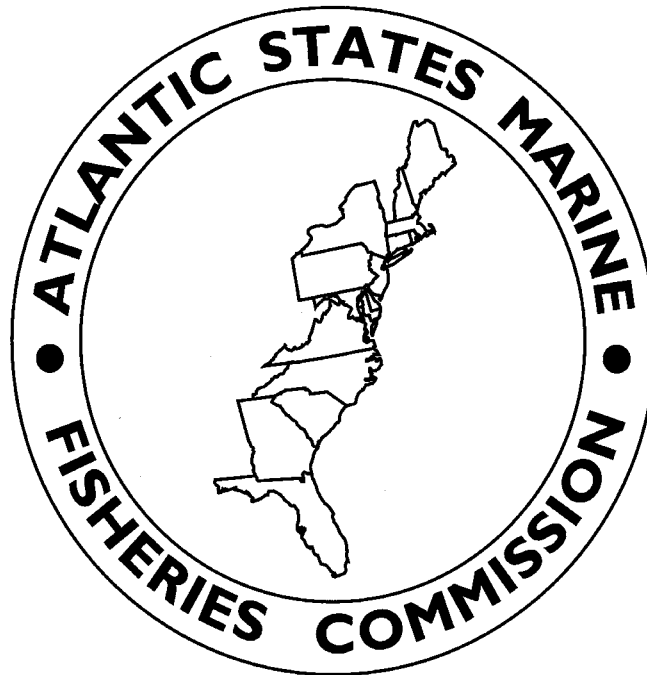


Addendum VII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster



ASMFC Vision Statement:

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

November 2005

1.0 Statement of the Problem

In August of 2002, the Lobster Management Board asked the Technical Committee (TC) to advise the Board on the magnitude of problems in Area 2 as well as recommend an appropriate response. Board members expressed interest in TC review of trawl survey and sea sampling information to provide insight into the current situation of stock declines in Area 2 and to advise if the current Amendment and supporting addenda are sufficient to remedy the problem.

The October 2002 Technical Committee report indicated that landings had declined, the area survey indices had declined, and the incidence of shell disease was increasing. There was consensus among the TC that the current overfishing definition (F10%), in combination with the proposed management measures, were not sufficient to remedy the current stock declines observed in Area 2 and spawning stock biomass needed to be rebuilt. The Lobster TC recommended reducing fishing mortality in Area 2, reducing effort in Area 2, and continuing to work on a control rule that incorporates both f-based and biomass based reference points to offer better management advice to varying stock conditions.

2.0 Background

In February 2003, the Lobster Board took Emergency Action to increase the minimum gauge size for lobsters in Area 2 on an accelerated time scale and initiated action to rebuild the lobster stock in Area 2 in 2003 through Addendum IV.

Addendum IV included an interim benchmark goal based on survey information and a Total Allowable Landings to be used as a performance measure. This Addendum included an effort control program and gauge increases for Area 2. The Board had concerns with the Area 2 effort control plan including the inability of several jurisdictions to implement portions of the plan.

In February 2004, the Atlantic States Marine Fisheries Commission Lobster Board (Board) passed Addendum VI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster. This addendum required all jurisdictions with Area 2 permit holders (MA, RI, CT, NY, & NJ) to work with the Area 2 LCMT to develop a new effort control plan. The plan would cap effort at or near current levels with the potential to adjust the levels based on the outcome of the upcoming stock assessment by the August 2005 Board Meeting. Addendum VI suspended implementation of a previously approved effort control plan for Area 2 found in Addendum IV.

The Board acted in response to concerns of the Area 2 Effort Control Plan Implementation Committee comprised of representatives from the jurisdictions with Area 2 fishermen including Massachusetts, Rhode Island, Connecticut, New York, and NOAA Fisheries. This committee found that several jurisdictions could not implement portions of the original plan. Moreover, preliminary analysis indicated the plan was ineffective at controlling trap growth over current levels. The specific problems identified in the previous plan were two-fold: the aggregate allocations were too liberal – far beyond the recent levels fished, and the allocation rules were considered arbitrary because fishermen were given either 100 or 800 traps if reported landings were more - or less - than 2,000 lbs. in a single year during a 5 year period: 1999-2003.

The Board, in two separate actions,¹ directed jurisdictions with Area 2 permit holders to work with the Area 2 LCMT to modify components of the effort control plan so that all jurisdictions will be capable of implementing the plan specifics and to ensure that it will not allow effort to increase if and when the resource recovers in Area 2. Board members from RI & MA have been clear in their intent to craft a plan that would capture the attrition seen in the fishery in the past five years. Rhode Island fishery statistics show a 45% decrease in traps fished and a 34% decrease in the number of fishermen fishing traps since 1999. Analogous data from Massachusetts show a 37% decrease in traps fished and the same decrease (34%) in the number of fishermen fishing traps since 1999. NY and CT data are not readily available but similar trends are expected (Figures 1 and 2).

It should be noted that LCMT members and industry representatives throughout the development of Addendum IV (2002 - 2003) had urged the Board not to adopt a proposed cap on landings, a 1.14 million lbs. quota. They urged the Board to consider the conservation benefits of reduced fishing effort attributable to fishermen leaving the industry or the LMA, and the down-sizing of many fishing operations due to declining catches and profits. Most permit holders do not fish their current allowed maximum trap limit of 800 traps. Table 1 demonstrates the degree of latent effort in the fishery.

3.0 Introduction

The purpose of this management plan is to establish a multi-state effort control program for Lobster Conservation Management Area 2 that governs traps fished in state and federal waters to cap effort (traps fished) at recent levels and allows adjustments in traps based on future stock conditions. This plan attempts to capture the attrition from the fishery, caused by stock decline, thereby preventing a return of overall fishing levels to historic highs of the late 1990's.

This plan limits participation to permit holders who have been active in the fishery in recent years, creates permit-holder specific trap limits that are unique and based on reported traps fished and landings, and establishes a transfer program that allows the transfer of trap allocations with a conservation "tax". Limiting access and allocating a set number of traps will also allow managers to more precisely quantify the universe of known effort in Area 2 and thus facilitate overall management of the resource.

A significant concern in any effort control involves the issue of activating latent effort – i.e., the so-called "pregnant boat syndrome" wherein a single lobster operation with a single fishing history but dual state and federal permits, might split those permits between two entities therein doubling effort. This plan address this issue by ensuring that a single fishing history will result

¹ *From the August 2004 Board meeting:*

Motion to draft Addendum VI to modify the effort control plan 5.3.1 of addendum IV for Area 2. The states shall work with the Area 2 LCMT and consider an effort control plan that creates a mechanism for trap reduction in the short term to reduce fishing effort. This plan addendum shall be presented at the November annual meeting to the Board.

Motion made by Mr. McKiernan; seconded by Mr. Gibson. Motion carries.

From the November 2004 Board meeting:

Move to add under section 2.0 of Addendum 6 which states, "by the August 2005 Board Meeting, all jurisdictions with Area 2 permit holders and the area 2 LCMT will develop a new effort control plan, which caps effort at or near current levels with the potential to adjust the levels based on the outcome of the upcoming stock assessment.

Motion by Mr. Lapointe; seconded by Mr. Gibson. Motion carries.

in no more than one trap allocation regardless of whether that single history was created by a dual permit holder.

4.0 Management Measures

4.1 Area 2 Effort Control

This addendum replaces the Addendum VI Area 2 Effort Control measures in section 2.1 of Addendum VI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster.

4.1.1 Mandatory Elements

4.1.1.1. Qualification for Area 2 Permits. *(This replaces section 5.3.1 Qualification for Area 2 Permit Holders of Addendum VI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster.)*

- a) Moratorium on new permits for commercial fishing of lobster traps in Area 2. No person shall land lobster taken by pots from Area 2 in any state unless that person has been issued an Area 2 pot allocation by their home state.
- b) Standards for qualification:
 - i. Moratorium on permit splitting accomplished through the establishment of a new joint state/federal licensing scheme that identifies each fishing operation as a combination of the individual permit holder at the state level and the federally permitted vessel.
 - ii. No vessel or permit holder shall hold more than one allocation that corresponds to a single fishing history- The purpose of this section is to prevent trap proliferation that might occur through permit splitting or stacking. That is, a dual state and federal permit holder acting as a single operation might qualify and receive an allocation on both permits under the same fishing history. If those dual permits were subsequently split and allowed to fish the full allocation under each permit, or if the permit allocations were allowed to be combined, then there exists the potential to double fishing effort.
 - iii. Nothing shall prevent the owner of two or more vessels that have trap allocations assigned to them based on separate fishing histories from owning or transferring or acquiring a vessel with its assigned fishing history or transferring trap allocation to another vessel or permit holder eligible to fish in Area 2.
 - iv. Nothing shall prevent a holder of a federal permit without a pot allocation from acquiring pots from an allocation holder once a transferability program is accepted and implemented.
- c) There will be a coordinating committee to review appeals and proposed resolutions developed by the management agency of a permit holder's home state. The purpose of this committee is to facilitate communication and coordination, which is expected to result in more consistent decisions amongst the decision making entities. The coordination committee may provide comment to alert a home state of any concerns with the proposed solution for consistency with similar decisions in the other states. The federal government shall have the opportunity to sit on this committee so that it may provide its perspective on these issues. The decision of the home state or federal agency shall be the final determination on allocations.

4.1.1.2. Trap Allocation Authority-*Assign primary authority to states to oversee trap allocations to its permit holders.*

- a) States shall process and determine trap allocations for eligible permit holders. For dual permit holders, to better ensure consistency across jurisdictions, states shall forward all proposed allocations to NMFS for its consideration, along with its rationale in setting the allocation at the proposed level.
- b) States and NMFS shall ensure vessels or permit holders do not receive duplicate allocations for the same catch history from different jurisdictions.
- c) In the event of a discrepancy between agency proposed allocations for Area 2, the dual permit holder is restricted to fishing the lesser of the two allocations. This scenario of a fisherman with different Area 2 permit allocations is distinct from and does not implicate the scenario of a multi-area fisherman having different allocations in those different areas. The Commission has already addressed the principle of allocating pots to fishermen with multiple elected areas in section 3.2 of Addendum IV and nothing in this section of proposed Addendum VII is inconsistent with that previously decided section in Addendum IV.

4.1.1.3 Establish Area 2 fishery-wide overall Trap Allocation Cap.

This cap shall be subject to Board approval and constitutes the maximum number of traps allocated among all permit holders fishing in Area 2 from states of RI, MA, CT, NY, and NJ, and any other state with verifiable landings based on the documentation criteria established. The Trap Allocation Cap includes traps granted through any appeal process established by the Addendum.

4.1.1.4. Compliance

States shall incorporate trap levels and fishery performance into the Annual Lobster Compliance report due to ASMFC's Plan Review Team on March 1.

4.1.1.5. Data Disputes

Permit holders can request corrections to qualifying data if errors are found attributable to data entry and mathematical errors in logs. However, state-issued recall-log catch reports and/or logbooks signed by the permit holder are considered the best available data.

Permit holders who had submitted catch reports for the performance period signed under the pains of perjury will not be allowed to furnish additional catch/effort data that is inconsistent with records already furnished to state and federal government.

Appeals would only be accepted for a finite period (to be determined by each jurisdiction) after the program has been approved and notification has been sent to permit holders.

4.2.1 Optional Elements

4.2.1.1 Trap Allocation- *Devises a trap allocation system that grants participants fishing authorization for a specific trap number that is commensurate with their recent fishery performance in traps and landings. Permit holders will be prequalified in 2006 for their 2007 allocation. Appeals pursuant to this plan shall occur in 2006. This period is necessary to address convoluted permit histories and develop rules to regulate transfer of trap allocations.*

Each permit holder's unique fishing history determines his or her initial trap allocation. Acceptable documentation for verifying recent fishery performance (both pounds landed and traps fished) complement the federal requirements used recently for Areas 3, 4, and 5 (See Appendix A). Landings must have occurred at a port located in a state adjacent to Area 2 (i.e., Massachusetts, Rhode Island, Connecticut, and New York). *The purpose in restricting landings to an adjacent port is to ensure that only those fishers who actually fished in Area 2 – as opposed to the many who designated Area 2 on their permit but never fished there – will be eligible to qualify. Physical, geographical and landings data, and anecdotal information, dictates that Area 2 fishers historically landed in adjacent ports.*

Participants are required to submit further information as requested by the allocation authority should discrepancies arise among documentation for qualification and allocation. Any permit holder who submits fraudulent documentation may have the allocation permanently revoked.

Grant initial Trap Allocation based on highest value of Effective Traps Fished, during 2001-2003.

“Effective Traps Fished” is the lower value of 1) the maximum number of traps calculated or reported fished for a year; and 2) the predicted number of traps that is required to catch the reported poundage of lobsters for a year. This allocation program is expected to result in an initial aggregate trap allocation that would exceed 2003 aggregate traps fished by about 23%. To avoid the “single-year” effect on trap allocation, the maximum “effective” traps for the 3 years is used. In no case would an individual's initial trap allocation exceed their maximum number of traps fished during the performance period. An individual's Initial Trap Allocation is determined as follows:

1. “Predicted Traps Fished” are calculated for 2001, 2002, and 2003 from their total landings in each of those years using the established regression relationship for LMA Area 2 (Figure 3 & Table 2). The Board's preference would be to use only landings from Area 2, however, much of the landings data available does not universally contain sufficient resolution to determine where the landed lobster were caught. Consequently, a permit holder's total landings during the time period constitutes the best available information across all management jurisdictions and are the authorized basis for meeting the purposes of this plan.
2. Predicted Traps Fished and a State's most accurate Calculated or Reported Traps Fished is compared for each year and the lower value would be the “Effective Traps Fished”
3. Trap Allocation is the highest value of the three annual “Effective Traps Fished” values.

4.2.1.2. Trap Reductions

Issue One

If overall Initial Trap Allocations exceed the Board-approved Trap Allocation Cap, reduce trap allocation (in subsequent years) reducing each permit holder's trap allocation by a specific percentage to reach the Trap Allocation Cap.

Issue Two

If, after a stock assessment is completed, further trap reductions are warranted each permit holder's trap allocation would be reduced by a percentage (fishery – wide) to meet trap allocation goals.

4.2.1.3. Transferability

Allow transferability of trap allocations among permit holders to increase or decrease the scale of their business.

States shall develop a transferability program after initial allocations have been finalized. In addition, states shall develop an interstate transfer program for permit holders seeking to transfer permits and traps between states. These interstate transfers are allowed once NMFS accomplished complementary rules.

4.2.1.4. Monopoly Clauses *-An anti-monopoly clause is intended to prevent entities from controlling excessive numbers of permits or traps.*

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.

4.2.1.5. Appeal for Medical/Military Hardships

Permit holders who meet the qualifications in Appendix B may request their fishing performance for the years 1999-2000 be considered in qualifying for the initial trap allocation.

4.2.1.6. Minimum Size

The Minimum Size for Area 2 is 3-3/8" carapace length.

Future addenda or plan amendments may require adjustments to minimum gauge sizes pending stock assessment results.

5.0 Recommendations for Actions in Federal Waters

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

Table 1. Frequency of maximum traps fished (per fishermen) among Area 2 lobstermen in MA (1999-2004) & RI (1999-2003).²

Count of Permit Holders from Massachusetts				
Range of Traps	2001	2002	2003	2004
0 (DNF)	162	150	169	186
1 - 100	50	47	40	43
101 - 200	24	22	20	13
201 - 300	13	19	21	20
301 - 400	19	15	21	11
401 - 500	9	12	4	8
501 - 600	4	4	5	2
601 - 700	3	4	2	2
701 - 800	21	32	24	20
> 800	1	1	0	1
Total	306	306	306	306

Count of Permit Holders from Rhode Island			
Range of Traps	2001	2002	2003
0 (DNF)	1124	1156	1212
1 - 100	144	131	115
101 - 200	41	35	29
201 - 300	24	23	13
301 - 400	15	19	12
401 - 500	15	12	15
501 - 600	13	5	9
601 - 700	6	8	8
701 - 800	100	100	76
> 800	11	4	4
Total	1493	1493	1493 ³

² Note that this is a retrospective summary of traps fished by current (2004) permit holders, thus total number of permit holders does not vary inter-annually in RI and MA, respectively.

³ The most recent (June 26, 2005) analysis by RI officials on the status of eligible permit holders, recalculated the number of permit holders eligible to remain in the fishery (reported lobster landings with traps during 2001-2003), lowering the count from 622 to 404. Permit holders who failed to renew their permit will likely not be eligible to remain in the fishery.

Table 2. Regression output tables for 5-year ('99-'03) and 3-year ('01-'03) periods showing predicted traps fished for given levels of annual landings.

Pounds Landed	Predicted Traps		Pounds Landed	Predicted Traps		Pounds Landed	Predicted Traps
0	0		3,000	398		6,000	623
100	44		3,100	407		6,100	630
200	69		3,200	415		6,200	637
300	90		3,300	423		6,300	643
400	108		3,400	432		6,400	650
500	125		3,500	440		6,500	657
600	140		3,600	448		6,600	663
700	155		3,700	456		6,700	670
800	169		3,800	464		6,800	676
900	183		3,900	472		6,900	683
1,000	196		4,000	480		7,000	689
1,100	208		4,100	487		7,100	695
1,200	220		4,200	495		7,200	702
1,300	232		4,300	503		7,300	708
1,400	243		4,400	510		7,400	714
1,500	254		4,500	518		7,500	720
1,600	265		4,600	525		7,600	727
1,700	276		4,700	532		7,700	733
1,800	286		4,800	540		7,800	739
1,900	296		4,900	547		7,900	745
2,000	306		5,000	554		8,000	751
2,100	316		5,100	561		8,100	757
2,200	326		5,200	568		8,200	763
2,300	335		5,300	575		8,300	769
2,400	345		5,400	582		8,400	775
2,500	354		5,500	589		8,500	781
2,600	363		5,600	596		8,600	787
2,700	372		5,700	603		8,700	793
2,800	381		5,800	610		8,800	799
2,900	389		5,900	617		8,900	800

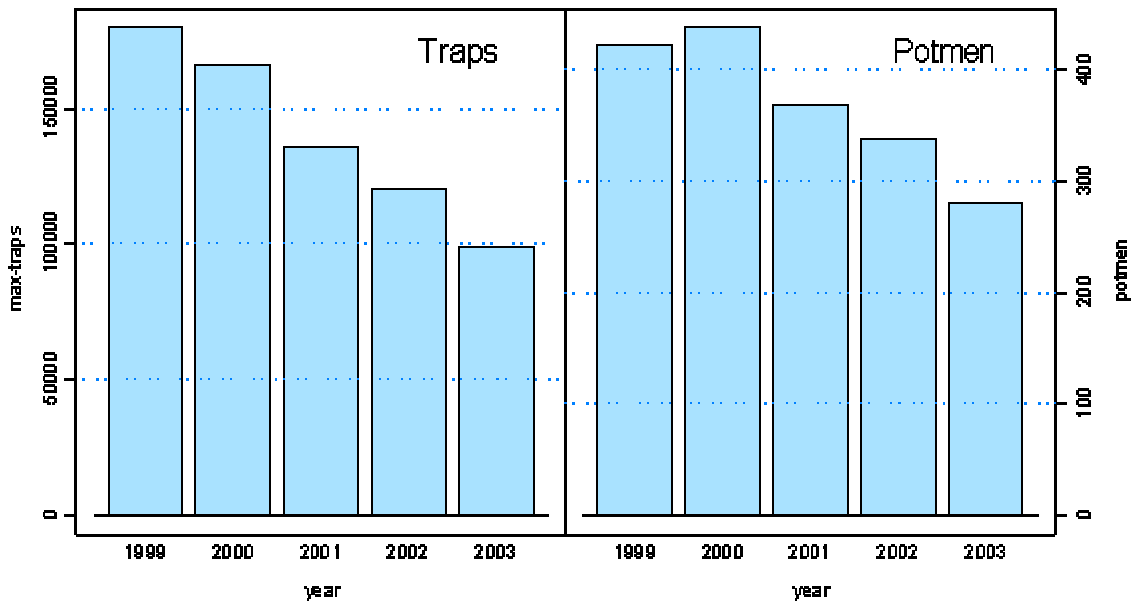


Figure 1. Attrition in RI Lobster Trap Fishery: 1999-2003.

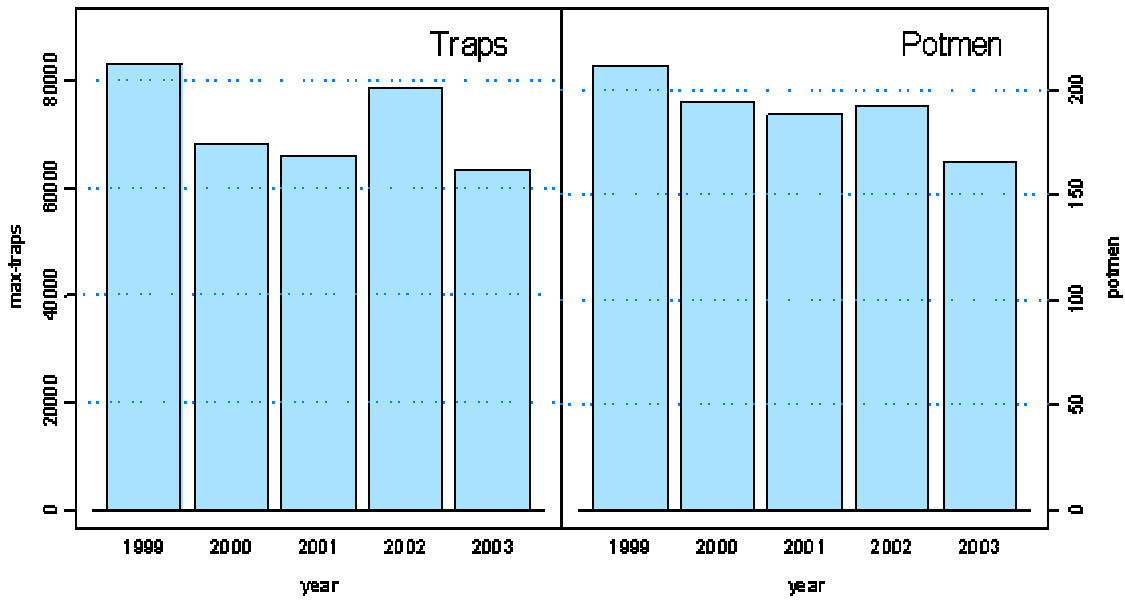


Figure 2. Attrition in MA Southern waters lobster trap fishery: 1999-2003.⁴ See footnote below regarding data accuracy.

⁴ Note that MA historical counts of traps fished and number of fishermen depicted here is an estimate from MA catch reports and may include some fishing beyond LMA 2, including Areas 3 and Outer Cape Cod. Data were selected for fishermen who fish in MA statistical reporting areas that closely coincide with Area 2 but not exclusively in Area 2. Since 2004, MA lobster trap fishermen are required to select a single LMA so more recent counts of traps (44,361) and fishermen (137) are considered more accurate.

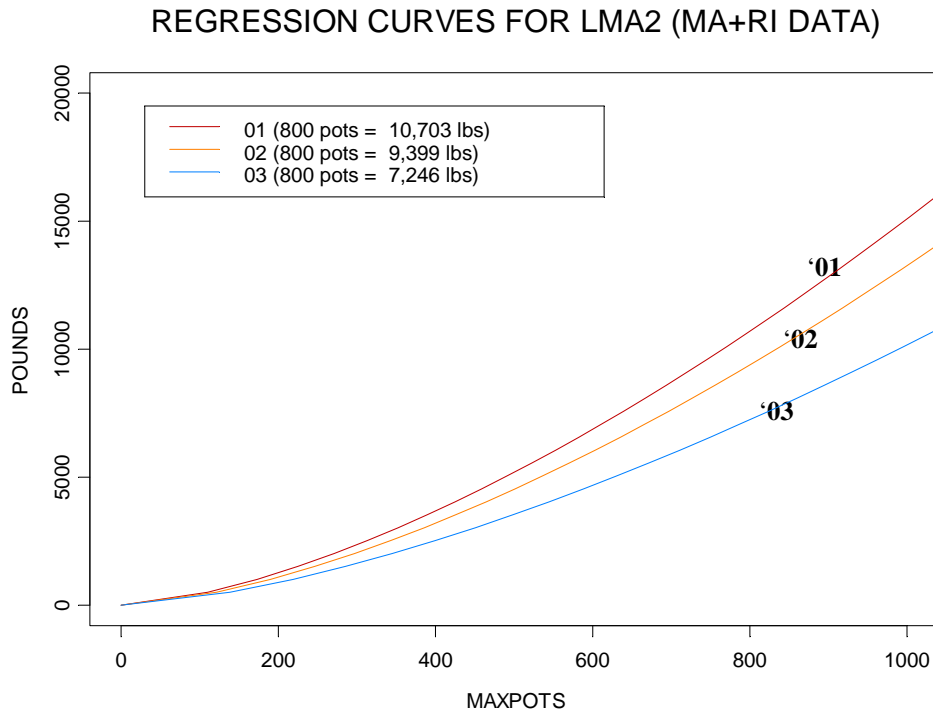


Figure 3. Regression curves depicting the relationship between traps fished and pounds landed in each year between 1999 – 2003 depicting an annual decrease in catch rates.

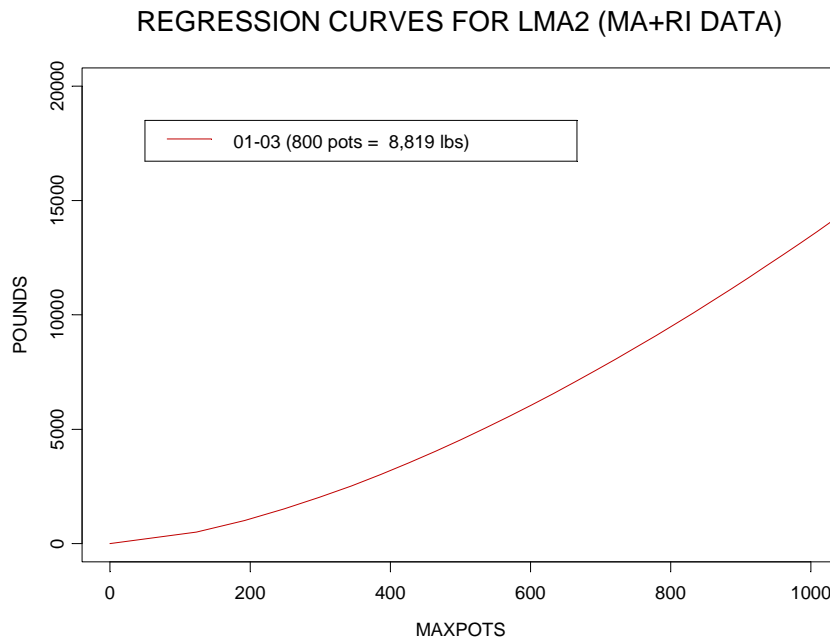


Figure 4. Regression curves depicting the relationship between traps fished and pounds landed. Data are combined into a 5-year data set (1999-2003) and then selected for only the three most recent years (2001-2003). Data are combined for RI and MA.

Appendix A

Proposed Hierarchy of Documentation for Allocating Traps:

For pounds landed

One or more of the following:

1. Official state reporting documentation showing pounds of lobster landed, including but not limited to
 - i. state report cards;
 - ii. state vessel interview forms;
 - iii. state sea sampling observer reports; &
 - iv. catch reports; or
2. Federal fishing trip report (NOAA Form 88-30); or
3. Federal Port Agent Vessel Interview forms (NOAA Form 88-30); or
4. Federal Sea sampling Observer Reports; or
5. Personal vessel logbooks; or
6. Sales receipts or landing slips.

For traps fished

One or more of the following:

1. Official state reporting documentation showing number of traps fished, including but not limited to
 - i. state report cards;
 - ii. state vessel interview forms;
 - iii. license application forms;
 - iv. state sea sampling observer reports;
 - v. catch reports; or
2. Federal fishing trip report (NOAA Form 88-30); or
3. Federal Port Agent Vessel Interview forms (NOAA Form 88-30); or
4. Federal Sea sampling Observer Reports;
5. Federal Fishing Vessel and Gear; or Damage Compensation Fund Reports (NOAA Form 88-176); or
6. Personal vessel logbooks; or
7. Tax returns and sales receipts.

Appendix B

PROPOSED APPROACH FOR ALTERNATIVE ACCESS TO THE AREA 2 LOBSTER FISHERY BASED ON LENGTHY INCAPACITATION DURING THE PROPOSED 2001-2003 QUALIFYING PERIOD

- 1) The qualifying period used to determine the allocation of traps is based on:
 - A. A license holder must have landed lobsters with traps during any year from 1999-2003. This demonstrates recent participation in the fishery;
 - B. A license holder must possess, and present to the state marine fisheries management agency, written documentation of a material incapacitation during the period 2001-2003, such documentation circa the date of the incapacitation and notarized at the time that the appeal is presented.
 - C. Individuals who qualify under these requirements can use landings from any year or years (highest or the average) during the years 1999 and 2000 as the basis for their allocation, provided that the individual must also have landed lobsters with traps during 2004, and must have possessed a state or federal commercial fishing vessel registration and/or a state or federal commercial fishing license to land lobster continuously during the period 1999-2004.
 - D. The regression equation used to determine individual trap allocations will be based on data for the year or years used by the applicant for his landings. (This means that higher landings are needed for the same number of traps if the year chosen is a more productive year.) The accuracy of the individual landings used to allocate traps will be verified by a State agency prior to that agency certifying an allocation of trap tags.

Definitions:

Material - the closest definition to a legal situation is "of importance to a case; relevant."

Incapacitation - to make legally ineligible; disqualify.

Note on usage in the context of this proposal: "material incapacitation" is intended to account for an event beyond the control of the license holder such as military service or a medical condition. It is not intended to account for a choice of the license holder to pursue other interests or to an irrelevant medical condition (e. g. a broken bone or short-term illness would not have incapacitated a person for three years).

Circa - approximately at the time of the event.