; and, two, is there an issue with having three different v-notch definitions in one state.

I mean, clearly, to me I think that would be an issue. It is just like having three different minimum sizes within a state. It is a multiple thing. At least from a point of the Chair – and I don't know how the rest of the board feels – I think we need to task our technical committee to start collecting the data that is needed to try and do an interpretation of what the impacts would be here and then also task the enforcement committee with a very clear task to look at it both from the multiple v-notch definitions in a single state and also are there problems with interpretation of the perfect flipper rule. Is there any objection to that? Bill.

MR. ADLER: I don't want to belabor this; I just want to leave this hanging in the air. First of all, what is a perfect flipper rule; what does the word "mutilation" mean; what does a V-shaped notch of any size mean? Those are some of the things which are open to interpretation and then we get into each word and what it means. Fishermen are supportive of v-notching, as I said. They do it but they also are supportive of having something like the eighth inch. I'll leave it hanging in the air. That is where we're coming from. Thank you.

MR. MCKIERNAN: Doug, could you foresee an outcome where one state could have this different rule, the other states could keep it more conservative, NMFS could go to the eighth inch for the Gulf of Maine, but the individual jurisdictions of Maine and New Hampshire could maintain zero tolerance and life would go on?

CHAIRMAN GROUT: You're asking for my personal opinion on this as opposed to the board's. I see we have lobster management area teams. We specifically changed our management a number of years ago from a coastwide this is what it is going to be to letting the Lobster Area Advisory Councils or these Lobster Management Teams come up with measures that would meet the conservation standards that we need for our lobster management.

I can see where if there is – you might have a rationale for going to a sub-area LCMA. It sounds like this is an issue in the northern part of Massachusetts of Area 1. Maybe there would be some rationale with creating another sub-area and that they would say, okay, we're going to go to an eighth inch and there might be some other conservation management measure that they'd have to do or maybe not to accomplish this.

I don't think you can have two management measures in a single LCMA. Is there any other discussion on this item at this particular point in time? Okay, seeing none, thank you for that, and I'm sure this won't be the last we hear of this. Josh, you have another report for us. Toni has a comment on something.

MS. KERNS: I just want to let the board know that staff is passing out a letter in reference to Bill had asked for an additional item be added under this trawl gear impacts, and this letter is an agreement that the offshore lobster fishery has come to with the offshore trawl fishery regarding Closed Area 2, which we will get into after Josh goes through his report. That is what this document is being passed out for.

CHAIRMAN GROUT: And just to give you a quick overview of how we got to this, there was some evidence of large amounts of berried female activity and catches in Closed Area 2. This is Groundfish Closed Area 2 out on Georges Bank. We had tasked the technical committee with coming up with a report on the impacts of mobile gear on lobsters just to help us make our decisions on this item.

TECHNICAL COMMITTEE REPORT ON BOTTOM-TENDING GEAR IMPACTS ON LOBSTER

MR. CARLONI: Here is the report that the technical committee came up with. What we did is we first looked at the available literature out there on this subject to address the effects that mobile gear has on lobsters. The first study that we looked at was conducted by Connecticut DEP. Just to give you the major summary, the findings showed that major damage or immediate mortality varied seasonally for trawls from zero to 14 percent.

The results suggest the damage was more a function of shell condition and temperature. That is just showing that lobsters were more susceptible to damage and mortality when they were soft, at times of the year when they had just recently molted. They also looked at egg-bearing females and found that they incurred no greater damage or mortality rates than non egg-bearing females. However, they did not look at egg loss.

A couple other studies found the same thing; that lobsters were more susceptible to damage when they were soft, and those studies above show that. The technical committee also looked at scallop dredges. There was a study done in the Gulf of St. Lawrence. They basically looked at an area that had scallop

fishing in the past and then an area that had not had scallop fishing in the past. They did some drags through each.

What they found was the area that did not have scallop fishing in the past, 11.7 percent of the lobsters were either retained or injured. They were slightly vague as to how many were injured of the retained amount. The authors in that study concluded that damage to American lobster from scallop dredges was minimal.

It is important to remember that all of these studies are area-specific. Georges Bank is very unique in that there are a lot of large lobsters, and the gear selectivity will be different. The speed at which they tow will be different. Most importantly I think is the size in the scallop dredge survey is a paper that we looked at. The mean size was 72 millimeters, and that is only the 25th percentile out at Georges Bank.

That brings me to the conclusion of the technical committee that we do not feel comfortable applying these results to Georges Bank due to the unique situation out there and request that three to five years of additional information be collected, which would be monthly or seasonal rates of newly molted versus hard shell and damaged lobsters from experimental trawling and traps that capture all size classes; monthly or seasonal estimates of major damage from commercial or experimental trawling and traps; and data characterizing tow duration, deck-handling practices, and net size for the proposed mobile gear fishery. Thank you.

CHAIRMAN GROUT: Are there questions for Josh? As I hear the summary there is that there is some information about potential damage to lobsters by some gears, but they may not be applicable to what is out in Georges Bank; and you feel before you can make definitive statement as to what the impacts would be, we'd need something specific to that area?

MR. CARLONI: Yes, that is correct. Due to the large size of lobsters out there, the type of gear, the gear selectivity, we didn't feel comfortable using the results from those papers at Georges Bank.

MR. ADLER: Thank you for that report; however, a couple of things. First of all, we know that there is damage. I've looked at numerous studies, maybe not out on the Georges Bank, but I mean numerous studies by biologists about the damage that could be done. Now, we have situation here where the federal government is likely to open a part of Closed Area 2,

and there has been documentation of heavy amounts of eggery at certain times.

Because of the concern of the offshore lobstermen for these eggery – and we know that it is not good to be rolling over eggery or lobsters, actually, the brittle creature that it is with nets. However, there were discussions and there was an agreement, which is great. Here we have the groundfish fishermen who possibly could be going in there if the federal government opens it up or part of it, anyway, and we have an agreement between them and the lobstermen. This has been ongoing for centuries here where we have these back-and-for battles, but we have agreement. I'm interested that NMFS is insisting that the agreement be approved by the commission through an addendum before they can or want to put it into effect, which would be a peace thing, and it may open up in May of 2013 and, maybe 2014.

It depends on the federal movement, but we want to try to protect the eggery that are out there at certain times, and here we have an answer. We have an agreement between two parties to do something, and all they needed is whatever the blessings are that have to come from the federal government.

But also apparently NMFS would like this agreement of some sort to come to the commission or through the commission. Now, I don't know the proper way to approach this – I do have a motion – and they said through an addendum. I want to go back perhaps to you, Mr. Chairman, or maybe to Toni, and is this what we should do to give our blessing to something which has been agreed to, which can bring peace out there if they open it up. How do you want me to handle that?

CHAIRMAN GROUT: I think maybe having a – maybe Bob Ross would like to provide a little input here on this as to why he feels an addendum as opposed to some letter from the commission asking this. Why do you feel that it is important for us to go through a management process; because, again, this is something that would have to be put in place out in federal waters?

All we're going to be doing is essentially recommending to the National Marine Fisheries Service that they implement these measures out in Closed Area 2. Bob, maybe you could give us a little background as to why you feel it is important that we go through an addendum process.

MR. ROSS: I apologize; I do not routinely attend the New England Council meetings and that is the origin

of a lot of this closed area issue. What I am aware of is this there is an action underway to request that not just Closed Area 2 but multiple closed areas be reopened over the course of the next year or two.

Now, in this case we have an industry group who has – and I commend them on this action – worked aggressively with the groundfish fleet to work out a potential agreement that would avoid gear conflicts as well as mitigate biological impacts to lobster in Closed Area 2. However, as I indicated, there are several aspects to this.

The first action would be on NMFS part to allow the groundfish sectors to enter into these closed areas under their sector plans, which would in fact be equivalent to codifying their rights of access. But, there are other areas here besides just Closed Area 2 that are being impacted where lobstermen also fish; specifically the Western Gulf of Maine Area as well as the Nantucket Light Ship as well as Closed Area 1.

These areas touch parts of Areas 1, 2 and 3. Also bear in mind that federal vessels that have only a federal lobster permit do not have federal mandatory reporting requirements; whereas, many of the states do, at this point, have federal vessel mandatory reporting requirements. The other issue here is policy and procedure. First, we want to ensure – I think we're all aware that lobster is a commission-managed fishery, primarily.

Lobstermen look and follow the commission process. They do not look and follow the council or the NMFS process as a primary point of concern relative to how their industry is going to be managed.

Again I backtrack here; the policy is that the commission addresses these measures for its impacted constituents. It goes through its public review process, its public comment process, and then makes recommendations to the National Marine Fisheries Service to develop complementary regulations.

As we're seeing at the earlier addendum, Area 3 is entirely in federal waters, and yet the commission did generate an addendum to address a conservation tax in Area 3, which would then follow normal policy as a recommendation to NMFS to then go forward and do its rulemaking to address the commission recommendations.

I think here you have multiple benefits to the commission reaching out on this issue. This is not just to deal with sectors. Again, I apologize, I may

not have full information here on the council action, but there is also a habitat omnibus process moving forward that will also address further expansion potentially of reopening these areas.

The initial reopening is only for the non-habitat parts of these various closed areas. The commission has also approved an action that will be tied into a habitat omnibus that will look at reopening the entirety of these closed areas, including major swaths of habitat protected area. I look at this as, first, outreach to all impacted lobstermen who may and do not routinely a council process, including those in Area 1 and Area 2.

I also feel that the states may be in a better position to provide information on the impacts to their permit holders rather than the federal government. Specifically, I looked for Area 2 we capture about 70 percent of federal permit holders in the Closed Area 2. For Area 3 vessels, about 70 percent do have VTR reporting requirements.

You move that issue to the Western Gulf of Maine area, which straddles Massachusetts, New Hampshire and Maine, the number of vessels that have the federal mandatory reporting requirement drops dramatically. The states in this case may be more able to provide the council process with the information it needs to make a good determination on whether reopening these areas would or would not adversely impact lobster participants or the resource.

The second, and just as importantly, and not to diminish the efforts by the Offshore Lobstermen's Association, but this is a private entity. This is not a state government, this is not the commission, this is not the federal government. For us to implement an agreement like this – and I have vetted this through our process – we would need the commission's public process to be able to incorporate this into the federal regulatory process rather than just receiving a letter from the impacted constituents, in this case the Atlantic Offshore Lobstermen's Association, or a recommendation from the commission without fully ensuring that all impacted permit holders in these areas would be impacted – would be aware of the issue, first, and then be willing to abide by whatever we codify as followup to your action.

I think there are multiple benefits here. This isn't a short-term process. We have one action that will move forward to open some of these areas just to the sectors, but a followup to that is the broader aspect of this habitat omnibus that would open potentially these entire areas. Again, we're not just talking Area

2; we're talking Caches, Western Gulf of Maine, Closed Area 1, Nantucket Light Ship.

Are your constituents aware of this? If not, I think the commission's public process would most effectively reach out to these potentially impacted individuals. I also feel that the states involved could potentially help both the council and NMFS by ensuring that we have the best available data to make our decisions. That is why NMFS would urge the commission to become involved in this process and as a partner in this process but also to move through their public process to ensure that when NMFS receives this recommendation, it has been fully vetted through its constituent base. Thank you.

CHAIRMAN GROUT: Thank you, Bob, and just so you know, the reason this is focused on Closed Area 2 was because the constituents brought us concern about large numbers of egg-bearing female lobsters in that Closed Area 2 that is currently closed. I think that was one of the driving forces behind this agreement because there is a lot of lobster gear out there.

We've shown to this board via letter I sent back in January that there are large amounts of egg-bearing female lobsters out in that area. The volume is at such a level that in some months it actually exceeds the harvest. With that, does that answer your question, Bill, as far as why the National Marine Fisheries Service is hoping we'll do this through the addendum process?

MR. ADLER: Okay, Mr. Chairman, first of all, what I'm getting at here is the fact there is the possibility that they're going to open up that area. I don't know about the other areas. That would proceed along in another manner, maybe. We have one area that could be opened. We have one area that has been designated or has eggers, and we have this same one area that has an agreement.

Now, I don't know how you make the agreement legal or whatever, because I know in the state of Massachusetts if we had an agreement, which we did at one time on the raised footrope in Cape Cod Bay where they wanted traps moved out at a certain time so they could go whiting fishing, the fishermen did get together and they did make an agreement. For a couple of years without a regulation, it worked.

Then I'm sorry to say it was a lobsterman that screwed up, so the state made it a regulation. Transfer that out to here. We have an agreement, and I don't know the process that the federal government

would use to sanction that to make it real; and what I'm looking at here is something Bob Ross just said, which was to have the commission move through its process.

What is that process? Basically what we're trying to say is we agree with the agreement or – and I don't know how you do it. It is a federal thing but apparently the federal government needs some help from us, the ASMFC, to say, yes, we support this fishermen agreement. That is what I would have made for a motion, and I'll still make it, basically is that we initiate this addendum to outline the agreement with the Area 2 Offshore Lobster Agreement; and however that is worded, I don't know how you put that into an addendum, if that is what we have to do to give to NMFS – because NMFS had said you should go through your process and they were looking for an addendum, apparently. Do you want me to give the motion which simply says we're basically blessing this; I don't know.

CHAIRMAN GROUT: I would look for a motion just to get this up on the board so that we can debate it at this point, and then we will have discussion. Go ahead.

MR. ADLER: Okay, can I make the motion, then? **Okay, I move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster industry and the sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing female lobsters and prevent gear conflicts.**

CHAIRMAN GROUT: Is there a second to that motion; Bill McElroy. Is there discussion on the motion? Terry Stockwell.

MR. STOCKWELL: Before I comment on the motion, I want to thank Bob for his explanation. I think I understood most of what you're talking about. What I wanted to provide the board here was a little context on the New England Fishery Management Council's activities at this point. I'm going to speak as the chairman of the Groundfish Committee.

As Bob was saying, there are two different actions that are being proposed. One is Groundfish Framework 48, which will provide some mitigation measures for the collapse of the ground fishery in Fishing Year 2013. One of those options is to make a sector request to open up a groundfish mortality area; not the habitat areas, but the groundfish mortality areas only.

That includes Closed Area 2. The habitat omnibus timeline is probably we're looking at an implementation in 2014, but the groundfish action would be the spring of 2013. That all being said, I would disagree with the motion on the board. The industry has gone a long way towards developing almost an unprecedented agreement between the mobile and the fixed gear in a specific area.

If I think anything this board needs to do, it would be to vote to support it in concept and move it along to the agency because as part of the council's development of the groundfish framework, there is very specific language included for potential gear conflicts.

It is when considering sector requests for access to closed areas, the regional office should include consideration of the potential for gear conflicts, shifts in fishing effort out of the closed area and impacts on protected species and lobsters.

To the lobster fishery and the scallop and the ground fisheries credit, they have seized that opportunity and they're codifying it into an agreement that could go into the sector rules. What I would agree would that we let this play out and see whether or not the agency agrees to any of the sector requests and then consider an addendum to work through the mechanics of how we implement possible changes to the habitat omnibus; because compared to the upcoming groundfish mitigation, that is going to be a fundamental different way that the Gulf is managed.

MR. ADLER: So, Terry, all we're trying to do here is do whatever needs to be done to make this agreement for that area work. This is what apparently the National Marine Fisheries Service said the commission needs to do. Now, are you saying that the council can do this, make the agreement official which is worked out so that when you and if you open up, this agreement goes into place; how do you do it?

MR. STOCKWELL: Good question, Bill. What I'm saying is that if the agreement moves forward, it would be the agency would adopt that as part of the sector operations' plans. My concern is by codifying into an addendum on a first try of the industry to work out an operating agreement we have taken the flexibility out of their ability to fine tune their operations' plans. I think we need to give the industry the flexibility to work with themselves in order to perfect their agreement, and I'm concerned that an addendum will lock them into something that

will take altogether another string of meetings and an extended timeline to amend.

CHAIRMAN GROUT: I'm going to take comments on this, but, Bonnie, you wanted to make some comments on this so that people could understand where this agreement is coming from and why there is potentially a need. As I understand it, there needs to be something in place that the National Marine Fisheries Service can put rules as apply to the lobster fishery because we have – in the sector agreements the National Marine Fisheries Service is going to be approving the sector agreements that are going to potentially have these measures in here.

We already have this agreement that has already been put place, but there is nothing at this point because the councils don't manage lobsters even though we can make a recommendation that they consider those things. I think they're looking for something from this board that says, hey, we think this is a good idea and that we should have the offshore lobster fishery out of Closed Area 2 for a certain number of months. If I can get Bonnie to bring that up – to that point and then we will have Bonnie come up and try and explain.

MR. STOCKWELL: Mr. Chairman, to that point, I understand the need for that. We do an addendum; it is a minimum of two meetings; the agency works quickly. Would this in fact be in place for fishing year 2013 for the groundfish sectors? If so, then I think we would need to perfect this motion by having a date certain that it would expire to let the industries again see whether or not they want to amend their agreement for the following year.

MS. BONNIE SPINAZZOLA: Mr. Chairman, when we heard that Closed Area 2 was going to open, we were very, very concerned; because for the last 18 years it has been closed, and for the last 18 years the fishermen clamored into that area. There are probably 30,000 traps in that area between June and October; because not only is it a very prolific area for good catchable keepers, it happens to be an area where very large females migrate through.

We were very concerned that if the draggers got into that area, they would crush them. I was going to say earlier with the technical committee recommendations or discussion we really can't tell what it is doing to the eggers. We can only fear what it is doing to the eggers, and that is truly believe our biggest brood stock or the only one that we really know if it is out there.

It is amazing; we had some boats throw over a million pounds. They throw over more than they keep. One boat threw over 300 pounds just from June through October. What we did is we sat down with the ground fishermen and said can we work something out, and we did. What we have is a definite, absolute, agreed-upon decision and agreement by the fixed-gear fishermen that fish in that area.

As you know, lobster is very territorial, so we seldom have others, but the thing is we took the group that is fishing there now and we asked them if they would sign a piece of paper – they're signing off on it – and we agreed to the sector ground fishermen that we would send – for public knowledge of Area 3, we would send the entire Area 3 permit holder list a certified letter that this was taking place so that they were aware of it.

The other thing is we have talked to people who do sometimes frequent the area. They're great with it; they're fine with it as far as fixed-gear fishermen. As far as the groundfish fishermen are concerned, all of the sectors – first of all, the common pool and non-sector groundfish fishermen are not allowed in that area.

What the sectors are doing is they're trying to use a sector exemption to be able to go into that area, and they're allowed in there only because they are sectors. They would be allowed in there because they are a sector. It is an exemption. The whole Framework 48 would take too long so using a sector exemption allows them to get in sooner.

This is why this is so important to us to move forward so quickly. All the sectors have agreed to do this. We have every single sector on board. We now have every single lobsterman who fishes in that area signing on to a piece of paper and we have every single sector signing on. Now, through the management process, the groundfish fishermen can be regulated.

Once they sign a sector agreement and they're putting it in their operational plans, once that happens and their operational plans are agreed upon, that becomes law. It is a regulation. If somebody in the sector does something wrong, the whole sector is shut down. The sector guys said to us "so what are you guys going to do, sign a piece of paper." We said you have our word.

They believe it but it doesn't really work, so we asked what could we do to codify this. We asked the

Service and they said the best thing to do would be to have an exemption. We agreed with the groundfish fishermen – or not an exemption; an addendum – we agreed with the groundfish fishermen that from June 15th through October 31st we would have lobster traps in the area and there would be no groundfish fishermen dragging through that area at all.

That would be from 41/30 to 41/50. It is kind of a swath right in the middle, and I think you probably have that diagram of the chart. The triangle above it and the area below it would be status quo where the two gears work together, but it is seldom a lot of gear in either place. That middle area would be – even if you had two groundfish fishermen in there, it would be a disaster because of all the traps during that period. They're fine with it.

The rest of the time, the rest of the year groundfish fishermen have the entire area and we're out of it. The top and bottom would remain status quo; the middle is all groundfish. We all agreed that would work perfectly. It is a done deal; it is a definite agreement. We are asking you to please do what the Fisheries Service needs you to do and agree to just put it in an addendum.

In talking to Bob earlier in the week or last week or whatever it is and actually talking to Doug, we talked about suggesting just putting it in an addendum all by itself and let it piggyback onto XIX, go forward, not cost a thing because it is agreed upon. We don't want to change it, and that is why every one of us, every single fisherman and the sectors and lobster, everybody wants it to be a regulation so that it is not going to change. The truth of the matter is, too, that down the road ten years from now, because they're in a framework process and we have addendums that can change, if necessary we can change it down the road. Did I answer that? Everybody is clear with that? Anything else? No questions? Thank you.

MR. ADLER: Okay, I'm a lobster trap guy and I've got a big boat. I signed the agreement and I go out into Closed Area 2, apparently the National Marine Fisheries Service can regulate the sector boats so they're going to be under some regulation that can be enforced; but, if I put my traps in there and I signed on the paper but there is nothing else, I don't know what the National Marine Fisheries Service can do because there is no regulation on me.

I think what we're just trying to do with whatever you need, so that since NMFS can't enforce or basically run the lobster deal, what do they need from us so that we can agree with the agreement and it will have some force of enforcement somewhere if the

lobstermen violates it. We know they can take care of the sector people. What do we do? I think that's why NMFS said, well, this is how you should do it so that it will be enforced for the lobster fishermen. I think that's where I'm trying to go here with this.

MR. WHITE: Mr. Chairman, I have what I hope is a friendly amendment that I think may take care of Terry's concerns. If we added to this "limited changes to the agreement brought forward by the industries could be approved by board action." If this changes in the future and it is not too substantial, we don't have to go through another addendum. We could just bring it to the board and approve.

CHAIRMAN GROUT: Is the maker of the motion acceptable with that friendly amendment?

MR. ADLER: Yes, because I think that would also – you know, as Bob Ross, these things could pop up somewhere else. I think what Ritchie's idea is that you fix this for this one, but you'd also leave it open. You wouldn't have to do a whole addendum if somebody else came up with an agreement. Ritchie, is that what you're intending?

MR. WHITE: Well, this was intended for this agreement. I'm not sure that if there are new areas and new agreements coming up, I think that would take a new addendum, but I think for changes to this agreement is my intent. Terry seemed to have concerns about tweaking of it. If there is a tweak, we don't have to go through all 'nother addendum. It just has to be approved at the board level.

MR. ADLER: I would support that, and basically you're saying that what you're having here would take care of what our immediate problem is? Yes, okay, I'm all right with that.

CHAIRMAN GROUT: Is the seconder agreeing with that? Bob Ross, if we had that flexibility in here, if there were changes in the future, do you believe this would be something that could help the National Marine Fisheries Service with making any changes to the rules in the future?

MR. ROSS: Yes, I think that would allow more flexibility. Again, my concern here is that we're focused on the one area, Closed Area 2, which obviously has significant information that there are large concentrations of brood stock lobster there. I guess my concern here is that the commission process – we have reached out very preliminarily to some of the potential impacted areas.

We have heard back from the Maine Lobstermen's Association regarding concern to the Western Gulf of Maine area. We know that the Nantucket Closed Area overlaps the Area 2/3 Boundary. One of the concerns we have at the federal level is to ensure that all potentially impacted lobstermen are aware of what is happening here. The reason we felt in addition to the need to get very specific recommendations regarding this agreement, we also felt that the commission would be the best vehicle to announce what is happening relative to these closed areas to the rest of the constituent base, which is why did not encourage a simple letter of recommendation from the commission to us to codify an agreement.

There are potentially many other Area 1 and Area 2 lobstermen who may not be aware of this action at all and by us going into rulemaking to codify this agreement for Closed Area 2 does not ensure that other impacted lobstermen are aware of this; or, as we know from the public process, other issues float to the surface when there is a full discussion of these issues.

For instance, even though this is an agreement between lobstermen and the mobile gear, there are other fixed gears out there potentially; as we've discussed in the past, Jonah Crab, which is a non-regulated federal fishery.

I think that we are looking to the commission to inform its membership of what is going on with the sister agency, with the council/NMFS process, and see if other issues do arise that could impact the direction the federal government is going in, as well as potentially identify other issues and exchange data. I understand the focus of this issue is the agreement. However, from our perspective the focus is the impacts to all commission-managed lobstermen if any of these areas are opened. That is why we sought a more public vetting of the issue.

CHAIRMAN GROUT: Bob, let's say we pass this addendum; doesn't the federal government have a public process when you're going to be implementing rules that you could potentially send out notices about these actions, the potential changes in the sector operations plans. Where they will have access to those areas; can't you send a notice out to all federally permitted lobster fishermen, because they have to have a federal permit to fish out there, correct?

You know, we're addressing a very specific issue because there is an agreement that has been brought together here to address something that was

specifically identified already with data that there is an issue in that particular area. It sounds like you're asking for something that is much broader, in all respect, as if you have no public process, but you do have a public process.

MR. ROSS: We do have a public process but it has been our experience relative to lobster that it is not as effective as the commission public process for a variety of reasons. Even though we are doing the best we can to outreach, we are experiencing budgetary constraints in our process, too, which has reduced the likelihood of mass mailings to all impacted constituents, especially at our proposed rule stage.

It is very clear that we will be notifying – once the rule is final, we will send out notice to all of our permit holders. Our concern is that potentially impacted federal permit holders would not be engaged in our council/NMFS regulatory process in the same way these same permit holders would be engaged in the commission's lobster public process.

Again, lobstermen follow the commission with lobster issues. They do not follow the council process. It is fortunate that one of the companies was able to monitor the New England Council actions and be made aware of the efforts to open Closed Area 2. Again, based on your letter to the board back in January, I think the board became aware of that action. Since then there has been little communication on the council's side that, at least in my humble opinion, has trickled down to the rest of the lobster industry relative to what may be coming in these other areas. That is our reason to encourage full public outreach on the issue.

CHAIRMAN GROUT: Okay, Toni, you have a question.

MS. KERNS: Bob, I have two questions relative to what the National Marine Fisheries Service would be looking for as information contained within the addendum. First, looking at this broader issue, if that is what is being considered in this addendum, what you're looking for is almost I guess something like scoping on potential impacts on lobstermen for all of the closed areas that the council is considering?

And if that is the case of what you're looking for, then the commission would need information from the council – background information of what they're considering and what they are considering because the council has not communicated to the commission at all on any of these issues. The only

communication that we have received is the information that Doug has passed on to the board as the Board Chair and a member of the New England Council.

That is my first question. My second question is specific to the agreement, when you were first describing what the National Marine Fisheries Service was looking for, it was unclear to me if you within this addendum need specific information on the impacts to fishermen. I guess I would want to know more information on what impacts are you looking for.

The number of permit holders impacted, how gear would be impacted, how catch would be impacted, those are pretty specific details and a lot of that data I think would actually come from the National Marine Fisheries Service because you guys have the VTR data, so we would need to work collaboratively to build that addendum, which would be I think a little bit more simpler than just writing up this agreement.

MR. ROSS: Yes, I think those are very good questions, Toni. First and foremost I think that the addendum would address the agreement and seek a public feedback on that. The benefit to the National Marine Fisheries Service is that it would then not just be an industry handshake. It would be a vetted process through a structured outreach.

The second aspect would be at the same time to inform interested parties that this agreement would address specifically Closed Area 2. However, other areas would also be potentially opened as part of a move by the council process. I think that in itself would potentially, I hope, generate additional awareness and potentially feedback from others as yet unknown who may not be aware that any of the closed area actions are being considered for reopening.

It serves two purposes. One, it gives guidance to the National Marine Fisheries Service relative to support by the commission for this agreement, and it takes it out of the realm of private industry and raises the bar so that NMFS has clear guidance from the commission on this action and not an industry handshake.

Second, it raises awareness of other areas that may be impacted, but it may also identify other issues that NMFS or the council may not be aware of unless there is public comment on the issue of opening any or all of these closed areas. It is two-pronged. I hope I answered your question.

MS. KERNS: I think that does; and so as the plan development team chair I would request that Terry work with me to help get the New England Fishery Management Council to respond to our requests for communication on this issue.

MR. TRAIN: Mr. Chairman, you could rule this out of order if it is not in line with the actual motion, but did I understand from Bob that before we open all the closed areas you expect to get a new agreement? You have mentioned four times all of the other closed areas that may open, so would you expect to get a new agreement for each area before it is opened and just currently we're only dealing with this one?

MR. ROSS: I'm unclear if these areas will in fact be opened, to be honest, because again – and maybe Terry Stockwell can expound on this, but it was my understanding that the approval for such an exemption would still have to be captured under the council's Framework 48 before the sectors would be exempted and then allowed access into these areas.

Now, I believe that is something that will happen in the future. What our concern is, is there the need for other types of agreements like this in the other areas? NMFS does not know that. Are there participants in Area 1 that fish the Western Gulf of Maine – lobstermen that fish the Western Gulf of Maine that would be impacted. At this time we don't know that.

Again, bearing in mind that especially in Maine most of your permit holders do not have other federal permits that require VTR reporting; therefore, we would not have good data to indicate whether there is a large or small concentration of Maine lobstermen working in the Western Gulf of Maine Closed Area that may or may not need this type of agreement.

Again, one of the approaches here is just to – it is a scoping in some way. We need to know if in fact these other areas have adverse impacts to lobstermen or to the resource; again highlighting the fact that we feel the commission is the most appropriate vehicle to reach out to lobstermen rather than NMFS or the council process.

CHAIRMAN GROUT: I think the point that Bob is trying to make is that if we go forward with this addendum, during the public comment process on the addendum other issues may be brought forward and there will be a public process of gaining that piece of information that NMFS can use in the future and may be some that the lobster industry can be used with the groundfish industry in developing other actions. Terry.

MR. STOCKWELL: Mr. Chairman, I will be quick. Specifically to the motion on the board, thank you, Ritchie, for the language for perfection. I'm feeling very comfortable with it right now. As Bonnie said, it is a done deal by industry. This would codify it as a done deal for one year because that is the length of a sector operations plan.

To address all of Bob's issues, this is a trial run, and I would propose that we vote motion up and then reconvene in a year when the habitat omnibus has got some life to it and we know a little bit more of what the details are and respond accordingly with an appropriate additional action.

MR. ADLER: I move the question.

CHAIRMAN GROUT: That takes a two-thirds vote. All right, do we have any objection to limiting debate at this particular point in time? Seeing none, while you're all caucusing on this, I am going to read the motion. Bonnie, is this real critical, is it going to mean some change that we need to make to this?

MS. SPINAZZOLA: Yes.

CHAIRMAN GROUT: Why wasn't that brought up before when you were making –

MS. SPINAZZOLA: I'm trying.

CHAIRMAN GROUT: No, no, I mean when you were making the initial – okay.

MS. SPINAZZOLA: Where it says "limited changes to the agreement could be made through board action"; would it be possible to please change it to "limited changes to the agreement by industry could be made through board action", because this is an industry agreement that we're voting on. I would not like the board to decide to make changes to it. I would like the industry to make changes. They would still be made through board action.

MR. WHITE: When I made this friendly amendment those words were in there, and that will be on the record as our intent, so I think you're protected in that.

CHAIRMAN GROUT: Okay, I'm going to read this into the record while you're caucusing. Move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster fishery and sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing

females and prevent gear conflicts. Limited changes to the agreement by the industry could be made through board action.

The motion was made by Mr. Adler and seconded by Mr. McElroy. Are we ready to vote on this? All those in favor raise your hand, 10 in favor; all those opposed; abstentions; null votes. One abstention; **the motion carries ten to zero to one to zero.** Okay, thank you very much on that. We now will move down to a quick Fishery Management Plan Review by Toni.

FISHERY MANAGEMENT PLAN REVIEW

MS. KERNS: I will go through this very quickly. In 2011 we had record lobster landings at 126 million pounds. Maine and Massachusetts account for 94 percent of those commercial landings; 83 percent in Maine and 11 percent in Massachusetts. The plan review team added an additional table to the FMP review to look at monitoring.

This is for fishery-dependent and independent monitoring according to what is required in the plan. For the dealer and the harvester reporting, the check and check-plus, if you have a check you have met all the requirements of the plan; and if you have a check-plus you have exceeded the requirements of the plan.

As a reminder, for harvester reporting it is only 10 percent of your harvesters are required and many states do have a hundred percent harvester reporting. For the fishery by dependent biological sampling for sea sampling and port sampling, the measures that were implemented through Addendum X far exceeded what any of the states had currently been collecting and far exceed the budgets of any of the states have to collect in terms of the percentage of sampling of the commercial fishery.

When the board implemented those measures, the technical committee did let the board know and the acknowledged it, recognizing that many of the states would continue with their current sea-sampling program at that time and that would be sufficient. It does characterize the fishery. For those states that have checks, they are sufficiently characterizing their fishery.

The one check minus is for New York, and the only reason why we put a minus there is because they have actually decreased their sea-sampling program in the past couple of years. That in part is due to the fact that industry has been less receptive to have the

state on the boats as well as a decrease in funding for their sea-sampling programs.

I also just wanted to point out the potential sampling loss, which I think will come up again from the other business that Bill McElroy had asked for. There are several states that will struggle to do the sea sampling for lobster and even some fishery-dependent sampling in the upcoming year with the loss of IJF funding and some Wallop-Breaux funding; not Wallop-Breaux; they're just all IJF funding.

It is a cause of major concern for the plan review team as well as the technical committee; because without that sea-sampling data, it will be very difficult for us to continue forward with assessments. The states of North Carolina, Virginia, Maryland and Delaware have made de minimis requests. They all do meet those de minimis requirements.

It is up to the board to decide beyond the coast-wide biological measures if those states can be exempted from additional measures. The plan review team recommends that those states implement all biological measures contained in the FMP and that the states conduct some biological sampling of their fisheries to improve the stock assessment but not make it required; just encouraged.

The de minimis states are also required to collect annual harvest data, and the PRT recommended that the harvest data is collected monthly so that it can be used better in the assessment. Lastly, the plan review team made a couple recommendations that are outlined in the document. I am not going to go through all of them except that the compliance reports contain the number of permits issued and the number of those permits that are active by state and LCMA; and Maine, for their zones; just to provide better information within the FMP review. That is all.

CHAIRMAN GROUT: Questions? Dave and then Pete.

MR. DAVID SIMPSON: I am not sure if it is necessary but the slide show wasn't complete for Connecticut, but I don't see it in the document. I don't know that it matters, but we do have a trawl survey. It is noted under New York that Connecticut does the trawl survey for New York, but it is not for Connecticut.

Then, more importantly, the ability to continue doing our lobster work is contingent upon money coming through IJF. The only reason we were able to do it

this year was because we had money left over; but going forward, I don't know where we would get money to do lobster, especially the juvenile recruitment, the larval stuff, and fishery-dependent sea sampling. I don't know where we would get the money to continue doing that without IJF money.

MR. HIMCHAK: Toni, I just wanted to point out about the – yes, New Jersey does have a trawl survey. It seems to be an omission there. I know you don't use it for the University of Maine Model, but it is the only fishery-independent survey for our area in addition to the NMFS Trawl Survey. Just one comment as a lead into the de minimis requests, we obviously don't have any objection to the de minimis requests states, but just to allow the board to be aware that we did have a conference call July 10th.

The state agencies that fish in Area 5; it is a very small but nonetheless significant component stock. While most of the states are de minimis, but the sea sampling will be accommodated by New Jersey's black sea bass sampling, and Maryland and Delaware were going to explore options for doing some sea sampling on the Southern New England stock. We're all on the same page as far as meeting the 10 percent reduction and coming up with a concerted effort for the evaluation of the 10 percent that will be needed in 2014. Thank you.

CHAIRMAN GROUT: Are there any other questions for Toni? Toni, outside of the requests for de minimis action we have to approve; are there any other things in there that you wanted formal approval from the board other than the entire approval of the management plan review?

MS. KERNS: If you approve the FMP review, then I can add those additional compliance report requirements, but you don't have to do an official motion for that.

CHAIRMAN GROUT: Okay, so I'm looking for a motion to approve the FMP review, including the four states that have requested de minimis. Bill.

MR. ADLER: **I will so move to approve the FMP review, which will include the requests of North Carolina, Virginia, Maryland and Delaware for de minimis status.**

CHAIRMAN GROUT: Seconded by Steve Train. Is there any discussion on this? Okay, all states in favor raise your hand, 11 in favor; any opposition; null votes; abstentions. **The motion carries eleven, zero,**

zero, zero. Okay, next we have a Lobster Advisory Panel population here.

APPOINTMENT OF ADVISORY PANEL MEMBERSHIP

MS. KERNS: Mr. Chairman, Nick Jenkins from the state of New Hampshire is no longer in the lobster industry, so he retired from the advisory panel. **New Hampshire has nominated James Willwerth.**

CHAIRMAN GROUT: We have a motion by Mr. Abbott and seconded by Mr. Adler to put Jim Willwerth on the Lobster AP. Are there any objections to that motion? **Seeing none, the motion carried.** Now, under other business we had one item from Mark Gibson concerning ACCSP. Jim, you also had another item that you wanted on here; do you want to start off with that?

MR. JAMES GILMORE: In our attempt for implementing the pieces of Addendum XVII and the management measures, we have run into a bit of a problem in New York. If you essentially look at the most restrictive rule between Area 4 and 6, essentially when we got down to putting this on paper, it pretty well came out that essentially the fishermen in New York couldn't fish in the either area, and I don't think that was the intent of this. Toni put some slides together and I think is going to go through this to explain it in a little bit more detail and then we can have some discussion about it; and then I have a motion once we're done.

MS. KERNS: The board approved the most restrictive rule to apply to the closed seasons any measure for Addendum XVII. As a reminder, Addendum XVII was for all Southern New England LCMAs to reduce their exploitation by 10 percent. Some areas put in closed seasons; others did the v-notch programs or a combination of closed seasons and v-notch regulations.

As Jim just said, dual permit holders would be prohibited from fishing for two closed seasons potentially if we did the most restrictive rule; or, depending on how you interpret it, you could also, if you said it was the longest closed season that a dual permit holder would have to follow, then some folks would be fishing in an area that is supposed to be closed, and that would be very difficult for enforcement purposes.

I don't think that is what the board was intending. I don't think the board was intending to prohibit the fishermen from being able to fish at all. One of the

reasons why we had suggested the most restrictive rule is because we didn't want to see effort shifting from one area to another. In the state of New York, for an example, there are fishermen that are actively fishing in both LCMA 4 and LCMA 6.

Eight of the thirteen permit holders live in Montauk or East Hampton, and ten of them live or fish outside of the South Fork of Long Island. These fishermen would be subject to both closures under the most restrictive rule. Their harvest accounts for about 56,000 pounds within the two areas.

MR. GILMORE: Like I said, I have a motion that I would like to put forward. Unless there are any questions about it, I can put the motion. What is your preference, Mr. Chairman?

CHAIRMAN GROUT: I was going to ask first are there any questions on this issue? Steve.

MR. TRAIN: Now, Toni said that the intent of the most restrictive rule – and I thought that is how I understood it – was to prevent displacement of effort; when one area closes, not go into another, which means essentially your traps would be out of the water. As I understand it, the intent now is to do away with that so they could fish one area or the other during closed periods, so that goes against the whole purpose of most restrictive rule. I'm trying to see what we're trying to do. Maybe I should I hear your motion first.

MR. GILMORE: Well, just to respond to the question, the motion will include a point that the area that they're fishing under the most – well, not using the most restrictive rule, the area they're not fishing, they will still be required to take their traps out of the water; that they can only fish one area or the other.

They can't do both at the same time, so essentially the motion is going to try to get at allowing them to fish and not – you know, essentially right now it prevents them from fishing the way we have essentially the rule set up.

CHAIRMAN GROUT: Maybe it would be good if you put the motion up on the board; and if we got a second to it, we could discuss it and then have questions about it.

MR. GILMORE: I move that permit holders who fish both LMA 4 and 6 must remove pots from the closed LMA but they are permitted to fish in the alternate open LMA during that time period.

CHAIRMAN GROUT: Do we have a second to that motion; Bill McElroy. All right, is there discussion on this motion? Pete Himchak.

MR. HIMCHAK: Jim, I know you've got problems. I'm surprised Area 3 isn't included in this, also. All right, so Area 4, we share that, and we have a closure in February and March; so if you declare for Area – I'm trying to understand the motion here to make sure that there is not a redirection of effort from Area 6 to Area 4. Can you satisfy my concern?

MR. GILMORE: Again, it may need to be wordsmithed. This is about the fourth version of this motion I did to try to essentially – you know, it started out that they can't fish in either area right now. This was to allow them to fish in one or the other, which I think was the original intent we were trying to do under management. If this is unclear and it is the best I could do in terms of making it that they could fish in one versus the other, then I'm open to suggestions on modifying it.

CHAIRMAN GROUT: Toni, you can clarify and then I'll go to you, Pete.

MS. KERNS: Pete, the technical committee had recommended, when they looked at all of these proposals prior to board approval, that the board use the most restrictive rule. If you apply the most restrictive rule as it is laid out, then it allows folks to fish in a closed area when that area is closed because it is the most restrictive of the two, so you would choose the longer closed season.

Then they would be allowed to fish if you were in the shorter season when no one else is supposed to be fishing in there. If you apply both – so then if you say, okay, well, we just don't want the effort to shift and you say you're closed during both time periods, then that wasn't the intention of the plan development team to not allow them to fish at all in either area. I don't know how we avoid the shifting of the effort because these folks are historically fishing in both areas. They have active landings in both areas.

MR. HIMCHAK: Well, my question is what is the closed season in Area 6? What is going to prevent the redirection into Area 4 where we currently have 87 percent of the landings and we're closing it down for two months in New Jersey?

MS. KERNS: Area 6 has not given their closed season dates yet, so I don't know them.

CHAIRMAN GROUT: Dave will have an answer to this and then I will get to you, Steve.

MR. SIMPSON: We don't have the exact dates, but we have agreed on a fall closure that would start some time in September, probably right after Labor Day, and go as long as it takes to get 10 percent; so into November, as I remember it; well into November.

MR. TRAIN: Mr. Chairman, I believe the way this is written it would be a clear redistribution of effort. I mean, you take your gear out of one area and put it another one because they're still open. I know at least where I fish if Zone G closed and they put the gear in Zone F because we were still open, it is a redirection of effort. Maybe the technical committee or the management board had intended this to happen, but I think it is a clear redirection of effort from one zone to another, and I am going to oppose this motion.

MR. HIMCHAK: Yes, I can't see it any other way but a redirection of effort into Area 4 in February and March while we're closed. How do we prevent that from happening?

CHAIRMAN GROUT: Is there further discussion on this motion? Okay, will you caucus while I read the motion into the record? Move that permit holders who fish both LMA 4 and LMA 6 must remove pots from the closed LMA, but they may fish in the open LMA during that time period. Motion by Mr. Gilmore and seconded by Mr. McElroy.

Okay, are you ready to vote? All those in favor of this motion raise your hand; all those opposed; abstentions; null votes. **The motion fails three to five to two to zero.** Okay, now other business, Mark Gibson, you had something? Well, we just defeated the motion.

MR. NOWALSKY: I would like to make another motion, Mr. Chairman. I would like to move to have the technical committee review this issue. If I get a second to that, I'll go ahead and speak to it.

CHAIRMAN GROUT: There is a second by Pat. Okay, go ahead.

MR. NOWALSKY: New Jersey opposed the motion on the grounds of the shift of effort, but it is clear that there is an issue here that needs to be resolved. I don't think we're in the business of simply putting people out of business, and therefore there is an issue here. New York has a valid issue. We need to find

some resolution to it, and I would like to find a way out of this box we're in right now for New York.

CHAIRMAN GROUT: Is there any further discussion on this particular motion? Pat.

MR. PATRICK AUGUSTINE: Could they do that for the next meeting? Otherwise, we're going to lose the whole year. We'll probably lose the whole year, anyway. Could we add that to be reported on at the next meeting?

CHAIRMAN GROUT: Okay, is that a friendly amendment?

MR. NOWALSKY: Yes, it is, thank you.

MR. WHITE: I guess I'd ask the technical committee are they clear on what they're being asked to come back with.

MS. KERNS: I think Adam's question is will there be a shift in effort if we allow for fishermen to fish during one of the area's opening. If we allowed what Jim wanted from his motion before, would there be a shift in effort; is that what you're asking, Adam?

MR. NOWALSKY: Well, obviously, I would have loved to have had that answered before voting, but I think we've got a pretty clear idea that, yes, there would have been some shift in effort. I think it is more comprehensive than that. The question here is how do we resolve – there were two very specific issues up there. One of them in particular was that there would be the ability for fishermen to fish in a closed area by choosing one of the more restrictive measures. That was an unintended consequence of the last action on this matter of Addendum XVII. I'm very clear that this issue should have a better answer and I'm open to resolution and wordsmithing on what we need to do here.

MR. GILMORE: Mr. Chairman, I think it goes beyond just asking about shift in effort. What we're trying to find out are alternatives to – essentially the first motion we were kicking around was suspending the most restrictive rule, which we figured was never going to fly because that goes in the face of what the amendment said, so we were trying to get into some way of providing an opportunity for these guys to fish in one area versus the other, which I think is fair. We're going to need not only whether it is a shift in effort but actually recommendations on how we can, under the amendment, still allow these guys to fish one or the other area.

MR. SIMPSON: I think Jim's attempt to narrow the issue to the particulars of the 4/6 dual area, there are only a few boats from Montauk and Hampton or some place – for my part in Area 6, because we're the only other state that shares Area 6, I'm not terribly concerned about that. I do think it needs to be clarified here because I don't want to have to go back home and say the 10 percent reduction in Area 6 is under review, because that is not what is happening here.

I think what we need is the technical committee to look at the particulars of Area 4/6 and ways to mitigate compromising the conservation without unduly burdening the few participants in both area. One of the things that occurs to me is the trawling. You can control whether you land or not from the two areas during the closed seasons.

There are trap tags that designate Area 6 and Area 4 so it is not like you can move all your gear back and forth. You can only fish your 6 tags in Area 6 and your 4s in 4; so just a little feedback from the technical committee about what difference does this make in the big scale of things. I am generally a proponent of most restrictive rules for the reasons that were expressed earlier, but we're talking about a couple of people who may be asked to do a whole lot more than is necessary to achieve the level of conservation we're looking for.

MR. HIMCHAK: Mr. Chairman, I understand Jim's problem and we encountered this in Areas 4 and 5, which is why we had the same closed area for those two areas – closed seasons for those two areas. My suggestion to Jim is could not New York require somebody that fishes both 4 and 6 to declare exclusively to fish one area during a calendar year and base that on their past landings from the previous years, so that you're locked into one set of regulations for an area for a year and you could not jump back and forth. Is that a possible solution?

CHAIRMAN GROUT: Jim, do you want to respond to that?

MR. GILMORE: I don't know, Pete. I mean that is something we could explore, but off the top of my head – I don't know unless Toni has got some idea on it; I don't know. We'll try.

MR. WHITE: Hearing the description of what you're trying to accomplish, the motion clearly doesn't reflect that in my opinion. I'm sympathetic to try to solve this. I view this as the states should develop a conservation equivalency where you figure out a

program that will let these fishermen fish and still come up with a 10 percent reduction.

I see this as kind of a reverse role, and I'm not sure that is the technical committee's role to come up with that. I think that is your role to come up with it and then the technical committee can review it and say, yes, we still get the 10 percent and that works.

MR. NOWALSKY: In response to the earlier question, I think what is up on the board right now really doesn't capture what I was going for. We're not looking to reopen the issue of reviewing the 10 percent reduction in Addendum XVII. I think specifically what we want the technical committee to review is the impacts of the most restrictive measures' provision of Addendum XVII for dual-permitted New York fishermen and then remove the part about the 10 percent reduction in Area 6.

CHAIRMAN GROUT: So are you withdrawing your motion or making an amendment to your own motion or a friendly amendment?

MR. NOWALSKY: Is that too complex to call it perfecting the motion at this point, Mr. Chairman?

CHAIRMAN GROUT: You can perfect it as far as I'm concerned.

MR. NOWALSKY: I would ask to remove the "in Area 6" portion of it.

CHAIRMAN GROUT: Is that the way you wanted the motion?

MR. NOWALSKY: Yes, that is a good clarification of this issue.

CHAIRMAN GROUT: Okay, Pat, are you comfortable with that? Okay, is there discussion on the perfected motion? Bill McElroy.

MR. McELROY: Mr. Chairman, I think that this is a good improvement. I share the concerns that New York and others have that some of their fishermen are essentially going to get a dual jeopardy. I think Ritchie is spot-on in suggesting that we need to find a way to solve that problem and be careful with the language. I think this is a good step in that direction and I'm supportive of that. Thank you.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Seeing none, can you please caucus while I read this into the record? Move to have the technical committee review the impact of

the most restrictive measures in Addendum XVII for dual-permitted New York fishermen by the next meeting. The motion was made by Mr. Nowalsky and seconded by Mr. Augustine.

Are you ready to vote? All those in favor raise their hand, 10 in favor; opposed, 1; null votes; abstentions. **The motion carries ten to one to zero to zero.** Mark Gibson, you have an item here on ACCSP.

OTHER BUSINESS

MR. GIBSON: Mr. Chairman, I know you're way behind schedule here. We saw some information earlier about how states are struggling to maintain their lobster monitoring programs and the data feeds for stock assessments. I'm also aware that the Operations Committee recently reviewed proposals and the ASMFC proposal to support lobster port and sea sampling did not make it to the funded cutoff point. I was thinking about perhaps a motion from this board to the Coordinating Council recommending that proposal be at the funded level, and I am prepared to do that.

However, I am also thinking that should this board make that motion, there may be other boards meeting subsequently to this that may pass other motions that would be in support of maintaining the current Operations Committee rankings or protecting other issues that board is concerned about.

I didn't want the Coordinating Council to receive a series of conflicting motions, but I thought just some discussion at this board about the importance of that program. A number of us sit on the Coordinating Council as well and can articulate those views when it comes time to discuss the Operations Committee's recommendations. I leave it to your guidance as to how we might proceed on that.

CHAIRMAN GROUT: We had a table up there; that I believe Toni had in one of the previous presentations that showed the impacts of that not being funded next year. I think that is the key piece of information that we want to bring forward to make sure that the Coordinating Council understands.

The kind of conflicting message here is there is a certain amount of funds that are allowed for existing programs that are funded by ACCSP and then a certain amount, 25 percent, that is allowed for new programs. Because we have never gone to ACCSP for this, this is considered a new program.

I think what might be good for them to understand, if they already didn't know, as a result of the Operations Committee and the Advisory Panel's deliberations, that if this doesn't get funded, there will be backsliding even though this is a new program. That might be the thing that we would want to bring forward just to make sure that they realize that there will be a loss and what is the impact on the assessment. Toni.

MS. KERNS: This table was included as part of the proposal and that is why Connecticut wasn't included. I just stole this straight from the proposal that Melissa had pulled together, because the request for funding for those northern states. The review committee did have this information.

CHAIRMAN GROUT: Well, I would then ask what is the pleasure of the board? Does the board want to make a recommendation here? Pete.

MR. HIMCHAK: Mr. Chairman, I thought this was going to come up under Atlantic herring because typically every annual meeting we do make recommendations to the Coordinating Council for funding Atlantic herring. Wednesday the Coordinating Council will really be sharpening its pencils again and again.

Mark is right, if this board comes up with we want this proposal above the line, other boards can do it in similar fashion. I think many of us will be at the Coordinating Council meeting on Wednesday morning and we're aware of the severe financial handicaps that we're facing. A formal motion; I don't know; if Mark so desires, I would support it.

MR. GIBSON: Well, I'll make that motion then. **I move that the ASMFC Lobster Board recommend to the ACCSP Coordinating Council that the ASMFC Proposal for lobster port and sea sampling be elevated to funded status.**

CHAIRMAN GROUT: Is there a second; Bill Adler seconds it. Is there discussion on the motion? Rick.

MR. RICK BELLAVANCE: Mr. Chairman, I'm the chairman of the Advisory Committee for the ACCSP. We just went through that process, like you mentioned, and I thought I just had a couple of things I could offer to this discussion. There is no doubt that all of the partners are coming to all different funding sources, looking to fund projects that have been ongoing and looking to new projects as well.

That was evident by the increase in funding requests for the maintenance proposals as well as the larger number of new proposals that were put forward this year. The Lobster Sampling Data Collection Programs in my opinion need long-term funding sources. Under the ACCSP Program Design, new programs that come forward are supposed to be more geared towards innovative data collection programs and new ideas and things like that where this lobster program is an ongoing proposal that has been collecting data for a long time.

I think a more important discussion here would be where do we institutionalize long-term funding for this type of data collection instead of risking kicking out one program for another and trying to determine a hierarchy of what is the most important program to push forward with the limited funding that we have. I don't know if there is time or a way to get that conversation going, but it is the long-term funding I think that is more important. Thanks.

MR. WHITE: I guess I'll support this motion, but I really do have an issue with this not going before the Policy Board first. I know that can't happen with the timing of the meetings. In talking to Bob, we have done it on sea herring, but that is it. Every other board goes through the policy, and that does give me concern from a process standpoint. This clearly is important so I guess I'll support it.

MR. McELROY: I would just like to briefly say that I'm in favor of it even though I didn't second it and Bill Adler did. Thank you.

ACTING EXECUTIVE DIRECTOR ROBERT E. BEAL: I think Pete's comment that he mentioned earlier is right on, which is each state that is on the Lobster Management Board is also on the ACCSP Coordinating Council. If the representative is not here, they should talk to their Coordinating Council representative and go over why this important and have that discussion about if lobster is funded and what should not be funded. There are tradeoffs in all these things and I think prepping for that discussion at the Coordinating Council is pretty important, but all the states that are in the room are on the Coordinating Council as well.

CHAIRMAN GROUT: Good point and I have discussed that with my Coordinating Council representative. Yes, Tom.

MR. THOMAS FOTE: Most of the governors' appointees and legislative appointees will be at a workshop at the same time, which we would also be

looking at what priorities are we going to do. We're looking at the cutting of funding at a whole bunch of monitoring committees and monitoring actions on a whole bunch of boards, so where do we set the priorities. That is usually why we go to the Policy Board and then make a recommendation from there.

I feel uncomfortable going through this process because then we'll start making motions at every board where we meet. We have a lot of problems with tautog about getting information and make that motion at the next meeting. I find it difficult to start doing micromanaging without going through the Policy Board first to discuss it with all the commissioners sitting there. We won't have them all at the ACCSP.

MR. BILL COLEMAN: Mr. Chairman, thank you for our de minimis status, but I'm a little bit concerned about the motion here and I'm not going to be able to vote for it. It is not that I don't think lobster sampling is important, but I believe that decision needs to be balanced with the other specie boards right now. I am not ready to vote to elevate lobster ahead of everything else, which is what this would do.

CHAIRMAN GROUT: Is there further discussion? Okay, caucus while I read this into the record. Move to have the Lobster Board recommend to the Coordinating Council that the ASMFC Biological Sampling Proposal be elevated to funded status. The motion was made by Mr. Gibson and seconded by Mr. Adler.

Okay, are you ready to vote on this? All those in favor raise their hand, five in favor; all those opposed; abstentions; null votes. **The motion carries five to four to one to one.** Are there any other items to come before the board? Ritchie.

MR. WHITE: I just wanted to make sure that we had tasked the Law Enforcement Committee to report back to us on the v-notch and if we had attached a time with that.

MS. KERNS: Ritchie, I have two things tasked to the Law Enforcement Committee; review the perfect flipper rule and then also looking at the three different v-notches' definitions within one state. I was going to ask Mark Robson to see if that could be added to their agenda for this week's meeting; and then if not, if we could do a conference call to report back to the board in February.

ADJOURNMENT

CHAIRMAN GROUT: Okay, are there any other items to come before this board? Seeing none, I will take a motion to adjourn. So moved; thank you.

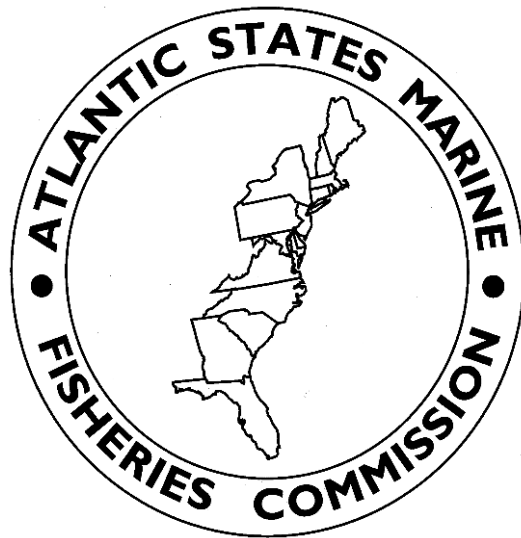
(Whereupon, the meeting was adjourned at 12:05 o'clock p.m., October 22, 2012.)

DRAFT DOCUMENT FOR BOARD REVIEW, NOT FOR PUBLIC COMMENT.

Atlantic States Marine Fisheries Commission

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

LCMA 3 Closed Area II Season



This draft document was developed for Management Board review and discussion. This document is not intended to solicit public comment as part of the Commission/State formal public input process. Comments on this draft document may be given at the appropriate time on the agenda during the scheduled meeting. If approved, a public comment period will be established to solicit input on the issues contained in the document.

ASMFC Vision Statement:

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

February 2013

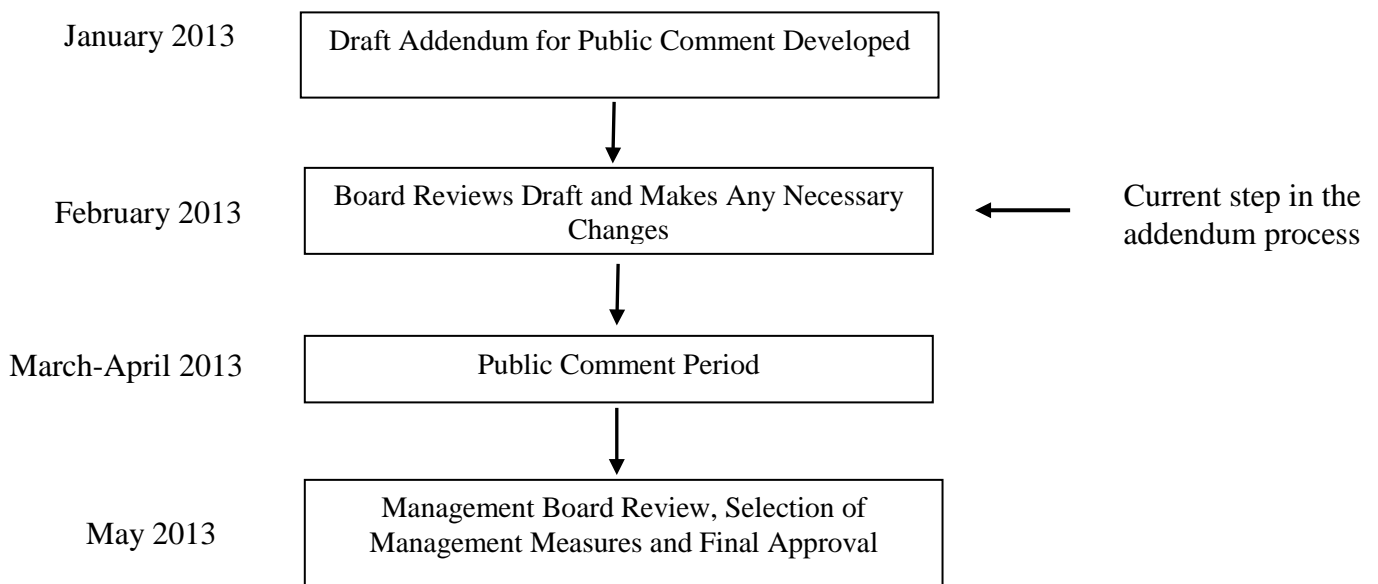
Public Comment Process and Proposed Timeline

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 (lobster conservation management areas 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 XXXX**. 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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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. Lobster Conservation Management Area (LCMA) 3 (subject of this Draft Addendum) includes all three biological stocks of American Lobster. Management Authority for LCMA lies with NOAA Fisheries.

The Lobster Board initiated Draft Addendum XX at the November 2012 meeting with the following motion: Move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster fishery and sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing females and prevent gear conflicts. Limited changes to the agreement by the industry could be made through board action

2.0 Background

2.1 statement of the Problem

Closed Area II was established in the 1969 through the International Convention of North Atlantic Fisheries. Its stated purpose was also to protect spawning. In 1977 it was added to the Atlantic Demersal Finfish Plan and stated purpose was to protect haddock spawning. In 1994 The New England Fishery Management Council (NEFMC) updated the purpose to reduce general groundfish mortality through Amendment 4. The original design of the closure was to link to or overlap with the habitat closures. While some parts of Closed Area II are complete closed to mobile gear, there are Special Access Programs that allow fishing in Closed Area II, primarily using selective gear such as separator and Ruhle trawls, which fishermen use to selectively target haddock. Closed Area II has been open to lobster trap fishermen and is fished by LCMA 3 lobstermen year-round.

In 2012 NEFMC considered Framework 48, which considers the opening of several areas that are closed to groundfish fishery including Closed Area II. The Council is considering opening of the closed areas to mitigate negative economic impacts to the groundfish fleet from low allocations of species such a Gulf of Maine cod. The framework allows sector to request exemptions from year round closure systems to allow greater access to groundfish species that are not impacted by low allocations such as Georges Bank haddock, Pollock and redfish. The Council is conducting additional analysis to determine the effectiveness of the closed area to their stated purpose. A preliminary look at economic data provided by NOAA Fisheries show that allowing access to Closed Area II will likely provide for increased revenue from haddock. The magnitude of this benefit is uncertain, and depends on the size and duration of the increase in catch per unit effort for this species, which cannot be quantified to any level of confidence. The second manner in which fishing revenues might be increased by sector exemptions is through access to areas where species assemblages are more valuable. For example, given two hauls equal in every metric other than one is inside and one outside the closed area, the non-target species such as lobster, skates, monkfish, and scallops could provide higher revenue in the closed area if these species are more valuable/more abundant there.

At the September 2012 Council meeting, NEFMC supported a measure that allows groundfish sectors, a type of harvesting cooperative established in 2010, to request exemptions from the longstanding prohibition on fishing in the year-round groundfish closed areas on a limited basis. These restrictions provide that: (1) Access would only be granted for the parts of areas that are not defined as habitat closed areas, or that have not been identified as potential habitat management areas currently under consideration in a habitat action that is currently in development. (2) Access to Closed Area I and Closed Area II (on Georges Bank) would only be granted for the period May 1 through February 15 to protect spawning fish.

As a second phase of the Councils work, alternatives will be developed to complement and augment the habitat management areas for consideration in the NEFMC's Essential Fish Habitat Omnibus Amendment. The latter phase includes consideration of rolling closures, spawning closures, as well as year-round closed areas. Should the closures be retained or eliminated. It is projected that the Council will take action these issues in April of 2014.

The offshore lobstermen that fish within Closed Area II have reported large congregations of ovigerous females within the area. Industry and members of the Board are concerned that opening Closed Area II to mobile gear will have a negative impact on the local lobster population. The Commission's Lobster Technical Committee reviewed several studies that document the effects that bottom tending mobile gear have on lobster in their respective areas. The results suggest that opening Closed Area II to these types of gear will result in additional incidental damage to lobster. It's important to note that studies reviewed were done in areas where lobster are generally smaller than those found on Georges Bank, and thus incidental damage could be quite different in this area due to gear selectivity and size of lobster. The TC recommended additional surveys and studies should be completed to accurately assess the effects of mobile gear on lobster near Georges Bank (Appendix A).

In response to the action taken by the NEFMC, the American lobster offshore pot fleet fishing in Closed Area II developed an agreement with the groundfish sector to prevent gear conflicts. The lobster offshore fleet was particularly concerned with the possible impacts to egg-bearing females in the late summer if bottom tending mobile gear were to gain access to Closed Area II. The two industries drafted an agreement that would give equal access to the area (Appendix B). This agreement is the basis for Draft Addendum XX.

3.0 Proposed Changes in Management Tools

Option 1: Status Quo- No Closed Area II Season Closure

Vessels fishing with or using lobster tagged pot gear designed to take lobsters provided no regulated species are kept and no other gear capable of catching NE multispecies is on board may fish in closed are II year round as defined in NOAA Fisheries regulations.

Option 2: Closed Area II Season Closure

For purposes of this proposed measure closed area II is defined by straight lines connecting the following points in the order stated: Still need to gather the lat/long and chart for this. Working with NEFMC

Point	N. Lat	W Long

It will be prohibitive to set or store lobster traps in Closed Area II from November 1 to June 15 annually. All Lobster trap gear must be removed from the water by midnight October 31st from closed area II area, except the HAPC area and no lobster gear will be set in the area until 12:01 a.m. on June 16th. Any gear set or stored in this area from November 1st through June 15th will be considered derelict gear. In the case where an act of God may prevent the removal of fixed gear by October 31, the situation will be communicated immediately to qualifying sectors and gear removal will commence immediately upon the situation being resolved.

Initial period: The sector operations plans are not in effect until May 1st, 2013. To start this agreement there will be the period May 1 to June 15, 2013 when Mobile gear Sector vessels will first enter the area for their six week spring season above 41° 30'. Should the opening of CAII not become effective until 2014, this agreement will remain in effect for initiation at that time (2014).

4.0 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: All states must implement Addendum XIX 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 Atlantic States Marine Fisheries Commission believes that the measures contained in Amendment 3 and Addenda I-XX 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 Section 3 of this document.

Appendix A.

Assessment of Trawl-Induced Damage to American Lobster
Report to the American Lobster Management Board
By the American Lobster Technical Committee
August 2012

At the May 2012 Lobster Board meeting the TC was tasked with looking at the effects of bottom tending mobile gear on lobster in response to management actions that could lift a prohibition on this type of gear in Closed Area II on Georges Bank. Lobstermen that fish in this area have reported large congregations of ovigerous females within Closed Area II and they're concerned that opening it to mobile gear will have a negative impact on the local lobster population. The studies cited below document the effects that bottom tending mobile gear have on lobster in their respective areas. These results suggest that opening Closed Area II to these types of gear will result in additional incidental damage to lobster. It's important to note that studies cited below were done in areas where lobster are generally smaller than those found on Georges Bank (ASMFC 2009), and thus incidental damage could be quite different in this area due to gear selectivity and size of lobster. Additional surveys and studies are needed to more accurately assess the effects of mobile gear on lobster near Georges Bank.

When a surge in trawl effort directed toward lobster caused substantial conflicts between the bottom trawl and lobster trap fishery in Long Island Sound in the early 1980s, the Connecticut legislature commissioned the Department of Environmental Protection to examine the impacts of mobile trawl gear on lobster. Agency biologists compared direct and delayed mortality from trawl nets versus trap gear (Smith and Howell 1987). Biologists made monthly trips aboard commercial stern trawlers (n=63 trips, 12-26m vessel size, tow duration 1-3 hrs) and lobster trap vessels (n=12 trips, 12-14m vessel size) from July 1983-January 1985 to examine lobster catches for immediate damage and mortality, and collected animals for transport to laboratory open circulating seawater tanks for extended examination over 14 days. Similar observations were also recorded from cruises made by a research stern trawler (13m vessel size, tow duration 0.5-2 hrs).

Summary of Results

- Monthly incidence of major damage and immediate mortality varied seasonally from 0-14% in the trawl fishery (n=6,174 lobster) and 0-4% in the trap fishery (n=4,762 lobster). There was no difference in damage/mortality rate by vessel size.
- Delayed mortality occurred only in trawl-caught animals and almost exclusively in animals that sustained major damage (broken or crushed body or claws) or were newly molted (new-shell).
- Trawl-induced damage occurred at similar rates in cold-water versus warm-water intermolt periods (2% January-June versus 3% August-September) and between cooling and warming postmolt periods (12% October-December versus 13% July).
- The above results suggest that damage due to trawling is more a function of shell condition than water temperature. The importance of shell condition points to the effects of compression in the trawl net on recently molted animals.
- Sub-legal size new-shell lobster incurred significantly greater damage rates than legal-size lobster caught by trawl. Hard-shell animals, and those captured in traps, showed no size differences in damage rate.

- Trawl-caught egg bearing females (n=909) incurred no greater damage/mortality rates than non-egg bearing females or males. Egg loss attributable to either harvest technique was not examined.

Two other studies also documented similar damage rates and an increase in damage immediately following molting periods with lower rates during intermolt periods. In Rhode Island waters, Ganz (1980) reported an overall 9% major damage rate estimated from biweekly experimental trawl tows (n=105 tows, tow duration 1 hr, 5228 lobster). However, injury rates increased to 16-21% during the molt in June-July and October-November while averaging 0-5% in all other months. Spurr (1978) also found trawl-induced injury to be greater in July than in September based on experimental tows taken in New Hampshire waters.

These damage rates must be expanded by the relevant bottom trawl fishing effort in order to assess the total effect of trawl gear on the affected population. For example, damage to 14% of lobster contacted by bottom trawls (as indicated by the Connecticut study) during the 3-6 month season when lobster are molting and most vulnerable would be of little consequence to the health of the population if trawl effort during the same time period is relatively low. Similarly, damage due to trawling may be minor relative to damage by lobster traps (4% during the period of greatest vulnerability) if effort in the lobster fishery is high. Other factors to consider include: The seasonal distribution of mobile gear fishing effort, trawl/dredge design, mortality of lobster contacted by mobile gear but not landed, and the size selectivity of bottom trawl gear. All of these factors would substantially change the total damage to lobster by these types of mobile gear.

The proposed regulation changes will also include lifting the prohibition on scallop dredges. Jamieson and Campbell (1980) looked at the impacts of scallop dredges on lobster in the Gulf of Saint Lawrence in areas with and without commercial scallop fishing. They found that 1.3% of lobster in the fished areas were either injured or retained and 11.7% of lobster in the non-fished areas were retained/injured by experimental scallop dredge. SCUBA divers followed behind the dredge and observed lobster in the drag path during and after the tow. Injured lobster were not found in the drag path though some were observed to retreat into burrows in front of a moving dredge and the damage/mortality associated with those animals is unknown.

The authors concluded that damage to American lobster in the research area was minimal from the observed drags of sea scallop dredge. They noted that seabed substrate was generally smooth and most lobster were able to avoid the gear. Though this study provides useful information, one needs to exert caution when trying to draw parallels between this study and interactions of scallop dredges and lobster on Georges Bank. The selectivity of the gear is very dependent on the physical terrain and speed of the tows. Additionally, the mean size of the lobster in this study was 72mm which is less than the 25th percentile for the lobster population around Georges Bank (average 80-115mm, ASMFC 2009). Lobster size will affect damage rates as well as retention rates in the gear.

Applying the results of these studies to assess potential effects of opening a closed area of Georges Bank to bottom tending mobile gear would require 3-5 years of the following information:

- Monthly or seasonal proportion of newly-molted versus hard-shelled lobster for sub-legal and legal size classes from experimental trawls and lobster traps that capture all size classes and sexes present on Georges Bank
- Monthly or seasonal estimates of major damage rates (i.e. broken or crushed body or claws exclusive of culls and old damage) from commercial or experimental trawling and lobster traps on Georges Bank or the Gulf of Maine where shell development is comparable
- Data characterizing tow duration, net size, and deck handling practices for the proposed mobile gear fishery(s) for comparison to data describing fishing effort in the lobster trap fishery.
- Characterization of the amount of spatial overlap between the area exposed to bottom trawling and known lobster habitat.

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- Spurr, E., 1978. A assessment of short term effects of otter trawling on large epibenthic invertebrates. Final Report to Department of Commerce, NOAA, NMFS, Commercial Fisheries Restoration and Development Activities, NH Project 3

BASIC TERMS OF AN AGREEMENT BETWEEN THE OFFSHORE LOBSTER INDUSTRY AND THE SECTOR TRAWL FISHERMEN

The Agreement Period will commence upon execution by all parties with the expectation that the Sector Operations Plans will be in effect as of May 1, 2013. See "Initial Period" on page two.

This document is intended to describe the basic terms of a formal agreement to be drafted and executed between the Offshore Lobster Fixed Gear Fishermen and Sector Trawl Fishermen in the groundfish sectors.

The agreement is limited to the area now and formerly known as Closed Area 2 (CAII). (See illustration attached)

The Parties to the Agreement will be:

1. All Sector Trawl Vessels requesting access to CAII in fishing year 2013 (or 2014, should the opening of CAII not become effective until 2014), through ops plans
2. All Offshore Lobster vessels fishing with Traps in CAII

From June 15 to October 31

41 30 north to the Southern boundary of the Triangle will be no trawling by Sector Vessels.

41 30 South, **status quo** / shared by mobile gear and fixed gear

Triangle, **status quo** / shared by *Selective mobile gear* and fixed gear fishermen

From November 1 to June 15

41 30 North to the Southern boundary of the Triangle will be no Lobster gear set or stored in the area.

41 30 South, **status quo** / shared by mobile gear and fixed gear

Triangle, **status quo** / shared by *Selective mobile gear* and fixed gear fishermen

The Sectors will incorporate specific reference to this agreement in their Sector Operations Plans as part of the exemption request to access the area. In doing so, sector vessels will carry onboard a Letter of Authorization that identifies the Sector affiliation of the vessel and a copy of their Sector Operation Plan which will reference the Agreement between the Lobster Fishery and the Sector.

Offshore Lobster Fishermen will be responsible for communicating, to the best of their ability, with all Area 3 fixed gear lobster fishermen, including those entering CAII, throughout the entire year to ensure that all vessels abide by the agreement. All Area 3 fixed gear lobster permit holders will be notified by certified mail and copies

of said notification will be provided to the qualifying sectors. All Offshore fixed gear lobster fishermen setting gear within CAII will be signatories to this agreement.

Offshore Lobster Fishermen agree to remove all gear from the water by midnight October 31st from the CAII area North of 41 30 to the Southern Boundary of the Triangle (except the HAPC area) and no lobster gear will be set in the area until June 15th. Any gear set or stored in this area from November 1st through June 15th would be considered derelict gear. In the case where an act of God may prevent the removal of fixed gear by October 31, the situation will be communicated immediately to qualifying sectors and gear removal will commence immediately upon the situation being resolved.

All parties will work out the details of communication and education regarding the terms and consequences of the agreement or breach of the agreement.

Initial period: The sector operations plans are not in effect until May 1st, 2013. To start this agreement there will be the period May 1 to June 15, 2013 when Mobile gear, Sector vessels will first enter the area for their six week spring season above 41 30. Should the opening of CAII not become effective until 2014, this agreement will remain in effect for initiation at that time.

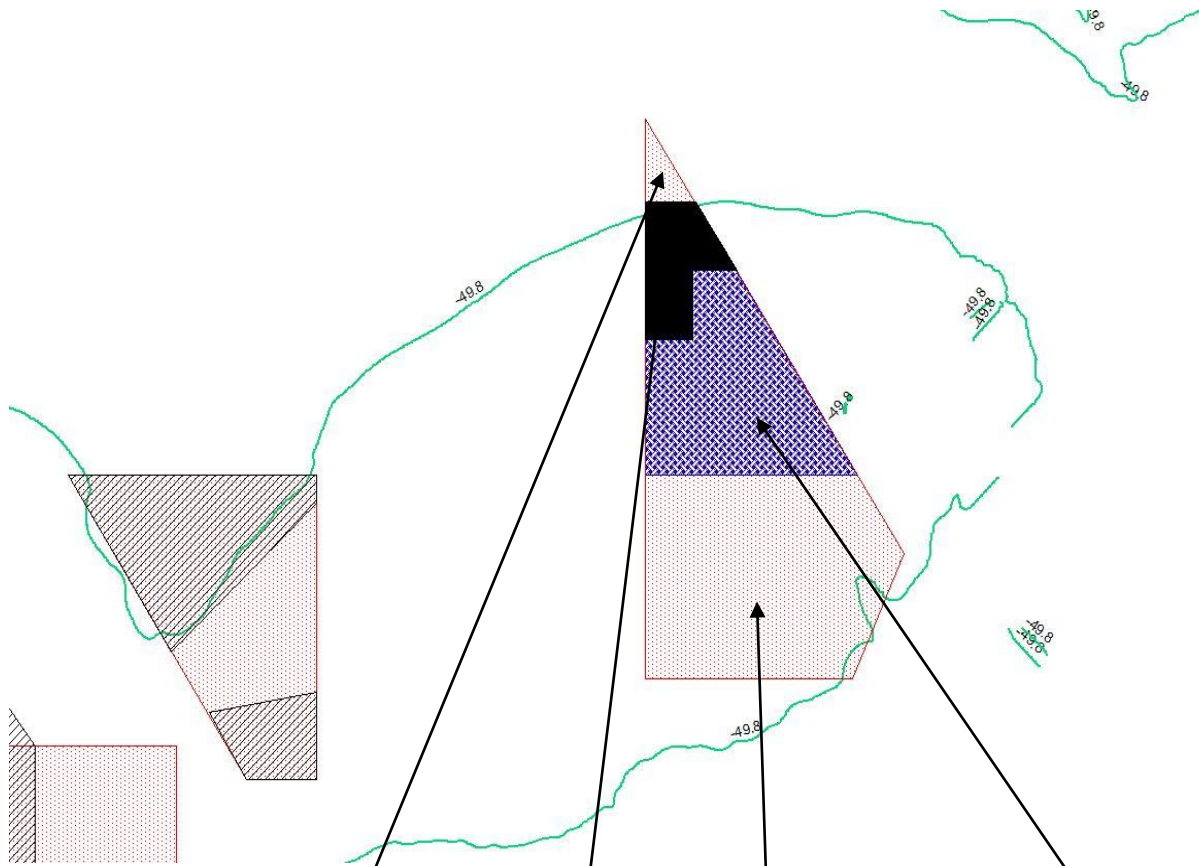
Initial Period from May 1, 2013 to June 15, 2013

41 30 North to the Southern boundary of the Triangle will be no Lobster gear set or stored in the area.

41 30 South, **status quo** / shared by mobile gear and fixed gear

Triangle, **status quo** / shared by *Selective mobile gear* and fixed gear fishermen

**Selective Mobile Gear is described as: "that which is currently required within an SAP. (Should a SAP be modified, Selective Gear description will remain as currently described in 2012.)*



THE "TRIANGLE" Status Quo / Shared
(using selective mobile gear)

Area 41 30 to South is Status Quo / Shared

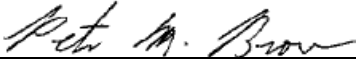
Lobster / Fixed Gear Only Area June 15th to October 31st

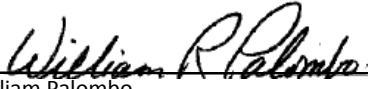
Mobile Gear Only area November 1st to June 15th

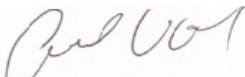
Habitat Area of Particular Concern (HAPC)


FINAL
AGREEMENT BETWEEN THE OFFSHORE LOBSTER INDUSTRY and
SECTOR TRAWL FISHERMEN

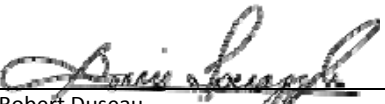
The following signatures refer to the attached agreement, specifying spatial and temporal bottom-sharing of Groundfish Closed Area II between the above stated gear sectors.

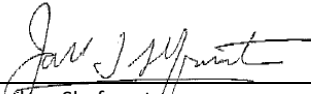
X 
Peter Brown
F/V Rachel Leah - pmt # 330678


X 
William Palombo
F/V Endeavor - pmt # 330555

X 
Arthur "Bro" Cote
F/V William Bowe – pmt # 320683

X 
Charles Raymond
F/V Michael and Kristen - pmt # 330507

X 
for Robert Duseau
F/V McKinley - pmt # 410594

X 
Jonathan Shafmaster
See below*

X 
for Grant Moore
F/V Direction - pmt # 320652

X 
Jonathan Williams
See below **

* F/V Amy Michelle – pmt # 330590, F/V Amy Philbrick – pmt # 321047, F/V Carol Coles – pmt # 321031,
F/V Eulah McGrath – pmt # 321036, F/V Jacqueline Robin – pmt # 310481, F/V Jennifer Anne – pmt # 320740,
F/V Laura Beth – pmt # 310970, F/V Michelle Jeanne - pmt # 320703


**F/V Diamond Girl – pmt # 410317, F/V Hannah Boden– pmt # 410325

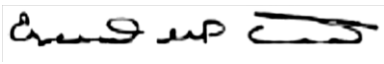
FINAL
AGREEMENT BETWEEN THE OFFSHORE LOBSTER INDUSTRY and
SECTOR TRAWL FISHERMEN


The following signatures refer to the attached agreement, specifying spatial and temporal bottom-sharing of Groundfish Closed Area II between the above stated gear sectors. The signatories are authorized representatives of NE Groundfish Sectors who have submitted this agreement to be incorporated into their 2013 Sector Operations Plans.


The undersigned sector representatives have entered this agreement for the sole purpose of alternating access to eliminate gear conflicts between trawl and lobster / fixed gear fishermen in the specified area. This agreement was negotiated and agreed with the starting point being an attempt to allow the Lobster fishery to prosecute their fishery during the period most important to that fishery.

Trawl fishermen have not entered this agreement for the purpose of protecting egg bearing lobsters and wanted to make it clear that the discussions leading to this agreement did not represent in any way, a determination that such protection was warranted or even considered by the negotiating parties. This is stated for the specific purpose of clarifying the record following the motion made by the ASFMC Lobster Board in which reference to "concentrations of egg bearing females..." was made. Should such reference be incorporated into the 2013 Lobster Addendum it would be a unilateral statement that cannot be conclude by virtue of the existence of this agreement.

p.p. 
Elizabeth M.P. Etrie
Joseph Orlando, President
II, Northeast Fishery Sector Inc.

p.p. 
Elizabeth M.P. Etrie
Michael Walsh, President
VI, Northeast Fishery Sector Inc.


Christopher Brown, President
V, Northeast Fishery Sector Inc.


William P. McCann, President
VII, Northeast Fishery Sector Inc.



Felicio R. Lourenco, President
VIII, Northeast Fishery Sector Inc.



Carlos Rafael, President
IX, Northeast Fishery Sector Inc.



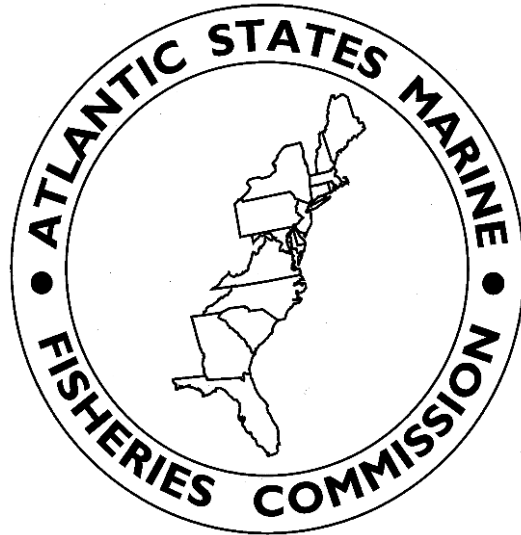
p.p.

Elizabeth M.P. Etrie
Thomas Williams Sr., President
XIII, Northeast Fishery Sector Inc.

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***



This draft document was developed for Management Board review and discussion. This document is not intended to solicit public comment as part of the Commission/State formal public input process. Comments on this draft document may be given at the appropriate time on the agenda during the scheduled meeting. If approved, a public comment period will be established to solicit input on the issues contained in the document.

ASMFC Vision Statement:

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

February 2013

Public Comment Process and Proposed Timeline

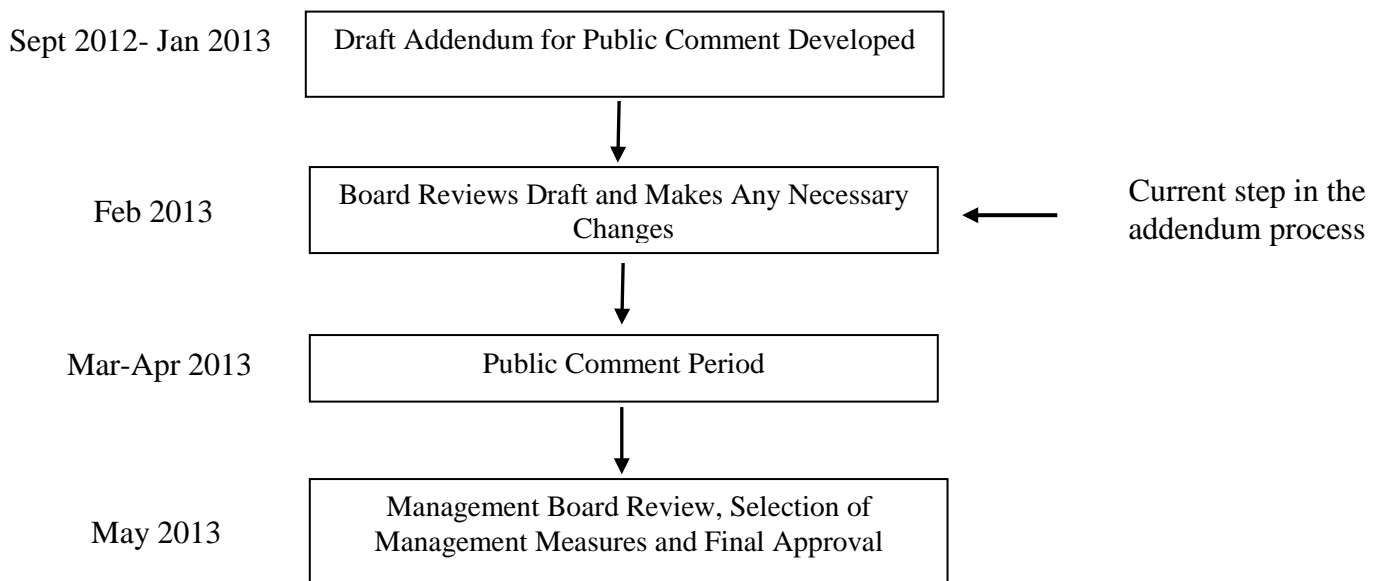
In December 2011, the American Lobster Management Board approved a motion to initiate the development of an addendum to the Interstate Fishery Management Plan (FMP) for American Lobster to respond to the poor stock condition in the SNE lobster stock area. The Board directed the Plan Development Team 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 and initiated this addendum to address changes in the transferability program for both Area 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 (lobster conservation management areas 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 XXXX, 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.

Mail: Toni Kerns

Atlantic States Marine Fisheries Commission
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Fax: (703) 842-0741

Email: tkerns@asmfc.org
(Subject line: Lobster Draft
Addendum XXI)
Phone: (703) 842-0740



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 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 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 (LCMT's). 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 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 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 LCMA 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 ASMFC Lobster Management 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 LCMA 2 and 3 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 LCMA 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 (Addendum I and 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.

Controlled Growth

While LCMT's have expressed a desire to have flexibility to scale businesses in a predictable manner in order to survive the exploitation reductions that are needed to rebuild the stock, the industry has also voiced the concern that they do not want the industry to change too rapidly. This includes both the process of purchasing traps (increasing and decreasing traps). In order to balance these two conflicting concerns the addendum includes a provision that would limit the rate of trap increases that may result from the implementation of trap transferability, this which is termed "controlled growth". Controlled growth is intended to allow an entity to annually move traps from their trap allocation bank account, and add them to their allocation of active traps at a predictable rate. The controlled growth limitation is only being proposed for LCMA 2 at this time.

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 or partial allocation.

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 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 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: All Areas can be fished:

The recipient of a partial 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.

B. Full Business Transfers:

Option 1: Status Quo: 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 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 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.

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 in accordance with the controlled growth provisions of the FMP, section 3.1.4. All traps would be subject to trap reductions, but 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 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. 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) (LCMT Preferred)

This option only limits the number of traps that can be owned.

Option 3. An entity could not own more than 1600 traps (800 active and 800 banked traps) or more than 2 permits. Any entity that owns more than the ownership cap at the time of implementation of the regulation may retain the overage. However all transfers of traps after the implementation date are subject to the aggregate cap.

This option only limits the number of traps and permits that can be owned.

3.1.4 Controlled Growth

Controlled growth is intended to allow an entity to annually move trap allocation from their trap allocation bank account, and add them to their allocation of active traps per year, but at a

predictable rate. Controlled growth applies each individual's allocation by LCMA and not an individual's total allocation.

The controlled growth provision will be effective in the same years that NOAA Fisheries implements transferability, and once annually thereafter. A full transfer of all qualified and banked traps will be exempt from the controlled growth provision.

Option 1. Status quo: No restriction on growth

Option 2. A maximum of 400 traps could be moved per year

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 or partial allocation.

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 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 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. All areas can be fished:

The recipient of a partial 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 LCMA's that the trap history allows. The recipient would be bound by the most restrictive rule when fishing multi-LMCA's.

B. Full Business Transfers:

Option 1. Status Quo:

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 LCMA's that the trap history allows. The recipient would be bound by the most restrictive rule when fishing multi-LMCA's.

Option 2. 1 Area can be fished:

The recipient of a 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 LCMA's will be forfeited.

3.2.2 LCMA 3 Endorsement

Lobstermen fishing in the SNE portion of LCMA 3 have historically fished a larger number 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 LCMA's, 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

	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

	Number of Traps
Year 1	2333
Year 2	2216
Year 3	2105
Year 4	2000
Year 5	1900

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.

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, or share ownership of, more than 5 qualified LCMA 3 federal permits and can not own more than five times the individual permit cap traps (Area 3 Individual Permit Cap Table, section 3.2.4).

If this option were adopted, the Board would recommend that NOAA Fisheries establish a control date for the number of permits or 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

	Number of Traps
Year 1	23,330
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 ASMFC Lobster 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 ASMF 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 XVII for approval by the American Lobster Management Board

XXXXX: The American Lobster Board Approves State Proposals

XXXXX: All states must implement Addendum XVIII 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-XVIII 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 Section 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

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

LOBSTER CONSERVATION MANAGEMENT AREA 3 TRANSFER TAX



ASMFC Vision Statement:

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

February 2013

Public Comment Process and Proposed Timeline

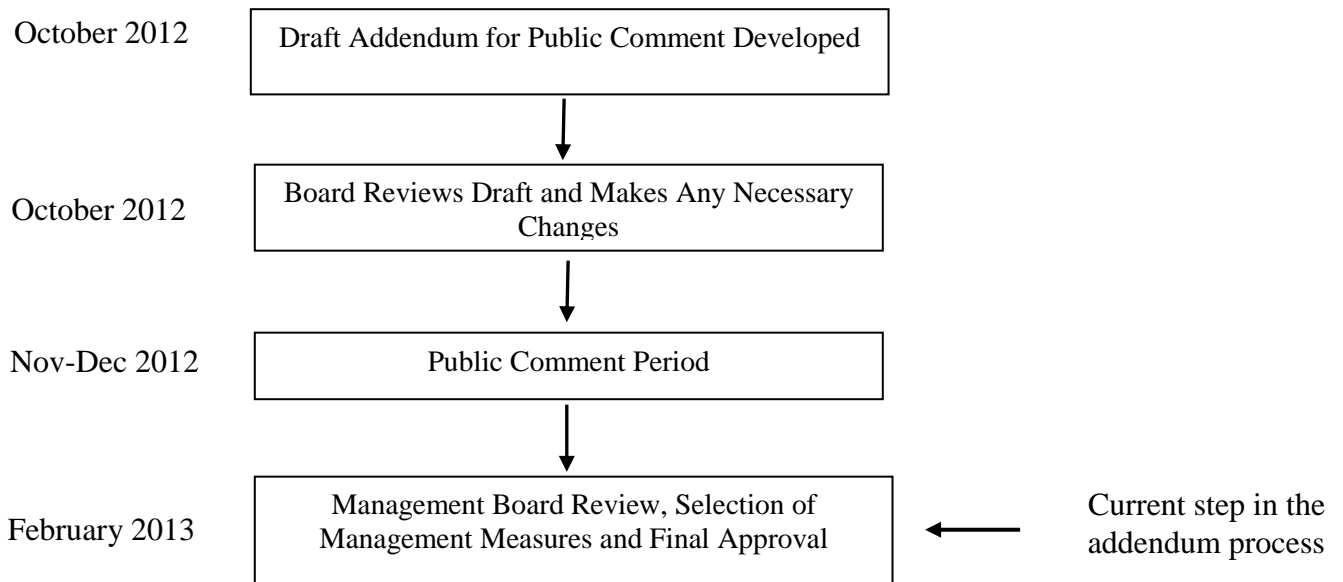
In approving Addendum XVIII, the American Lobster Management Board inadvertently failed to include a proposed change to LCMA 3's transfer tax. Since this issue will be considered in the upcoming federal rule-making process this winter, the PDT recommended that the Board finalize its action relative to the LCMA 3 transfer tax and provide its recommendations to NOAA Fisheries during its winter 2012 public comment period on the LCMA 3 transfer tax. This draft addendum proposes to modify the conservation tax for LCMA 3. It also presents background on the Atlantic States Marine Fisheries Commission's (ASMFC) management of lobster, and the addendum process and timeline.

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 December 5, 2012**. 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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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-XVIII 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.

The most recent transferability rules were established in Addenda XII and XIV. This draft addendum proposes to modify the conservation tax for LCMA 3. Proposed changes to current regulations are noted in section 3 of this document.

1.1 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 Addendum XVIII to scale the SNE fishery to the diminished size of the SNE resource. The final Addendum contained trap reductions measures for Areas 2 and 3. The Draft addendum that had gone out for public comment had included proposed changes to both areas transferability programs, but these measures were delayed to allow the PDT to further clarify the issues.

In approving Addendum XVIII, the Board inadvertently failed to include a proposed change to LCMA 3’s transfer tax. Since this issue will be considered in the upcoming federal rule-making process this winter, the Board needs to finalize its action relative to the LCMA 3 transfer tax and provide its recommendations to NOAA Fisheries during its winter 2012 public comment period on the LCMA 3 transfer tax.

2.0 Background

The ASMFC Lobster Management Board has approved past addenda governing the LMCA 3 trap fishery that allocated traps to each permit holder based on past performance. The trap allocation programs for LCMA 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 ITTs: Individual Transferable Trap programs. The Commission has recommended that NOAA Fisheries implement all approved measures for the LCMA 3 ITT program, including the transfer tax measures. However, despite the desire for trap allocation transfers, they have yet to be fully enacted, primarily because NOAA Fisheries has 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 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 will begin rulemaking to consider federal rules that would allow trap allocation transfers among LCMA 2, 3, and OCC permit holders this winter. If the Board changes the transfer tax measures contained in Addendum XIV, a new recommendation should be sent to NOAA fisheries during the comment period this winter.

3.0 Proposed Changes in Management Tools

3.1 Transfer Tax

A. Transfer Tax Rate

In order to further downsize the fleet to the reduced status of the lobster stock in SNE, each transfer of traps will be assessed a conservation tax. The tax will be assessed on all transfers including transfer between vessels in the same corporation. *This would replace Section 4.1.1 of Addendum XIV*

Option 1. Status Quo: A conservation tax of 20% is assessed for each partial transfer of traps in LCMA 3 (example: if 100 trap tags are transferred to a fisher, the net number of tags received by that fisher will be 80). A conservation tax of 10% is assessed for the sale of a complete fishing operation in LCMA 3.

Option 2. A conservation tax of 10 % is assessed on any transfer or full business sale (LCMT preferred option)

Example: If a fisherman A purchases 100 traps from fisherman B, 10 traps will be retired for conservation purposes and 90 traps will be added to fisherman A's allocation or trap allocation bank account.

4.0 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:

XXXXXX: All states must implement Addendum XIX 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-XIX 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 Section 3 and 4 of this document.



Atlantic States Marine Fisheries Commission

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MEMORANDUM

December 19, 2012

To: American Lobster Management Board
From: ASMFC Law Enforcement Committee
Subject: V-notch regulations

In response to discussions during the American Lobster Management Board (Board) meeting of October 22, 2012 the Law Enforcement Committee (LEC) of the Atlantic States Marine Fisheries Commission (ASMFC) reviewed its position regarding v-notch regulations for American lobster. The LEC commented previously on this issue in October 2004, and again in August 2006. Copies of these memoranda are appended to this document. The LEC discussed the issue at length during its meeting in Philadelphia on October 22, 2012 and during a phone conference on December 17, 2012. Following is updated guidance concerning v-notch regulations for American lobster.

The LEC believes that a zero tolerance v-notch standard is enforceable and in fact that any measurement standard, whether zero, one eighth inch or one quarter inch, is equally enforceable provided that adequate guidance is given to officers in the field to minimize subjective application of measurement criteria in determining a violation. States have mechanisms to provide such guidance and training to officers in the field.

The LEC has stated previously, and continues to strongly assert, that the lack of consistency in v-notch sizes within and among lobster conservation management areas is the greatest impediment to successful enforcement and compliance of v-notch regulations.

The multiple standards for waters off of Massachusetts exemplify the problem. There currently are 3 different notch-marking requirements, including two different sizes for notches within the Outer Cape management area. The lack of a consistent v-notch requirement in waters off of that state hinders the successful prosecution of violations.

The LEC reiterates the following statement from its August 2006 memorandum:

The LEC again requests that where possible, efforts should be made to have consistent definitions, sizes and regulations regarding the taking and possessing of American lobster. This will allow for a higher degree of enforceability at sea, dockside, and in wholesale and retail markets.