

# Atlantic States Marine Fisheries Commission

## American Lobster Management Board

*August 7, 2012  
10:45 a.m.-12:30 p.m.  
Alexandria, VA*

### 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*) 10:45 a.m.
2. Board Consent 10:45 a.m.
  - Approval of Agenda
  - Approval of Proceedings from May 2012
3. Public Comment 10:50 a.m.
4. Consider Draft Addendum XVIII for final approval (*T. Kerns*) **Final Action** 11:00 a.m.
  - Review public comment
  - Review options
  - Consider final approval of Addendum XVIII
5. Discussion of lobster conservation management area 1 v-notch definition 12:00 p.m.
6. Technical Committee Report (*T. Kerns*) 12:15 p.m.
7. Other Business/Adjourn 12:30 p.m.

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

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

# MEETING OVERVIEW

**American Lobster Management Board Meeting**  
**Monday, April 30, 2012**  
**10:45 a.m. - 12:30 p.m.**  
**Arlington, VA**

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: April 30, 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 April 30, 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.

<b>4. Consider Draft Addendum XVIII for final approval (11:00 a.m.-12:00 p.m.) Final Action</b>
<p><b>Background</b></p> <ul style="list-style-type: none"> <li>• The Board indicated draft Addendum XVII was an initial step to start rebuilding SNE at the August 2011 meeting and initiated draft Addendum XVIII and XVIV to scale the SNE fishery to the size of the SNE resource, tasking the LCMTs to develop proposals to meet the goal of the draft addendum</li> <li>• LCMT 2 and 3 proposed a consolidation proposal. LCMT 4, 5, and 6 have not put forward a proposal.</li> <li>• Board approved draft Addendum XVIII for public comment in May 2012 (<b>Briefing CD</b>)</li> </ul>
<p><b>Presentations</b></p> <ul style="list-style-type: none"> <li>• Review of draft Addendum XVIII public comment and options, <i>T. Kerns</i> (<b>Briefing CD</b>)</li> </ul>
<p><b>Action</b></p> <ul style="list-style-type: none"> <li>• Approve Addendum XVIII</li> </ul>

**5. Discussion of lobster conservation management area (LCMA) 1 v-notch definition (12:00-12:15 p.m.)**

**Background**

- Massachusetts Marine Fisheries and the MA Office of Law Enforcement have fielded numerous questions and some complaints about the vagueness of the zero tolerance v-notch definition. The v-notch regulation as currently written appears to be undermining the intent of the rule as compliance and enforcement wane. Massachusetts industry support has been building for the Commonwealth to consider applying the 1/8" standard to LCMA 1.

**Presentations**

- Discussion of steps to evaluate the zero tolerance vs the 1/8" v-notch definition for LCMA 1

**6. Technical Committee Report (12:15-12:30 p.m.)**

**Background**

- Doug Grout sent a letter to the Board reviewing impacts of potential Council action on lobster in closed area II of Georges Bank. This area has a high concentration of berried lobster.
- 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
- The Board tasked the TC to report on mobile gear impacts to lobster, including impacts to berried females

**Presentations**

- Technical committee report by T. Kerns (**Supplemental Materials**)

**7. Other Business/Adjourn**

**DRAFT**

**DRAFT**

**DRAFT**

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

**Crowne Plaza Hotel - Old Town**  
Alexandria, Virginia  
April 30, 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 to approve Addendum XVIII for public comment with changes made today** (Page 12). Motion by Bill McElroy; second by Bill Bill Adler. Motion carried (Page 12).
3. **Move to adopt the terms of reference as presented by the technical committee** (Page 20). Motion by David Simpson; second by Pat Augustine. Motion carried (Page 22).
4. **Move to postpone until the summer meeting acting on the terms of reference** (Page 20). Motion by Mark Gibson; second by Pat Augustine. Motion was defeated (Page 22).
5. **Move to approve the draft terms of reference for the peer review panel** (Page 22). Motion by David Simpson; second by Pat Augustine. Motion carried (Page 22).
6. **Move to adjourn by consent** (Page 26).

**ATTENDANCE****Board Members**

Terry Stockwell, ME, proxy for P. Keliher (AA)  
 Steve Train, ME (GA)  
 G. Ritchie White, NH (GA)  
 Douglas Grout, NH (AA)  
 Dennis Abbott, NH, proxy for Rep. Watters (LA)  
 Rep. Sarah Peake, MA (LA)  
 Jocelyn Cary, MA, Legislative Proxy  
 William Adler, MA (GA)  
 DanMcKiernan, MA, proxy for P. Diodati (AA)  
 Robert Ballou, RI (AA)  
 Mark Gibson, RI, Administrative proxy  
 Rick Bellavance, RI, proxy for Rep. Martin (LA)  
 William McElroy, RI (GA)

David Simpson, CT (AA)  
 Lance Stewart, CT (GA)  
 James Gilmore, NY (AA)  
 Pat Augustine, NY (GA)  
 Brian Culhane, NY, proxy for Sen. Johnson (LA)  
 Peter Himchak, NJ DFW, proxy for D. Chanda (AA)  
 Tom Fote, NJ (GA)  
 John Clark, DE, proxy for D. Saveikas (AA)  
 Roy Miller, DE (GA)  
 Bernie Pankowski, DE, proxy for Sen. Venables (LA)  
 Tom O'Connell, MD (AA)  
 Russell Dize, MD, proxy for Sen. Colburn (LA)  
 Bob Ross, NMFS

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

**Ex-Officio Members**

Josh Carloni, Technical Committee Chair

**Staff**

Vince O'Shea  
 Robert Beal  
 Toni Kerns

Mike Waine  
 Chris Vonderweidt

**Guests**

Jason Didden, MA FMC  
 Michelle Duval, NC DMR  
 David Spencer, AOLA  
 Bonnie Spinnazola, AOLA  
 Alison Fairbrother, Public Trust Project  
 Chris Jones, MD DNR  
 Peter Burns, NOAA  
 Jay Lugar, MSC  
 Peter Burns, NMFS

Mary Beth Tooley, Camden, ME  
 Jeff Kaelin, Lund's Fisheries  
 John German, LISLA  
 William Ball, Ofc. of Sen. Collins, ME  
 Kyle Molton, Ofc. of Rep. Pingree, ME  
 Jay Lugar, MSC  
 Patrick Paquette, MSBA/RFA  
 Steve Goodman, NMFS  
 Janice Plante, Commercial Fisheries News

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel, Alexandria, Virginia, April 30, 2012, and was called to order at 3:25 o'clock p.m. by Chairman Douglas Grout.

### **CALL TO ORDER**

CHAIRMAN DOUGLAS GROUT: This is a meeting of the ASMFC American Lobster Management Board. My name is Doug Grout. I am Chair of this board.

### **APPROVAL OF AGENDA**

CHAIRMAN GROUT: The first item on the agenda is board consent of approval of the agenda. Are there any changes? Yes, Pete.

MR. PETER HIMCHAK: Mr. Chairman, I didn't see on the agenda any time allocation for maybe some reporting on where we are with implementing Addendum XVII measures. I see all the other states from Area 5 here, so they might want to know what New Jersey is doing on the regulation front. It will be a quick update.

CHAIRMAN GROUT: Can I add that under other business; would that be appropriate?

MR. HIMCHAK: Yes, that would be fine.

CHAIRMAN GROUT: Any other changes to the agenda? Is there any objection to approving the agenda as amended? No objection, we'll move on.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN GROUT: We also have in our packet an approval of the proceedings of the February 2012 board meeting. Were there any changes needed for that? Is there any objection to approving the minutes of the meeting? Seeing none, I see them approved.

### **PUBLIC COMMENT**

CHAIRMAN GROUT: We also have a place on our agenda here for public comment on items that are not on the agenda. Is there anybody that would like to provide public comment? Yes.

MR. MIKE TYLER: Mike Tyler from Connecticut, Commercial Lobstermen's Association. There are two things I would like to bring briefly. One is that I have a concern or we have a concern that the Lobster Advisory Panel has not been involved in the process

basically since the moratorium. I was wondering why they haven't been convened and do you plan on convening them in the future?

They were part of the process for an awful long time. We have representatives from states. It is a vehicle for us as the public to bring issues to the board without going through the public at the end of the meeting and then coming up with a question and we can have representation on the board.

CHAIRMAN GROUT: Didn't we have the advisors meet before the last addendum?

MS. TONI KERNS: We've been engaging the Lobster Conservation Management Teams instead of the LAP because these management program changes have been specific to Southern New England. Traditionally with the way the Lobster Board works, anything that is a coast-wide issue goes to the advisory panel and area-specific changes go to the Lobster Conservation Management Teams. Because the Lobster Board set up those LCMTs, it's a special case on how the Lobster Board works.

MR. TYLER: The other thing that I would like – I am disappointed because it is an opportunity for us to talk among our peers with issues that other states might vote against when we feel that it's something that would be in our favor. The other thing that I wanted to say is that Representative Minor from Connecticut, who is not here, since the last meeting brought up a House Bill that would address some of the pesticide use along the shoreline.

I think it is everyone's duty among this board here or panel that when things like this come up, I think that they should be supported. If it doesn't even pass out of the Environment Committee, at least he has been proactive in bringing about some awareness. Thanks.

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

CHAIRMAN GROUT: Thank you. Any other comments from the public? Okay, the next item on the agenda is election of a vice-chair. David.

MR. DAVID SIMPSON: I would like to nominate Dan McKiernan for vice-chair.

CHAIRMAN GROUT: Seconded by Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman, and I move that we close nominations and cast one vote for the new vice-chairman.

CHAIRMAN GROUT: Any objection to that? Thank you, Dan; we appreciate your service.

### **DISCUSSION OF DRAFT ADDENDUM XVIII FOR PUBLIC COMMENT**

CHAIRMAN GROUT: Okay, the next agenda item is to consider Draft Addendum XVIII for public comment. Toni has a presentation on this.

MS. KERNS: Draft Addendum XVIII was on your briefing CD, and I'm going to go through this addendum. I realize that it's a little more complicated than some other addendums so I'll try to be as thorough as possible. The Lobster Board gave direction to the plan development team to scale the Southern New England Fishery to the size of the resource.

Included in this was an option that would result in a minimum reduction in traps fished by 25 percent. At the last board meeting the plan development team had several questions related to the goals of this addendum, and the board put together a working group to clarify those questions. The working group altered this language in the initial motion from the board to change the language from traps fished to traps allocated.

This was due to the information that we have available across all entities in terms of data for the lobster fishery, and traps allocated was the most common factor that we have amongst all the agencies that is consistent versus traps fished. The board should consider and note this language change.

With this language change, the addendum proposes the consolidation program for LCMA 2 and 3 to address latent effort and reductions in traps allocated. For trap limits to be effective in reducing harvest and rebuilding the stock, we need to consolidate this fishery. Without addressing latent effort from the fishery, any effort to consolidate the fishery will be undermined as well as latent effort needs to be addressed to prevent effort from coming back into the fishery as the stock grows.

In 2007 the Area 2 allocation program was implemented by the states. The National Marine Fisheries Service is still going through rulemaking to allocate to the federal permit holders. From the data that I have collected so far, which is not a complete set of information, there is approximately 40 percent latency in Area 2.

In 2003 the Area 3 allocation program was implemented. Addendum I reduced their traps on a sliding scale and then trap allocations were again reduced by 5 percent in 2007 and 2008 and then another 2.5 percent in 2009 and 2010. I do not have a good estimate for latency in Area 3 to give to the board yet, but I'm working with NOAA Fisheries to get that information before the document is released for public comment.

Trap allocations are the only aspect of the current regulations that provide a mechanism to allow for consolidation. The industry will need to right size itself to the available resource in Southern New England; and from the last assessment this is approximately 50 percent of its historic level. This addendum proposes trap banking for Area 3 and Area 3.

Trap allocation banking will allow the permit holder to obtain trap allocation from other permit holders in excess of the individual's trap limit on an area-specific basis. The additional allocation would not be able to be fished until it is activated by the permit holder's governing agency. Banking is proposed to allow flexibility for industry members to plan and scale their business to the future of the fishery both for individuals and corporations.

The provision will enhance the ability of a lobster business to plan for their future with the benefit that bank traps do not enter the fishery except on a predictable schedule. Entities will be able to purchase a large number of traps in a single transaction versus making numerous small transitions every year, which would reduce the administrative burden for both management agencies as well as industry.

There is also a proposed controlled growth for Area 2 and 3. Controlled growth limits the rate of trap increases that may result from the implementation of trap transferability, and it is intended to allow an entity to annually move traps from their banked account to their active account each year at a predictable rate.

First I'm going to go through the proposed management options for Area 2. They're a little bit different than Area 3 although some of them have the same concepts. For Area 2 we propose an initial trap reduction. Option 2 is a 25 percent reduction in the trap allocation, and that would be Year 1. This is the LCMT preferred option.

It would reduce the allocation from what the individuals were given in 2007 if they were allocated by the states, and it would reduce by 25 percent once the National Marine Fisheries Service adopts rulemaking for allocations in Area 2 we're hoping in the coming year. This reduction also would reduce any other allocations that were obtained by the permit holder since their allocation was given to them in 2007.

I've underlined here transfers would not occur prior to the 25 percent cut. This information was not in the addendum as it was written, but it was a clarification that was made after the CD was done. This is just to ensure that some of that latent effort gets out of the system before transfers occur since there is at least 40 percent latency in Area 2.

Then we would do additional trap reductions in Area 2. These would be on an annual basis and proposed over a five-year period. Annual trap allocation reductions would be assessed on both active traps as well as traps that were banked with the annual reduction, and those traps would be permanently retired for conservation purposes.

If an initial reduction is implemented in Year 1, then the annual trap reductions would start in Year 2 and continue through Year Six, so total reductions including the 25 percent would be over six years. The annual reductions would be 5 percent reductions in the trap allocation for five years, totaling 25 percent. The total reduction in traps, if both options were approved, would be a 50 percent reduction from your trap allocation.

Next is looking at some rules governing trap allocation transfers. Through the transferability addendum, entities were able to transfer full or partial trap allocations of qualified traps from one another, but we established different rules governing those transfers whether it was a full business sale or a partial business sale.

From Addendum XII our status quo is that if an individual transfers a trap that has multiple LCMA's allowed to be fished on it, then once that trap is transferred the buyer has to choose a single LCMA that that trap will be fished in, and the privileges for the other LCMA's are forfeited. That is status quo as we currently operate.

Option 2 would allow any LCMA to be fished when transferring a multi-LCMA trap, but you would still be bound by the most restrictive rule. This slide is going to look a little bit similar but it is flipped.

When you are selling your full business under the current rules in Addendum XII, you may fish any LCMA that is transferred with that permit. If it's a multiple LCMA permit, you can choose any of the LCMA's on there but still bound by the most restrictive rule.

Option 2 is that the entity must choose the single LCMA to fish on a multi-LCMA transfer of traps and privileges for the other LCMA's would be forfeited. I think the rationale behind having this up for changes in management is to set potentially the same rules for a full business sale or a partial business sale because currently they are opposite.

Trap allocation banking; trap allocation that is owned but may not be fished and are held in a banking account is what we call a trap allocation. An entity who owns the maximum individual trap cap but less than the ownership cap in an area may purchase traps from another fisherman and deposit those into the allocation in his or her trap allocation bank account until the maximum ownership cap is reached.

Each entity with a state or a federal permit for an LCMA is entitled to establish one single trap allocation banking account for each permit. Each trap allocation account will be partitioned by the LCMA and an entity's total of the active and bank accounts cannot exceed the ownership cap for that LCMA. Traps in the account may not be fished until activated according to the governing agency and the release of banked trap allocation would be subject to the provisions of the addendum. Traps in the banked account are subject to trap reductions, but a transfer tax will not be assessed on traps when activated from the permit holder's banked account.

Option 1 is to not allow banking, status quo. Option 2 is to allow up to 800 traps to be banked by an individual or a corporation at a given time, and that is the LCMT preferred option. Ownership caps; this ownership cap goes along with the trap banking that I just discussed. An ownership cap is the maximum number of traps an entity may own for each LCMA, so it's a combination of your individual allocated traps or your active traps plus the number of traps that are in your banked account.

Option 1, status quo, limiting the number of permits; currently we have a monopoly clause for Area 2, so that sort is like an ownership cap. Our monopoly clause is we do not allow more than two permits per entity with the exception of those that had more than two permits prior to 2003, and this was done through Addendum VII.

Option 2 here is that an entity could not own more than 1,600 traps, and that would be 800 active traps and 800 banked traps. This is the LCMT preferred option. The one point where I'm not sure what was the intention of the LCMT is if they wanted to have any sort of monopoly clause because I don't believe Option 2 limits the number of permits an individual could own. It just says you can't own more than 1,600 traps, but you could have more than one permit as an individual. This is something to think about for clarification.

Next for Area 2 is looking at controlled growth. Controlled growth is intended to allow an entity to annually move traps from their banked account to their active account on an annual basis. Controlled growth applies to the individual's allocation by LCMA and not an individual's total allocation.

Option 1 is status quo; no limits on growth. Option 2 would be a maximum of 400 traps could be moved annually each year, and that is the LCMT's preferred option. Option 3 is to allow a maximum of 800 traps to be moved annually each year. The controlled growth provision would be effective in the same year that NOAA Fisheries implements transferability.

A full transfer of all qualified and banked traps would be exempt from the controlled growth provision, so a full business sale would not have to follow under these rules. Looking at the Area 2 transfer tax, currently the transfer tax in Area 2 is 10 percent for all transfers whether that be a partial or a full business sale.

This addendum is not proposing to change that 10 percent but changing the method in which a transferability tax could be approved. Option 1 is status quo; to make changes for the tax you would do this through the addendum or the amendment process. Option 2 is changes would be made through board action, and the board would be restricted in the amount that they would allow. To change it, it would have to be anywhere from 5 to 20 percent, and the adjustment would only be on an annual basis and it would be for the following fishing year.

Next I'm going to go through the proposed changes for LCMA 3. First we're going to look at annual trap reductions. Trap allocations would be reduced from the 2012 permit trap allocation, and this is because they have already had several reductions in their allocations since they were initially allocated in 2003. The reductions would occur for both active and banked traps.

Option 1, status quo, no action; and Option 2 is a 2.5 percent reduction of trap allocations per year for ten years, and this is the LCMT preferred option. Option 3 is a 5 percent reduction of trap allocations for five years. Both of these add up to a 25 percent reduction. Next is looking at the transfer tax. The transfer tax in Area 3 under status quo is a conservation tax of 20 percent for partial transfers and 10 percent is assessed on full business sales.

Option 2 looks at the conservation tax of 10 percent for all transfers, whether it be full or partial, and this is the LCMT preferred option. Also for the transfer tax, it is looking at how we adopt the transfer tax for Area 3, and this is exactly as was proposed for the Area 2, which for the Option 2 proposes that through board action limits the amount you can have on a transfer tax, and it would be just on an annual basis. I'm not going to rehash that.

Trap allocation transfers for LCMA 3; and this is exactly like what I went over for Area 2 is that the commission has different rules for entities that have a multi-LCMA trap allocation and they transfer traps. The current regulation on the partial transfers is that the buyer has to decide which LCMA they want to fish it in. They can only choose one LCMA and then all the other LCMA that trap has history in are forfeited. Option 2 allows that history to retain.

Just like in Area 2, the full business transfers, status quo is that on a full business sale all of the history follows the trap on a multi-LCMA transfer. Under Option 2 the individual would have to choose one LCMA and all the other LCMA history would be forfeited. This addendum proposes a change for LCMA 3 in that it is proposing to give a designation.

We would split Area 3 into three designation areas. Those three designation areas follow the biological stock assessment units. It would be Gulf of Maine, Georges Bank and Southern New England. Fishermen would annually designate one of the three areas to fish in for the entire year. It would be part of their permit renewal process.

And just like you can turn on and off whether or not you're fishing traps or you're trawling for lobster, you could just turn on Southern New England or Gulf of Maine. Changes could be made from year to year, but fishermen would still be bound by the most restrictive rule for the area that they designated. Option 1 is status quo, no designation; Option is to designate.

Next is looking at trap and permit cap on ownership. We're proposing several types of restraints on ownership to inhibit the excessive consolidation of the industry. There are three different things that we're looking at; 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, as well as a cap on the aggregate number of federal permit and traps an entity or a company may own.

First looking at the trap cap, Option 1 is status quo; the trap cap would be 2,000 traps in Area 3. Option 2 as specified in the table on Page 11, we would have a trap cap for Southern New England alone and a trap cap for Georges Bank and Gulf of Maine. Option 2 assumes that NOAA Fisheries would implement a 2,000 trap cap in the proposed federal rulemaking that is being considered currently and that a cut of the allocated traps by 25 percent as proposed in Section 3.2.1 of the addendum.

And then also NOAA Fisheries adopts a lower trap cap for LCMA 3; or if a different cut occurs, then we would adjust the schedule accordingly. And the trap cap looks like so; it starts off with 2,000 traps for both areas; and then for Southern New England it will drop down to 1,800 traps at the end of Year Ten; and for Georges Bank and Gulf of Maine it drops to 1,513 traps at the end of the ten years.

Next is looking at the ownership cap. The ownership cap as a reminder is the maximum number of traps that an entity may own in an LCMA, which is a combination of their active traps and their banked traps. Option 1 is status quo, no ownership cap. Option 2 is the ownership cap is as proposed in the table on Page 12. Again, it is contingent on what NOAA Fisheries adopts in their rulemaking.

An entity who owns traps above the cap in each area would be allowed to keep their allocation of qualified traps, but all transfers of the qualified traps after the date of implementation would be subject to the ownership cap; meaning that you would not be able to transfer more than the cap in any given year.

You can see for Southern New England the maximum cap would start off at 2,396 traps and in the end would get down to 1,800 traps. Lastly, looking at the restrictions on traps is the aggregate ownership cap. Addendum IV limited the number of federal permits that any single entity or company could own to five permits with the exception of a small group of permit holders that were grandfathered in.

Option 1 holds that true, so no one may own more than five permit, status quo. Option 2 is that no single company or individual may own or share ownership of more than five qualified LCMA 3 permits and cannot own greater than five times the individual ownership cap of traps. Any entity that owns more than the aggregate cap at the time of implementation may retain that overage; but when transferring traps after the implementation date, they are subject to the aggregate cap.

Part of the reason why this is being proposed in the document is because while ASMFC has the rule that you can't have more than five permits, the National Marine Fisheries Service has yet to adopt this rule, so there really is no limit on the number of federal permits. This second option not only limits the number of permits, but it also limits the number of traps an entity can own together.

In addition to the language that is not in the document, after discussing with NOAA Fisheries we thought it would be best to put this information in before the document went out for public comment. If this second option were to be adopted under the aggregate ownership cap, the board would recommend to NOAA Fisheries to establish a control date for the number of permits or traps a single company or individual may own or share ownership of for LCMA 3. This is just to prevent a large number of individuals buying up on traps or permits.

The aggregate ownership cap for Gulf of Maine and Georges Bank starts off at 10,000 traps and drops down to 7,565. For Southern New England it also starts off at 10,000 but drops down to 9,000 traps. Trap banking works quite similarly for Area 3 as it does for Area 2. The banked traps would be held in the account and could not be fished until they were activated by the governing agency. Option 1, status quo, no banking would be permitted. Option 2, up 396 traps could be banked. Option 3, up to 900 traps could be banked; and Option 4, up to 2,396 traps could be banked.

This is equal to the maximum ownership cap and is the LCMT preferred option. What is unique to Area 3 versus Area 2 is that if you owned the maximum trap allocation for the Southern New England portion, at the end of Year Ten then you actually would not be able to have any banked traps because their ownership cap is 1,800 and their individual maximum trap cap is 1,800, so that would prevent from owning any banked traps if you had the maximum.

Looking at controlled growth for Area 3; again, controlled growth is intended to allow the entity to annually move trap allocation from the trap allocation bank account and add them to their active traps on an annual basis. Option 1, status quo, no action; Option 2, a maximum of 100 traps could be moved per year, and this is the LCMT preferred option.

Option 3 is a maximum of 200 traps could be moved per year. The provision would be effective in the same year that NOAA Fisheries implemented transferability; and again the full transfer of qualified and banked traps would be exempt from controlled growth. This addendum would propose some changes to our annual review process.

So included in the compliance reports for states and governing agencies that had Area 2 and 3 fishermen which are due on July 1<sup>st</sup>, they would also include for each of these areas by area the number of traps fished, the number of traps transferred, the rate of those transfers, the maximum number of traps fished and the degree of consolidation that have been undergone in those areas.

If the existing Lobster Management Program is revised by approval of this addendum, the Lobster Board would need to designate dates by which states would be required to implement the measures in this addendum. The board would also need to determine, if approved, those management changes that should be recommended to NOAA Fisheries for implementation in federal waters. Since an entire section of this document is for Area 3, and those are federal waters fishermen only, it would be recommended that those provisions be recommended to NOAA Fisheries. That is what I have for the addendum and I'm happy to take questions.

MR. WILLIAM A. ADLER: These are just questions. With regard to somewhere in that addendum on Area 2, I guess it was, there was an option that could transfer traps around to any area. Now, I presume you're meaning any area for which they've had history in and not any area like go to the Outer Cape, for instance, because they transferred something. I presume that's what you mean, and I just hope that's what it says. That's my first question.

MS. KERNS: Bill, I need to have a specific section that you're – are you talking about the trap allocation transfers, partial transfer of a multi-area trap allocation and full business sales?

MR. ADLER: I think it was in there. It was in the Area 2 presentation part where it said should we allow them or should they be allowed to go another area. That was also where you used the word "forfeited".

MS. KERNS: Okay, yes, it's only specific to – so when transferring a multi-area LCMA trap allocation, so I'm John and I have a trap that can be fished in Area 2, 3 and 4, and I'm going to sell you 50 of my 100 traps. You would have to choose Area 2, 3 or 4 for those 50 traps that you want to fish in. You would have to choose one of the three, and the other two are forfeited. You can only choose those areas that they have history allocated to.

MR. ADLER: Okay, there is the secret; that they have history in; they can't just go jumping into some other place they haven't got any history in.

MS. KERNS: Yes, it says that in the language; it's that they are authorized to fish in.

MR. ADLER: Okay, the second question was Area 2 continues to have an 800 trap maximum; is that correct?

MS. KERNS: That is correct; the addendum does not change that.

MR. ADLER: All right, third question; in the Area 3 proposal to split Area 3 into three separate areas; it's not that I'm opposed to that at all. It's just that is that something we can do under the addendum process to subdivide an area or is that something that needs a bigger thing?

MS. KERNS: It doesn't change the boundary of the area itself. It's just giving them a sub-allocation of the area, so the boundaries are not specifically changed.

MR. ADLER: All right, that can be done within an addendum like this?

MS. KERNS: Yes.

MR. HIMCHAK: Toni, could you explain to me on Appendix 1, the Figure 3.2.1, the Area 3 to 5 overlap? I've never seen an Area 3/5 overlap before.

MS. KERNS: Pete, I'm trying to remember which document that it's from. I'm going to have to look in my previous addendums to know where it's from, which addendum established that overlap. These are the current boundaries of all management areas.

MR. HIMCHAK: Yes, because I wasn't aware that there was an Area 3/5 overlap similar to Areas 2 and 3. It just caught my attention.

CHAIRMAN GROUT: Okay, while Toni is looking at that, Steve.

MR. STEPHEN TRAIN: Mr. Chairman, I don't know if I can ask the question if Toni is still looking at something else, though. You okay?

MS. KERNS: Yes.

MR. TRAIN: On Page 11 of the document it says the area selected will be noted on the permit and remain in effect for the entire fishing year and fishermen will be allowed to change the area designation once a year, and then it says fishermen will be bound by the most restrictive rule and trap allocation. My question is if somebody fished in Southern New England and Gulf of Maine they're restricted to the lower trap limit; but if they decide next year not to fish the Gulf of Maine, do they jump back to the higher trap limit? It said that it's reviewed annually.

MS. KERNS: Yes, I believe that is the intention that they are allowed to do that. Yes, they will be able to switch back because they would only be able to designate one area per year, anyway.

MR. ADLER: That's federal only, correct, what you just said, because our Area 2 people can't decide to go and fish in the Gulf of Maine, which would be Area 1.

MS. KERNS: It's only for Area 3 and Area 3 is all federal permitted fishermen.

MR. DAN McKIERNAN: Toni, a quick question; on Page 8 to 9 there are Options 1, 2 and 3, and you put them up on the board. It has to do with controlled growth. I'm curious; isn't Option 1 and Option 3 essentially the same since Option 1 is no restriction on growth and Option 3 is a maximum of 800 traps could be moved, and that is the trap limit. It seems like those two are functional equivalence. Just think about that before the addendum goes out. It seems like it's the same effect.

MS. KERNS: Eight hundred traps would be a full business sale, so in this sense, yes. Are you suggesting that we take it out?

MR. McKIERNAN: I would recommend number three be taken out because it would be the same as

number one. Doug, are you going to take comments at all or we just taking questions right now?

CHAIRMAN GROUT: Questions right now and then comments once we get through with the questions. I have a couple of questions about the Area 3. The first question was more of a curiosity question on the trap banking. Options 2, 3 and 4 have some very unique numbers for the amount that you can trap, anywhere from 396 to 2,396. I was wondering from the LCMA standpoint why those unique numbers were chosen as opposed to something that was more rounded.

MS. KERNS: If I may defer to the Area 3 LCMT Chairman to answer that question because I do not know the answer.

MR. DAVID SPENCER: The reason for such a wide variety of numbers is we have allocations ranging from the maximum number I think initial allocation from 3,200 down to people with several hundred traps. We had assured people that when transferability came in even the smallest operator could grow within the confines of a rebuilding schedule.

If we didn't allow somebody with, let's say, 200 traps to purchase 2,000 or whatever the appropriate number is, we felt it wasn't fair to really the smaller operators. You still can't, no matter what this number says, go above your ownership cap; so a lot of these numbers, if you have a full allocation, don't mean anything. It's just a mechanism to allow the very smallest Area 3 fisherman to become one of the larger ones. That's probably the simplest way to put it.

CHAIRMAN GROUT: And the preferred option is 2,396 that would apply to all of them?

MR. SPENCER: Just for that reason, yes.

CHAIRMAN GROUT: Why 96; why not 2,300?

MR. SPENCER: Because 2,396 was the buy-up-once option at the very beginning of this; and if you followed all the reduction down, you'd end up at the total allowable trap cap.

CHAIRMAN GROUT: I knew there was a logical reason behind it. I had one other question while you're up here. When we split out the trap caps and actually the aggregate ownership caps in the Georges Bank, Gulf of Maine and then Southern New England, it strikes that if our goal is to right size the

fishery to the resource that the reductions in Gulf of Maine and Georges Bank are much greater than they are in Southern New England. Do you have a reason why those reductions aren't flip-flopped and there is more of a reduction in Southern New England?

MR. SPENCER: The caps aren't really reductions. They're individual allocations. The reduction is aggregate. The history behind it is the LCMT preferred a 15/13 trap cap and at an LCMT meeting the Southern New England contingent made a compelling argument that historically they had fished larger trap allocations than the fellows to the east. That is why there is differential there. It really doesn't speak to the number of traps in the area. It's just what one individual may be fishing.

CHAIRMAN GROUT: Yes, they're actively fish traps is what it says.

MR. SPENCER: Yes. Could I just add to that answer to that because it was something I wanted an opportunity to comment on? It was going back to something Bill Adler said. We did split this area up, and it only has to be into two areas, the Southern New England and not Southern New England. That really all it has to be. It is not our intention to make these permanent designations throughout all lobster management. It is really specific to this addendum and I think from an Area 3 perspective that's important to point out.

CHAIRMAN GROUT: As we get to comments, I just have a couple of questions for Toni on process here. First of all, one of the slides indicated that we might want to include a reference to a control date. Does the board need to take action to put that in or can that just be left in as a correction to the addendum that is going to be included? Do you need board action on that?

MS. KERNS: I don't need board action since that's how I presented the information to you today.

CHAIRMAN GROUT: Is everybody comfortable with that? The same thing applies to changing the concept of this addendum from reductions in traps fished to allocated traps. Since you presented it in this addendum and if we approve the addendum, we will have in effect changed the purpose of this addendum?

MS. KERNS: The board does not have to vote to make that change, but they need to note that the intention – it's noted that the intention of this motion has been changed from "traps fished" to "traps

allocated" and that everybody is in concurrence with that.

CHAIRMAN GROUT: Okay, discussion? Dan.

MR. McKIERNAN: To those of you who don't have a dog in this fight, this seems like a really confusing and dizzying array of rules. One the one hand I apologize for that, but it is a really good plan crafted by the industry with the state delegations input and NMFS' input as to what is doable and what is possible in terms of dealing with this currency of traps and going forward.

Just so I don't get approached by my friends from Northern New England about changing the objectives of this plan, I don't want to you think it's a bait and switch on the allocated versus reduction; because it needs to be stated clearly here that if we want to reduce traps fished in Area 2, we need more than a 25 percent reduction in trap allocation.

The plan as written calls for six steps of trap cuts and we intend to go forward with those. Whether we change the language in the objectives of the document, we don't intend to change the cuts because we do want to get into the bone. If the language is to talk about trap allocation because it is a common denominator, then that's acceptable, but just so everybody knows we plan to go further in Area 2.

Obviously, it's a challenge because in Area 3 you have three stock units, and only one of them needs help so it's awful difficult to drive all three components of the offshore fishery under the same conservation mandates. To Toni, I think we do need one minor change, and that is I think we need a zero percent option on trap tax because at some point in time going forward I think we can stop taxing these trap transfers.

That's one minor change I think we might want to consider, a number as low as zero. I know in the Outer Cape we continue to cut traps, but at some point in the history of lobster management you need to stop taxing them. Otherwise, you force them to go away. Thank you to those who helped put this together; David Spencer, David Borden of our staff and Lenny and Bill McElroy, Mark Gibson, and Doug, and Toni. It was complicated but I think it's a good plan and I look forward to the hearings.

I do have one other comment, which has to do with the trap allocation banking. It was brought to my attention that because of the trap – I'm sorry, there is a permit limit of two. We probably need a third

option which allows a single person who might have two boats, two permits already in Area 2 an opportunity to bank traps for each of those permits and boats.

So under Option 3 if we could add a very similar option to 2, but at the very end just add an expression for each permit held up to a maximum of two permits. The reason for that is in the event that we do have someone who has an inshore boat and an offshore boat, with someone being hired to run that second boat offshore, if they want to maintain that two-boat business they should have that opportunity.

Keep in mind that in the state portion of the fishery anyone who has a state permit in Rhode Island and a state permit in Massachusetts, which gives them the right to fish in state waters, that's an owner/operator fishery, but the second boat, if it's exclusively federal they can have a second boat under the current rules.

MS. KERNS: Dan, just to be clear, I think you were talking about under the ownership cap section of the document and not trap banking, right, because the ownership cap is the one that says an entity cannot own more than 1,600 traps active or 800 banked?

MR. McKIERNAN: That's right, Toni, thank you.

MS. KERNS: Okay, and then because some Area 2 fishermen are also federal fishermen, then they may not have been subjected to – or under the provision of Addendum XII, which established the two-permit monopoly clause, may I recommend that we add the same language that we have under the aggregate trap cap for Area 3 that says, “Any entity that owns more than two permits at the time of implementation of the regulation may retain that overage; however, all transfers of traps after the implementation date are subject to the ownership cap”?

MR. McKIERNAN: Yes, that makes sense.

MR. TERRY STOCKWELL: Mr. Chairman, similar to Dave Simpson's approach to herring in the northern Gulf of Maine, I'm very comfortable with this proposed addendum developed by the industry in the Southern New England states. Thank you for your efforts. One question though probably to Dan is as I look at it – and you're right it is very complicated and confusing to me at this point – have you thought about how you're going to assess and measure your performance over the course of time?

MR. McKIERNAN: Certainly, as Toni mentioned, the annual review will come in and each jurisdiction

is expected to report on the degree of consolidation, the number of traps fished, the number of traps transferred, et cetera. It's our expectation that after Year Six we will have reduced the trap allocations 25 and five years at 5. Then that's how we'll measure. If you're asking me are we going to measure fishing mortality or something in the biological aspect of the stock, I don't see that; but in terms of the consolidation and the shrinking of the fleet will certainly be clearly measurable.

MR. STOCKWELL: My only related comment was to what you're alluding at the end, the difference between trap reduction and effort reduction; not anything disparaging but just a thought as I think about how to support moving this ahead.

MR. McKIERNAN: Well, I can say, Terry, that at the large whale take reduction team, our Southern New England fishermen all played this card as the rationale for relief from the large whale plan, and so I hope it does come o pass because I don't want to go back there.

MR. SIMPSON: Just to follow up on the bookkeeping question; the bookkeeping would be done by the state or federal government that is issuing the license; is that how it would work? Are you allowing transfer of traps between Massachusetts residents and Rhode Island residents for state waters fisheries; how is that sort of thing handled?

MR. McKIERNAN: David, that principle didn't change from Addendum XII, I believe, which is we've outlined in that addendum the kind of transfers that would be available once transferability takes place. If you are a dual permit holder, which means you have a permit fishing in state waters and in federal waters, those are not going to be transferable to another state unless, of course, that allocation is given up to fish in the state waters. We can't constrain the movement of federal traps between states, but we can constrain the movement of traps between states.

MR. BOB ROSS: As other plan development team members have mentioned, this addendum has gone through a lot of facilitation between the states, NMFS and the industry. NMFS is very appreciative of our participation in this process to frontload some of our concerns with what is becoming a very complicated process here of transferability. Although we have embraced this concept and have worked closely with the states and the industry, I still have to caution all that we have a very onerous, complicated federal regulatory process to go through.

Some of these issues may or may not be possible at the federal level in the current form. If I can remind the board here, this Area 2/Outer Cape/Area 3 transferability process has been ongoing for unfortunately several years, and part of that was the difficulty on NMFS part of integrating all our multiple regulatory requirements with the flexibility that the commission and the lobster industry wants.

All that said, I fully support the process. NMFS has been in rulemaking on this Area 2/Outer Cape/Area 3 transferability process. Again if I can pull back ancient history here, we actually did a fairly extensive draft environmental impact statement which was released in April 2010. If the board will recollect, ay 2010 was when the technical committee informed the board of the Southern New England recruitment failure.

At that point the board asked NMFS to delay moving forward with this transferability process subject to the evolution of the Southern New England recruitment failure. Obviously, NMFS has been an active participant in the Southern New England process and also in moving forward through the PDT process this Addendum XVII, which addressed the Southern New England issue. Now we're looking at Addendum XVIII and potentially Addendum XIX.

I guess my point here is that a lot of the measures in this proposed addendum include issues that deal with transferability. At this point we are in rulemaking on our transferable regulatory action and it will be difficult, if not possible, for us to quickly integrate some of the proposals here such as banking, controlled growth, splitting Area 3, et cetera.

This information has been provided to the plan development team and I believe at prior board meetings I have tried to indicate that we would have a challenge incorporating some of these measures in the immediate future when we turn on transferability. I just again want to point that out to the board. We expect to provide some fairly extensive written comment on this addendum during the public comment period, also. Thank you.

CHAIRMAN GROUT: Thank you, Bob. Any other discussion? Okay, there were a number of suggestions, changes or modifications to this document, and I'd like to have Toni go over them for the board just to make sure everybody is in line at this point. After you hear this, if there are any objections to those changes being made please bring them up. If there is no objection, at that point I'll be looking for a motion to approve the addendum for

public comment as changed at today's meeting. Toni, can you give us a rundown of the suggested changes that were offered up today?

MS. KERNS: I will include the ones that were not initially written into the document when it was put on the CD. Starting on Page 6, included in Option 2 under the initial trap reduction, the 25 percent reduction and that transfers would not occur until that 25 percent cut has been completed.

On Page 8, 3.1.6 under the ownership cap I'll add an Option 3 which has the same language as Option 2 but also includes that you couldn't have anymore than two permits and put in the sort of grandfathering clause that is in the Area 3 language. Under controlled growth I will delete Option 3, which is the movement of 800 traps. Under the transfer tax I will adjust it that the transfer tax can be adjusted between zero and 20 percent, and I'll do the same for the Area 3 transfer tax. I will add the recommendation to NOAA Fisheries under the aggregate ownership cap that they issue a control date if that option were to be adopted.

MR. ADLER: This is just a suggestion and thinking in terms of the public hearings. Would it be possible to put in examples of what you mean by a particular scenario rather than having the people at the public hearing reading the thing and going, well, how does that fit in the real world where I live? I didn't know if you can do that, but I think you've done it in the past under some other things where you put Joe had this and he wanted that, whatever. If it would be possible to do that, it might help the public hearing process on the particular things. That's my only concern here.

MS. KERNS: I can do that, Bill, where applicable.

MR. TRAIN: Mr. Chairman, this doesn't affect me so much, but I'm not sure, Toni, you and Dan got on the same page on that last change. You talked about making it so it goes away at time of transfer and I thought Dan wanted the guy fishing with a federal permit in federal waters and fishing with a state permit in state waters to be able to maintain two trap banks, one for each boat or business. You're talking about it going away at time of transfer the way it was in Area 3 for anyone over the trap cap. Did I hear it wrong?

CHAIRMAN GROUT: Dan, what did you want?

MR. McKIERNAN; Well, I just wanted a third option that sort of gives entities that might already

have two boats, two permits, and might want to create two bank accounts the option to continue that. We may not carry that forward. I'm not necessarily campaigning that as a final action but as an option that should be in there.

MS. KERNS: When I was talking about similar to the Area 3 language, because NOAA Fisheries never implemented monopoly clauses in either Area 2 or Area 3, there are individuals that are fishing beyond the five permits or two permits that is allowed depending on which area you're in.

Once they do implement, then the data of implementation would be the cutoff anything beyond two or five for each of the areas; but when transferring traps, they would be subject to that two permit or five permits. I think we're on the same page. It just allows for those that have already built up to hold them, but doesn't allow any individuals to go beyond two or five.

MR. WILLIAM A. McELROY: Mr. Chairman, I just wanted to get a point of clarification on the reductions. Toni stated that we clarified it by saying that we wouldn't allow transfers until the reductions had occurred, the first 25 percent reduction. We want to be clear that those transfers should still be allowed in the same fishing year that the reduction occurs.

We're not trying to create a circumstance where someone with an 800-pot string gets cut down to 600 and has to wait until the following year to build themselves back up. It should be the following day that they can build themselves back up so in that same fishing year they would be able to make themselves whole if they're able to find the qualified allocation to buy. Thank you.

CHAIRMAN GROUT: Toni seems to be clear on that. Bob.

MR. ROSS: On the ownership monopoly issue, NMFS has voiced some concerns and it's not just in lobster. Those of you involved in the council process are aware of some of the other fisheries addressing very similar issues about ownership caps. The dilemma NMFS is wrestling with obviously is a situation where we don't only have owner/operators; we also have partnerships and corporations.

I believe as in the real business world out there beyond fisheries it can be very challenging to identify all ownership in corporate entities. Although we fully support recommendations by the commission to move forward with a control date to address ownership caps, I just wanted to highlight that this is

not a simple process to identify all owners in corporate entities. There are other federal fisheries currently looking at this issue and we hope to capture the results of their reviews also. Thank you.

CHAIRMAN GROUT: Any other discussion? **Do we have a motion to move forward with this for public comment with the changes made today?** Bill.

MR. McELROY: **So move.**

CHAIRMAN GROUT: Bill McElroy; seconded by Bill Adler. Discussion on the motion? Any comments from the audience? Okay, back to the board; do you need time to caucus on this? I don't see anybody nodding their head. I'm going to read the motion; move to approve Addendum XVIII for public comment with changes made today. The motion was made by Mr. McElroy and seconded by Mr. Adler. All those in favor raise your hand, ten in favor; any opposed; any abstentions; any null votes. **The motion carries; ten, zero, zero, zero.**

MS. KERNS: Pete, I did not make the lovely chart that is in the back of this addendum. I had just given all the area boundaries to my GIS guru. I believe they may have made an error when entering the data points I gave them, so we'll go back and see if we can get that fixed. Thank you for noting that.

MS. HIMCHAK: So there essentially is no Area 3/5 overlap?

MS. KERNS: Not that I see in the area boundaries.

MR. ROSS: Since that a federal waters fishery, I would love to rattle off which addendum out of, but that was definitely a request and a recommendation from the commission to establish a 3/5 overlap area, which was I would say done about five years ago now. I don't have a specific addendum I can point you to at this point.

CHAIRMAN GROUT: Bonnie, do you have something to add to that specific issue?

MS. BONNIE SPINAZZOLA: Just very quickly; the New Jersey and Southern New England and Maryland and Delaware people, whoever fished down that way, felt that because the Area 4 was so far inshore or Area 3 came so far inshore down that way their trawls were crossing over the Area 3 line, between the Area 3 and 4 line. They requested of Area 3 that we give them that space into Area 3, and we granted that request.

CHAIRMAN GROUT: Thank you, Bonnie. Okay, I have one other question in relationship to this, and that is we had a motion at the last meeting to try and right size the fishery and we've had plans incorporated in this addendum to try and address that for two LMAs. The question is when are the other LMAs who are involved with Southern New England going to bring forward their proposal and does the board want to have some kind of time constraint on that? David.

MR. SIMPSON: I think you can hear the interconnection between trap allocations and state permitting authority or federal permitting authority, and as a reflection of that Connecticut has been working at this very issue and in a larger context of our state commercial licensing. It is not largely; it's exclusively an economic question so more appropriate I think for the state that is doing the licensing and managing the fishery to address.

We very fortunately have a much simpler situation in Area 6 where there are no federal waters and instead it's a small internal waters body that is shared between New York and Connecticut. Connecticut fully intends to go ahead with making some adjustments that make more economic sense and certainly reporting out on that to the commission and talking with New York as we move along. There are bigger things that go beyond the board, things like renewal requirements and things like that that will change the number of licenses out there and therefore the number of traps being fished. We are taking it as part of a bigger overall exercise with our commercial fisheries.

MR. HIMCHAK: Well, suffice it to say that during all the LCMT meetings and the public hearings on Addendum XVII, they were so preoccupied with what we were going to do with that addendum nobody really offered anything up on Addendum XIX. I'll speak for Area 4 because I know it the best.

We may have to borrow some of the concepts from today's addendum insofar as the pool of latent permits out there is huge. If we start in with a reduction mechanism for the 30 guys that left in the fishery, are we going to allow them to acquire other traps and bank them or are we just opening the door for new entries into the fishery.

I understand the concept of the addendum we just approved today for public hearing, and we may have to borrow some of the concepts to scale down the fishery and deal with latent permits at the same time. As far as the timetable, we're working on getting

regulations done for next year, so I can't give you a timetable right now.

MR. McELROY: Mr. Chairman, I don't think that it's necessary for us to at this point put a timetable on the rest of the region. In simple English, roughly three-quarters of the landings in Southern New England come out of either Area 3 or Area 2. The other areas clearly are struggling with what to do.

It's not like they're ignoring it; and I think if they need a little bit of time to try to figure what is the best way to move forward, from my point of view as an Area 2 representative and a representative from Rhode Island, I don't feel at all that it would be untoward to give them a little bit of leeway to figure out how to deal with a pretty intractable problem. Thank you.

CHAIRMAN GROUT: Any other comments? Is the board comfortable with that; just having an open-ended timeframe for the remaining areas to come forward with something? Pete.

MR. HIMCHAK: Just to refresh my memory, Addendum XIX would be implemented in 2014, correct, or is it 2015?

MS. KERNS: Well, we don't have an Addendum XIX yet because none of you have provided us with ways to scale back your fishery.

MR. HIMCHAK: That's my point, but the crystal ball timeline for us to get this thing developed and implemented would be 2015?

MS. KERNS: The board never gave a date so there is no crystal ball.

CHAIRMAN GROUT: That's the reason I was asking the question because there was no specific date to come forward, and I want to make sure the board is comfortable with that being open-ended. Dave.

MR. SIMPSON: Yes, I'll follow up with some more specifics that I left out. At least for Connecticut we've had two meetings already. We formed a working group of industry and other parties that are interested; the Connecticut Fund for the Environment and some university people associated with Sea Grant, an economist and an outreach person and others.

We've had two meetings so far and we're hoping to have a third this spring. The idea is to have

something to forward to the legislature for statutory license changes next session next year. That's our timetable for working. The details of what we might want to do particularly for lobster beyond licensing toward traps, that has to follow after that.

Frankly, that's why we're on this timetable of implementing Addendum XVII in 2013 because we want to get that in place, that little step before – because it takes a couple of years to get license changes made. That's the timetable we're on is this time next year we hope to have something approved by the legislature.

CHAIRMAN GROUT: Okay, seeing no other comment, then we'll leave it open-ended and maybe once in a while check back with the states and see where the progress is maybe next year some time. Toni, you have a question?

MS. KERNS: I did not get a chance to ask what states wanted to have public hearings on Draft Addendum XVIII. Okay, thank you.

### **TERMS OF REFERENCE FOR THE 2014 AMERICAN LOBSTER STOCK ASSESSMENT**

CHAIRMAN GROUT: Okay, the next item on the agenda is consideration of the terms of reference for the 2014 stock assessment. Josh, I hear you have a little presentation or an overview for us.

MR. JOSHUA CARLONI: Yes, I do. I'm not a seasoned veteran with regards to stock assessments. This will be my first one so hopefully you guys will take it easy on me today. I do have Genny here to help answer any question you guys may have. The term of reference one, collect and evaluate available data sources; looking into historical commercial and recreational discards in the fishery-independent data; provide descriptions of each data source, geographic location, sampling methodology; discuss data strengths and weaknesses and their potential effects on the assessment; justify inclusion or elimination of each data source; explore improved methods for calculating catch-at-length matrix; describe calculations or standardization of abundance indices.

Term of reference two; use the University of Maine Model to estimate population parameters for each stock unit and analyze model performance, population parameters such as effective exploitation abundance; modify the University of Maine Model for new data sources; explore estimation of growth parameters and estimate uncertainty; evaluate

stability of the model; perform and present model diagnostics; perform sensitivity analysis to examine implications of model assumptions such as but not limited to natural mortality and growth.

Term of reference two, continued; explain model strengths and limitations; justify choice of CVs effective sample sizes or likelihood weighting schemes; state assumptions made and explain the likely effects of assumptions on synthesis of input and model outputs; conduct projections assuming uncertainty in current and future conditions for all stocks; compare projections retrospectively.

This is term of reference three and four; develop simple empirical indicator-based trend analyses or reference abundance and effective exploitation for stocks and substocks, and this may be done for areas of special interest or concern such as possibly Long Island Sound or Stat Area 514. Update the current fishing mortality and abundance biological reference points; if possible develop alternative maximum sustainable yield based reference points or proxies that may account for changing productivity regimes.

Terms of reference five and six; characterize uncertainty of model estimates, reference points and stock status; perform retrospective analyses; assess magnitude and direction of retrospective patterns detected and discuss implications of any observed retrospective patterns for uncertainty in population parameters and reference points.

Terms of reference seven and eight; report stock status as related to current overfishing and overfished reference points, both current and any alternative recommended reference points; include simple description of the historical and current condition of the stock in laymen's terms – and this is just text providing a simple description maybe as good way to communicate to stakeholders – address and incorporate to the extent possible recommendations from the 2009 benchmark peer review and 2010 Center for Independent Expert Review; develop detailed short- and long-term prioritized list of recommendations for future research, data collection and assessment methodology; highlight improvements to be made by the next benchmark review; recommend timing of the next benchmark assessment and intermediate updates if necessary relative to biology and current management of the species.

Now, those are the terms of reference for the board. We also are going to present for the peer review, so I don't know if you guys want to – if there are any

questions on that first segment and then we can have questions on the second segment after.

MR. ADLER: When I read this over, the word “discard”, of course, I don’t what you mean by discard. You know, they go over alive, that type of thing. It’s a little bit different than what fish do, so that was one thing. Also, the abundance indices; are you planning to, for instance, look at some of the – does this include looking at some of the outside of – for instance, in Area 2 where the lobsters seem to be as opposed to where they used to be and does the technical committee or the biologists, I should say, are they going to take that into consideration when they’re counting numbers or whatever. Do you want me to keep going?

MR. CARLONI: I’ll start with those, if you don’t mind. For the abundance indices – and Genny can help out here as well, but we’re looking at all available data sources and we’re going to kind of put them through the ringer and see which ones will help out with the stock assessment. As to your point, we definitely are going to be looking at trawl survey data, ventless trap survey data and hopefully be able to touch on some of those areas that you’re talking about. Unfortunately, there is a lack of sampling in certain areas so we’re going to do the best we can with the information that we have out there.

MR. ADLER: All right, if I may, Mr. Chairman, that answered several of my questions. Basically I am saying look at the ventless trap, look at everything, go outside where the fishermen say that they are and add that into your statistics so we don’t get into a bugaboo when you do come back with something and they go, well, you’ve got all wrong; ask them, see what you can do.

Also possible recommendations; I like the part about number seven there under current conditions of the stock in laymen’s terms; that is very good. Please don’t forget that part so we don’t have to explain what some of these technical terms are. Number eight, extend possible recommendations from the 2009 benchmark peer review and CIE review, it’s vague what they said, but they said something. I remember they said something so please do include that into the sources, and I’ll be quiet now. Thank you.

MR. CARLONI: Just in response to your first question, the ventless trap survey and some of our other surveys are set up in a random stratified way to hopefully catch some of that change and where the fishery is going over time.

MR. HIMCHAK: I guess under terms of reference three or what was on the CD number six that you may be getting to next, the concept of stocks and substock areas, boy, that got my attention. I’m thinking of like the mudhole in Area 4, there is a lot of literature coming out now about populations of lobsters that are biologically and socially segregated from – and, boy, we had a lot of discussions on the Southern New England stock homogeneity from Cape Cod to Cape Hatteras.

Fortunately, we do have sea sampling data from 2007. I’m really looking for some answers on a lot of the issues that came up after the last stock assessment on the Southern New England stock. The hypothesis of females moving to deeper water; was that declared null and void by the CIE experts or is that going to be tested again? There are a lot of dynamics going in within the Southern New England stock, and, boy, I hope I get a lot more output by areas and not just one blanket read. That’s my fear.

MR. CARLONI: Yes, we are going to take that into consideration and look at areas of special concern, as I stated. No promises, but trawl survey data had shown females moving to deeper water as well it was seen in the commercial fishery. Do you want to expand on that, Genny?

DR. GENNY NESSLAGE: I guess the technical committee wasn’t anticipating redrawing the stock unit boundaries, but we absolutely do want to take a very close look at the dynamics within the Southern New England stock, specifically the inshore/offshore movements, what the data are actually saying about that, and especially taking a look at what is going on in Long Island Sound versus Narragansett Bay versus offshore New Jersey and so. We are definitely planning to take a very close look at all the available data to try and get a handle on what might be going on in those areas. We did not plan to redesign the stock units for this benchmark. Does that answer your question?

MR. HIMCHAK: Yes, it does, it gives me some relief because the last benchmark assessment the only data that really applied to us, you had our landings data, which were very suspect I have to admit. We have the NMFS trawl survey and an inshore trawl survey which really wasn’t designed to get lobsters, and that’s what tied us into the whole Southern New England reference point and doom and gloom of where we’re going. At least now with sea-sampling data I think we have more to contribute towards what may ultimately be our fate.

DR. NESSLAGE: I have spoken with Peter Clark about including those bio-samples. We have a plan for adding them in and we do plan to include the New Jersey Trawl Survey data as well.

MR. MARK GIBSON: Mr. Chairman, I had some thoughts along the lines of Peter. I would have thought that the first one up on the list would be an evaluation of stock structure in the current assessment areas with the potential evaluation of possible changes to those or inclusion of strata within the stock assessment to better inform on smaller spatial scales.

I don't see that listed. Number three doesn't say that; it is just simpler indicators on a finer-scale basis. Had I been putting this list together, that is what I would have put up front and center is a review of the stock structure in with the potential for evaluating finer-scale assessment strata within the main assessment for Southern New England.

If that was number one; then our current list of number one, I think that is smeared together too much. That should be actually expanded into three terms of reference. One would be fishery-dependent data, which are your landings, recreational catches, any discards if they exist, bio-samples of that, measures of fishing effort, industry catch rates with an evaluation of those in terms of what has been described in the bullets under it.

Item 2 should be all of your fishery-independent data; you know, your trawl surveys, ventless traps, settlement indices, whatever else you have out there; an evaluation of those and the sampling intensity on those. Number three ought to be a life history information because I think there are some important considerations or new information on growth and changes in natural mortality rates.

I think those ought to be all broken out as independent terms of reference for summarization and evaluation purposes. Then I think you'd be left that the University of Maine Model would become actually number five, and I don't have any problems with that because I think you talk about in there that the model would be modified to incorporate whatever new sources of information have come to the fore and whatever structural modification you need to make to include those. Those are my suggestions. Thank you.

CHAIRMAN GROUT: Mark, are you suggesting that this board – the board is going to have to approve these terms of reference. One of the things you

talked about initially was evaluating the stock boundaries, the stock structure. I can tell you that's going to be a heavy lift and are you willing to modify this – there might be a need given the resources to take something off if you're going to go that direction with it. Certainly, if you want to make a recommendation for changes, you can, but keep that in mind.

MR. GIBSON: Is your intent to approve these today or just take input and see a revised list at another time?

CHAIRMAN GROUT: It's on the agenda as an action item, so that was to approve today. Could we come back?

MS. KERNS: Well, we're going to start working on the assessment so it would be best to approve today.

MR. GIBSON: Certainly, my comments are on the record about the need of expansion of Item 1 into three; and if the technical group is clear – and I'm assuming they are – that all those sources of information need to be spelled out in the assessment and evaluated for inclusion, I'm okay with that. The stock structure one I'm not okay with; that is going to be a problem. If we come forward with another Southern New England stock assessment which is from Cape Cod all the way down to where Pete Himchak talks about, we're going to have all the same problems all over again. I think that has to be in there.

MR. CARLONI: We're always looking at any new information that is coming out as to the lines drawn up for a stock and any new information that would change that. I personally don't see a problem of us looking into that. This is a heavy workload here, but my assumption is we're going to get the same answer from the data that we have now, and that is why it was originally drawn up as Southern New England. I don't think a lot has changed since then, but we can certainly talk about it on the technical committee level.

MR. GIBSON: Well, I listened to a paper at the Shell Disease Symposium about lobsters in Rhode Island Sound that were different than lobsters in Narragansett Bay. I think some things have changed in terms of our understanding. I look forward to your report on that.

CHAIRMAN GROUT: Okay, the basic modification you made to one was making it a little bit more organized is what I saw, but at this point you're

comfortable with the way three is written to get information out?

MR. GIBSON: I don't like it, but it's up to the rest of the board. I'm only one vote.

MR. HIMCHAK: I'm just afraid that we're going to be back arguing the same points for the Southern New England stock, and at some point we're – I've seen powerpoint presentations and have had them sent to me from workshops on populations within the Southern New England area that are biologically and socially segregated from others either due to natural barriers or behavioral issues. We need to do something on a finer scale than the whole Southern New England area.

MS. KERNS: If the board wants us to change the parameters in which we use to define the stock units, which we have set already, then they need to let us know now; and if we're going to change those parameters, I think that's a heavy enough lift for the stock assessment committee in which we would delay this assessment. The current parameters that we're using now to the technical committee's knowledge there has not been additional data brought forward to the technical committee.

Now, there may be some additional information on different types of parameters that have come out at these other meetings, but those are not the parameters that we're using to define biological stock units. If we need to change that and the board does not want to delay the assessment, then we're going to need some heavy lifting from those non-technical committee members and from those individuals that want us to make those changes to help the technical committee out to go forward.

Making a change to the parameters that we use to define biological stock units is a big job. We try to make it clear that the stock assessment committee and the technical committee has a very large load as it is with these terms of reference, and so any additional big job we would either have to take something out or delay the assessment.

MR. HIMCHAK: What does term of reference number three mean, then, when you start talking about developing effective exploitation for stocks and substock areas?

DR. NESSLAGE: The technical committee talked a long time about whether or not we could apply the University of Maine Model at a substock level. At the end of the last benchmark review, I attempted kind of a draft preliminary run for Area 514 and for

Long Island Sound just to see whether or not it would work. I was not terribly successful.

Now, I didn't spend a ton of time trying to tune that model, I admit. It was one of those things we tried right before peer review in case someone asked us about it. It would require a lot of very specific information from each one of those areas. I guess the technical committee then kind of decided that perhaps applying this monster model to the substock areas may be a bit of overkill.

That's where we're coming from with this term of reference in that perhaps we can apply trend analyses, something like we've seen with – well, you'll see tomorrow eel and river herring have used ARIMA. We have tried other meta-analyses of biological data, survey data to try and get a handle on where the stock is relative to historic levels.

That information may be useful for management. I guess the idea being that we don't think we can pull off a full-blown analysis for each of these substocks. Every time you add another one of these – just to tack on to Toni's comment; that every time you add another stock unit to this analysis, it's a huge lift, so please keep that in mind. As appropriate as it may be, it is a large amount of work.

MR. HIMCHAK: One last point – and I'll cut this short – Area 4 is a huge area, okay, geographically. I don't know how many square nautical miles it is. The fishery is in the mudhole. They're all in the mudhole, on the rim, and so it's like a distinct – it's a distinct bottom type that the lobster – I mean, where is the recruitment coming in that is supplying the mudhole. They're doing great out there on their lobster fishery.

When I see issues like that and then see what we had with the recruitment in Buzzard's Bay and Long Island Sound and everything, it's like I can't reconcile the two, and it's like what is going on in the mudhole or out in Area 3? Are we all tied into poor recruitment in Buzzard's Bay and shell disease? That is the way the Southern New England output is going to portray us and nothing is going to change, but we do have sea-sampling data.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, it seems like one of the other options is to ask the question why the board couldn't make a policy decision to just change the line.

CHAIRMAN GROUT: It's something to consider. Pat.

MR. AUGUSTINE: Mr. Chairman, we're seesawing back and forth. I listened to Mark Gibson make some comments about some reports he has read recently. My question would be have those been peer reviewed? Should they be appropriate? In response to Pete Himchak's comments, if not now when.

Maybe we've got to go back and look at the terms of reference and knock something else off; but if we're going to end up approximately where we are with an assessment of the overall stock of the last one, of what value. There are obviously enough questions that have been raised and put on the table that it's worth, in my humble opinion, to delay if we have to and make sure that we have established the right terms of reference, that we have taken out those areas that are not necessary at this time and the new areas are areas of a new assessment or paperwork that has been put on the market that, again, have been peer reviewed that we really should look at.

It has been a long time in coming to do this benchmark and it's a lot of work and there is a tremendous amount of effort that the technical committee is going to have to put into this. But at the end of the day are we going to end up basically where we were? You said you looked at one model and tried to fit it.

It took time and you're going to look at several other models to see if you can mix and match. The real question is if there is more appropriate data at this point in time that we should really consider before we take the next step I would move to table – or not table it but to postpone this next step before we go down this road and six months from now or a year from now end up about where we are with Peter still being able to say we've got data that shows that we have a unique area by itself here and we're lumped in to a body of animals that is inconsistent.

It doesn't fit; we've mixed and matched; we've pulled a big area together for convenience purposes, and that's what it comes out to be. I don't mean to preach. It just seems to me the technical committee's time is so valuable for the effort that they have to put in here, to have them spend time doing parts on the terms of reference that may not adequately give us what we need.

It may make it easier; but with that uncertainty, I really think we have to take a hard look. Again, the question I ask is have those documents or papers that Mark Gibson mentioned, have they been peer reviewed or have we taken a date certain and have

said this is the deadline, we're not going to look at anything after this date. If that's the case, then that's another issue by itself. That's my concern as a board member here.

I do think that our technical committees are so stressed for the amount of effort that they have to put in and the work they do, and they're all dedicated, every single one them on every single species, this one I think is extremely important because had we taken a different decision – the board had taken a decision earlier last year to literally put the Southern New England people out of business, lobstermen out of business on some – excuse my humble opinion – some assessment that this is the case and that it is basically the lobstermen's fault because the stock is doing what it is doing, when in fact it's a combination of several issues.

That's my concern, Mr. Chairman, and I hope someone looks at this whole process before we just say let's approve the terms of reference and move forward and find out six months or a year from now we have not really gained any ground. Thank you for listening to me, Mr. Chairman.

MR. McELROY: Mr. Chairman, in reference to what Mark was referencing and Pat was just questioning as to those studies that show we have sub-populations, there is a scientist by the name of Jelle Atema – and I might have mispronounced his name – who has been doing DNA studies on lobsters. His report is currently being peer reviewed. I don't think the peer review has been completed, but it's underway. His DNA studies show that there is a clear difference between Western Long Island Sound lobsters and Eastern Long Island Sound lobsters, Block Island Sound lobsters, Narragansett Bay lobsters and Buzzard's Bay lobsters and Maine lobsters.

He has looked at some of those and all have different DNA characteristics. As a fisherman for 37 years, I have been able to, down through the years, fish across Area 2. Within that, Emeli has found various sub-populations. As an observant fisherman, we have been able to see – you look at a guy taking out at the same weigh-out station and you can look at the lobsters and they're different.

You can tell that's a Coxes Ledge lobster, that's a Narragansett Bay lobster, that's a Block Island lobster, and now the DNA work is showing that is absolutely the case, that they are different, they are distinct. If we try to say that all of Southern New

England is the same, we're going to make a horrible mistake.

I keep going back to what Pete Himchak said at one of the very earliest meetings when we were discussing this, and his comment was how in the world can lobsters that are off of the New Jersey Coast in deep water repopulate Long Island Sound, Western Long Island Sound? The scientific answer is they can't; it isn't going to happen.

If we're setting up a stock assessment that is going to push us right down the same wrong path that we went before, we're not doing anybody any good. Like Pat just said, the time that the technical committee has to devote is valuable time and we can't have them running up trees. We already know that there is some differences; so to push us into the same circumstance where we can't acknowledge the reality that things are different there, we're making a terrible mistake. Thank you.

CHAIRMAN GROUT: Josh, do you have a response to that?

MR. CARLONI: Just a quick response; there are a lot of questions out there with lobster and unfortunately we don't have all the answers and we're doing our best. Unfortunately, we're dealing with lack of funding in a lot of areas as well. From my standpoint, of course, we can look at it, but I think with the lack of data it's going to be really hard to make that case. The papers that you spoke of, the technical committee will be looking at those and looking at all the current research that's out there.

MR. SIMPSON: I think everyone appreciates the problem that we're all facing and the technical committee is facing. There are just limitations to the level of geographic specificity that we can do any kind of full-blown, analytic assessment on, so I appreciate the approach they're taking that they will try to go for some what I see as a big picture view for Southern New England/Mid-Atlantic area, but then do what they can to provide insight into a finer spatial scale for management purposes.

I think that is the thing is probably the next time we come around for an Addendum XVII kind of what are we going to about it type of action, we will probably be relying pretty heavily on that finer spatial scale and probably tweaking based on the kinds of comments that were just made here. I mean it's evident in little Long Island Sound that things really are different west of the Connecticut River, for example, versus east of the Connecticut River, and so

there is probably a different prescription for each of those different cases.

I think looking ahead the management is probably going to rely more heavily on the detail that you were able to provide – the assessment committee is able to provide on those finer scales and it will be taken in a broader context of the overall Southern New England assessment, but you can't will this stuff to be.

MR. STOCKWELL: Mr. Chairman, I certainly appreciate the comments and concerns of Southern New England and the Mid folks on delaying the assessment, but I have an even greater concern about delaying and potentially impacting the board's ability to continue to manage the Gulf of Maine fishery as its current high level of catch and abundance. We have got a good thing going right now; and without timely assessments to help guide us in the future, we have a risk of jeopardizing that. I'm not of the science mind that many others around the table here right now, but we need to move forward with something.

DR. LANCE STEWART: I was just going to add my two cents to the different stocks of American lobster. There is a lot of data going back to the seventies; tagging studies that have shown different migrational trends at different seasons of the year and a definite separation of several Southern New England stocks.

Millstone Point Nuclear Power Plant data for 30 years shows a separation and migration trends and affinity for different water temperatures. I am glad to see that Jelle Atema's DNA work kind of put the icing on the cake, that really does show how we have behavioral trends and different population segregations; especially as Peter is mentioning south of Hudson Canyon, entirely different resettlement area due to water-borne larval settlement and kind of an isolation of a stock. These things do exist and there is a lot of old references and literature that could go to the technical committee's purpose.

MR. McKIERNAN: If the premise is that we've got these stocklets, then we've got a real problem if we're going to locally deplete the stocklets. We can sit around and say, well, we want more refined analysis, but are we really ready to manage lobsters on the scale that is being talked about here? I don't think so. If we were, then we'd be closing Buzzard's Bay because it is practically abandoned of lobster. We'd close Western Long Island Sound or we'd be finding all these little discrete areas. I'm not sure we're ready for that as managers. Be careful what you ask for.

CHAIRMAN GROUT: Okay, Lobster Board, we've had a lot of discussion on this and some concern that has been brought up. Are you comfortable with Item 3; will it get at what you want or Vince has also made a suggestion that maybe this is a policy decision that we can make. What we have as a task here is to approve terms of reference for our stock assessment; and so a question for you is are you satisfied with what these terms of reference are right now? Dave.

MR. SIMPSON: With all of the context of the discussion we just had in mind, **I would move to adopt the terms of reference as presented by the technical committee.**

CHAIRMAN GROUT: And Pat is going to second it.

MR. AUGUSTINE: I will, Mr. Chairman, as long as the comments, as Mr. Simpson noted, and the technical committee – and, John, you responded you can highlight those four or five areas where you're going to put some special attention to, and I'm sure you'll capture that, Toni, so that they are a part of the document and then I would definitely second it.

CHAIRMAN GROUT: I am going to turn to the technical committee chair and to Genny Nessler and also Toni and make sure that they're clear on what you would like them to do.

MS. KERNS: I'm looking at Genny, Pat, right now, and she is the contributor to these as well as some board members to these TORs, and I am not sure where I would change the language in the current TORs as it is to get at your highlights that you just brought up. If you want us to change language here, I would need some specifics.

MR. GIBSON: Mr. Chairman, based on what I'm hearing from staff, I think I need to move to postpone adoption of these until the summer meeting so that we can see the fleshed-out clarification we have been talking about. It is clear at your table they're not clear as to what those are and I don't think we're going to get to those on the fly today. **I would move to postpone adoption of the final TORs until the summer meeting after we've had time to flesh these out.**

CHAIRMAN GROUT: Is there a second? Pete seconded the motion. Ritchie and then I've people all over the board.

MR. G. RITCHIE WHITE: Mr. Chairman, I'm not in favor of delaying, but if we do delay I hope the maker of the motion to delay will give a specific task to the technical committee so they will come back with an analysis of exactly what you want, that we're very specific to them in our direction. Thank you.

MR. ADLER: Mr. Chairman, would it be possible that if the motion to send it forward gets the technical committee going on what they have written and that if there were some additional things that the board would like for them to look at, they could be handed in at the August meeting but at least it gets the technical committee going with what they've got already.

CHAIRMAN GROUT: In response to that, I'm going to ask the technical committee a question. Do you need to know where you're going with the stock boundaries and the analysis, that you need to do that before you start work on the stock assessment or can you do that after you start working on the stock assessment?

DR. NESSLAGE: I'm in the process of working with the technical committee to develop the data base right now, and the first step that we do in that process is to define the stock unit; so if you want different stock units, we need to know now, please.

MR. STOCKWELL: I'm uncomfortable with delaying the process into the summer. My question to Toni is staff workload, timing, how that is going to impact the rest of the issues that everyone is working on. Is it just a three-month delay or is it going to ripple into a further complicated mess than that?

MS. KERNS: Terry, I think it would all depend on how many stock units the board wants the stock subcommittee to put together. The more stock units, the more model runs, the more analysis there needs to be; and do we even have the data to do some of those model runs in a more confined stock unit. For some of them we won't because there hasn't been data collection for long enough in those areas. It could be probably as little as six months.

MR. STOCKWELL: How about you start on the Gulf of Maine?

MS. KERNS: The way the data base is built and how we parse out the data, it's hard to do those piecemeal for some aspects.

MR. STOCKWELL: It's a pretty big piecemeal.

MR. AUGUSTINE: Would it be possible to – and I don't support tabling this either. I think we've gone quite a ways at this point in time, but there were points put on the table, both addressed to Dr. Genny and John and to Toni, that I thought were stated clearly enough that they could be added on to with some detail.

Mr. Himchak just mentioned to me on a side comment that really the board should take a look at what other documents are available that the board may be able to be more pointed. I'm not sure what we're asking to do is create more work. We're asking to be – I'll use the word accurate – be more accurate or more pointed on what data we have and what data we don't have.

I think where Mr. Gibson was going was that if there are units – and I noticed Toni said some of these units are too small and you can't put them together. Well, maybe, Dr. Genny, you can put together those units that are close to each other, if you will, that logically makes sense. Maybe it's different combinations if it's a fact that these are distinct groups and originally they were all put together collectively because we had a larger data base to draw some conclusion from.

If they are distinct sets in each of all these areas, what does it accomplish? Mr. McKiernan says, well, gee, if we do it separately we might have to I guess close down some of those areas – well, maybe we do, maybe we do, and I think that's something that the board has to consider at a later date. But right now we're trying to get at – as I understand it, we're trying to get at the root of the problem.

You're trying to come up with a benchmark, an assessment; and if we're putting apples and oranges together, what is going to be different with this assessment than we've had in the past? So, take the terms of reference; if there are two or three items that board members have asked John and Dr. Genny and Toni to look at, can you identify one bullet, two bullets or three bullets that would be added to the terms of reference that would satisfy the board's need, that would help us point you in a different direction that will give us more valid information. I can't say it any clearer than that, but I surely would not support tabling it; if it's two or three items that we would like to have addressed that quite frankly you will not be able to give us any better information we make this decision two months from now.

MR. GIBSON: In response to Ritchie White's question on what my term of reference would be, it would be for the technical committee – you can start

your data compilation tomorrow with the existing stock structure, but the term of reference I'm looking for is that within the existing Southern New England stock area that has already been specified relative to the past assessment with the Gulf of Maine Model; is it possible to specify within that substrata or strata within that, it receive special treatment within the overall assessment.

I point to the tautog example. We assessed tautog on a coast-wide basis, but where data is available we create a substratum within that and allowed it to be assessed on a smaller scale. That's the term of reference I'm looking for; and if that can be done, I'd be happy to withdraw the motion, but I don't think Item 3, the way it's written right now, has the rigor necessary to give us the information we're going to need. That's the concept I'm trying to look at.

You do your Southern New England assessment the way you have before with your new pieces of information, ventless trap surveys, whatever they are, but then evaluate whether it's possible to create a cell within that. I'm sure the UMM Model can do that sort of thing. I get that's it work, but you can probably create an Area 2 or Southern New England cell, you can probably create an Area 6 cell, and they have to spin inside the big model that is currently defined.

You can start your data compilation tomorrow; and whether or not you have subsets of data, I think that has got to be a term of reference. I mean we've put a lot of money and effort into this advanced stock assessment model. We've got to use it; we've got to use it for what its capabilities are.

DR. NESSLAGE: Tell me if I'm misinterpreting your statement, please, but I think what I hear you are asking for is using the University of Maine Model with sub-regional dynamics within it, that would be enormous. I don't want to sound like a whiner and I think it would be a fabulous exercise.

I would like to see that as well, but that would be several years in the making, I anticipate. It took us multiple years, what, five or six years to develop the University of Maine Model for one stock. In addition to that, I don't think we have the data at the spatial resolution that you're asking for to parameterize that model. If we could, we would love to build one for the Gulf of Maine. It would have had inshore/offshore dynamics; figure out what is going on in 514.

We would love to do all these things; but as data rich as lobster is and the number of bio-samples we collect and the number of surveys that are conducted, we don't have that information at the spatial resolution to be able to do that sort of substock dynamics modeling. I wish we could but we don't, I don't believe; and to build that kind of model would take years.

MR. GIBSON: Don't we think that is what should come out of – that's why the term of reference should be there so that the group can evaluate and say we don't have the data to do this; sorry, we couldn't fulfill this term of reference, here is the research and data needs; you need to do that. I mean I'd much rather see that answer in the stock assessment and have the peer reviewers say it than just discard the notion at the table.

MR. McKIERNAN: Genny, wasn't Area 514 isolated in the last stock assessment with comments from the technical committee about different trends, so isn't that what we're talking about? I mean maybe it can be as simple as just as you develop or as you collect all of your data sets, if you're seeing anomalous trends, maybe you point those out on a sub-region basis as opposed to running a full model in those sub-regions.

DR. NESSLAGE: That's kind of what we were trying to get at with number three; and I'm not sure which part of the wording is throwing folks off. That's exactly our intent is to identify areas where we can, where the data are available that seem to indicate that there are different things going on compared to the coast-wide trends.

I think it's important to take a look at coastwide; it's important to take a look at Gulf of Maine, Southern New England and Georges Bank trends and then also where we can take a close look at the data as they're available at substock regions, but I can't promise that we can build a University of Maine Model with substock dynamics and all the bells and whistles in a reasonable timeframe for you to be able to keep moving with management.

That was our intent and perhaps if there is some way we can reword number three or whatever number it is now, that would be really – I think that's the level the technical committee is at and that's what we're trying to do. If you can provide any wording suggestions, we'd be happy to entertain that, of course.

MR. SIMPSON: I appreciate what she is saying and I will just say understand given our Addendum XVII

experience, we are more than likely to try to manage by these finer scales; so anything you can give us at the finer scale is what we're after.

CHAIRMAN GROUT: Is that clear? **All right, we have a motion to postpone until the summer meeting acting on these terms of references.** Any further discussion on this? Do you need time to caucus? All right, I'm going to call the question. All those in favor raise your hand; all those opposed; abstentions; null votes. **The motion fails one, nine, zero, zero.**

**We now have the main motion to move to adopt the terms of reference as presented by the technical committee.** Motion by Mr. Simpson; seconded by Mr. Augustine. Any further discussion? Do you need to caucus? Seeing nobody shaking their head, all those in favor raise your hand, ten in favor; any opposed; null votes and abstentions. **The motion passes ten, zero, zero, zero.**

Okay, now we have terms of reference for the peer review panel. Do you want Josh to go over these – they are on the CD – or are you ready to approve them as is or would you like to go over them? **I would like a motion to approve the draft terms of reference for the peer review panel.**

MR. SIMPSON: **So moved.**

CHAIRMAN GROUT: Seconded by Pat Augustine. Discussion on the motion? Any caucusing on this? Okay, all those in favor raise your hand; all opposed; null; abstentions. **The motion carries ten, zero, zero, zero.** David, is this to the next issue? Okay, come on up. I'll give you a chance since I didn't give the public a chance to discuss our vote on this.

MR. SPENCER: Mr. Chairman, this may be a little bit outside the borders of the terms of reference, but I think it's critical especially given the tremendous lack of data available for a stock assessment in federal waters. As with many other stock assessments in other fisheries now, there is a caucus of industry with the technical and/or stock assessment committee prior to doing this.

I think even though this isn't hard scientific data, I think it's anecdotal information that if you're looking at trends, the trends start on the water and fishermen are the first people that see this. I think it could add a lot of value in helping make the assumptions that the scientists have to make for the information going into the stock assessment model. I guess my question is has there been any discussion or is there any intent to

have an industry/technical committee meeting prior to the assessment? Thank you.

MS. KERNS: David, as a part of the data workshop any individual can bring forward data to be reviewed as part of that, and we'll send out notices of how that data should be submitted and the timeframe for it to be submitted. Any individual can come to that data workshop and participate. There are only some times when we have to ask folks to leave if there is confidential data being presented at that time.

MR. SPENCER: Okay, thank you. I guess my recommendation would be this should be something that is talked about and explored and I think not done just formally to caucus people. I think there are a lot of trends and it's over a time series, a lot of uncertainties can become a little more certain if that dialogue is created. I think certainly industry wants to see the best possible stock assessment and feels that their involvement on the front end would be very beneficial. Thank you.

#### **DISCUSSION OF POSSIBLE IMPACTS OF POTENTIAL COUNCIL ACTION IN CLOSED AREA II**

CHAIRMAN GROUT: Thank you, David. The next issue is there a letter in your meeting materials under Item 7 here that I sent to the board and to the council back in January. Basically if you can bring it out and open it up to the tables and graphs that I associated with this, I had an offshore lobster company that works out of New Hampshire come to me.

When they heard that the New England Fishery Management Council was going to potentially be looking at moving both the habitat closure area in Closed Area 2 and the groundfish, and there was also a potential that we would be looking at evaluating whether there still needed to be a groundfish mortality closure out there out light of the fact that we were under catch shares, they brought a video to me showing me pictures out on their boats of numerous berried females coming up in their traps. They brought in logbooks, VTRs, showing the amount of lobsters that were being discarded out in that area. What I had my staff do is take a look at all the VTR data and not just from that company that occurred out in Areas 561 and 562, which is out in Closed Area 2. Indeed, it did show a significant increase in the amount of discarded lobsters going on during some of the summer months out there.

Sometimes it was actually exceeding the amount of lobsters harvested. I then was looking for some sea-

sampling data and the Atlantic Offshore Lobstermen's Association had actually been doing some of this sea sampling with their captains recording some data. It was indicating a very high percentage of those lobsters – 90 percent were females and 62 percent of them were egg females.

The concern here is that if we were to open up – if the council in the future were to take management actions to open up that area to bottom-tending mobile gear there may be an impact on berried female lobsters out there because there seems to be an indication that there is a large concentration of them out there at certain times of the year.

I wanted to bring this up to the council's awareness so that when they make their decisions on whether to open this area up or not, they take this into consideration. I wanted the Lobster Board to be aware of this in case the council didn't take action or when they took their action and they were to open it up, that we may need to take some kind of management action if we desire to protect some of these berried females that are in high concentrations out there.

I wanted to ask, first of all, Terry, as chairman of the groundfish committee; do you know where the groundfish committee and the groundfish PDT is at on evaluating whether we still need the groundfish mortality closures out there?

MR. STOCKWELL: I'm going to give a little bit of an overview to what Doug has been talking about. This last fall the New England Council prioritized an analysis of all the groundfish closed areas and all the habitat areas with the goals of opening up the areas and closing areas consistent with the new SASI Model and groundfish spawning measures.

It's a joint action between the groundfish committee and the habitat committee. Frankly, it's moving at the speed of metal rusting primarily because of higher council priorities and higher groundfish committee priorities, including Gulf of Maine cod, Georges Bank yellowtail; implementing a cost-effective monitoring program for the groundfish fishery in 2013; and the upcoming specifications for 2013 and '14.

We've had some staff reconfigurations, but Groundfish PDT mentioned to me last week that he anticipated beginning work on this again some time in the latter part of the fall realistically. Doug did present this letter to the habitat committee and it didn't go over really well. One of the questions that

was asked – and I think I’m going to pose that to Toni and other folks around the table – is there any other data that we can bring to the council that will support the information that Doug and the Lobstermen’s Association brought up, because we’re trying to be a data-driven process here.

CHAIRMAN GROUT: Well, I can tell you that I don’t think to my knowledge there is any state-run sea-sampling program out in that area. We do have the VTR data which clearly we’ve at least through August of 2011 have tapped into that data completely. Another piece of data that I would like to possibly task our technical committee with is what is the impact of mobile-tending bottom gear on lobsters and berried female lobsters in particular? Is there any kind of a negative effect of those gear types on lobsters and female lobsters with eggs in them? Unless people have any objection to that, I’d like to at least task the technical committee with that, to get that piece of information. Bill.

MR. ADLER: Yes, I support that completely. Remember, what we’re trying to do here is all the rules we make try to make more eggs. I’ve read your letter and I’ve read the thing. It’s not all year. It’s just a certain time that perhaps the council, when they do get rolling on something, could consider getting that information; and if they have to open it up, they could open it up at a different time and just keep it closed as a compromised way of going.

We can’t have a massacre of eggers, not intentionally, but a massacre of eggers when we’re trying to produce eggers for the stock. I don’t know whether it’s impinging upon this board to send a letter to the NEPA process or whether it has even got to that point yet. I think we are concerned or we should be concerned; and at the appropriate time if we need to make a statement I think we should because we are managing lobster and we’re under a heck of a lot of trouble all over the place and we don’t need this. Thank you.

MR. CARLONI: I would just caution the board when looking at this on a monthly basis that this – and the technical committee needs to look at this closer, but this monthly layout of discards in certain months could be a reflection of the effort in those months as well and not a reflection of actually what is out there. I would just caution by doing a season closure that we don’t have information that I know of to show that they’re not actually there. We could put an effort standard on this or something of that nature; but as it stands right now I would caution against.

MR. SIMPSON: I think it’s good information to bring forward and for the council to be aware of and for the board to be aware of. It sounds like the New England Council is probably a few years off from – two or three years, anyway, from making any kind of decision on this, and that will give them plenty of time to think about all the ramifications of opening those areas including what that does for efficiency and overall effort that is expended out there; where that effort will come from which may provide benefits to egg-bearing lobsters that we’re not even talking about now. I think this has plenty of time and need to play itself out a little further.

CHAIRMAN GROUT: And just a response to that, while I agree with you that it could take as long as two or three years, I think the intent of the council in their priorities is that this might be something that might be implemented as soon as next year. At least that has been what the priorities were. Dennis.

MR. DENNIS ABBOTT: Mr. Chairman, is there any evidence that these egg-bearing females that show up there at any point in time have been V-notched indicating they have migrated from Gulf of Maine out there?

CHAIRMAN GROUT: The data that we looked at didn’t include that because VTRs don’t identify V-notch. Now, Bonnie, do some of your captains record V-notches? Just so I can repeat what you said, it is not in the data that was presented to me, but you may have the data.

MS. SPINAZZOLA: And I will get it to you.

CHAIRMAN GROUT: And she will get it to me and I will give it to the technical committee.

MR. STOCKWELL: Despite this being a council priority, I think implementation next year is a little optimistic given all the other council’s priorities. It is definitely on the table. I guess a question or a thought for the technical committee is to network with the observer data. The groundfish boats that work in that area outside have around a 30 percent rate of coverage and they should have all the bycatch data for you to work with.

MR. McELROY: Mr. Chairman, as a lobsterman this is probably going to sound kind of funny, but just because lobsters are bearing eggs in an area that draggers go through doesn’t automatically mean that the draggers are going to catch them. I wouldn’t feel comfortable as a lobster board member recommending that we tell a bunch of draggers

that they can't come into an area unless we can actually ascertain that is going to create a problem.

I have been in the business for a long while and typically what happens at least Southern New England is when the lobsters are available for potting, the draggers don't catch them; and when the draggers are catching them, the trappers aren't. It seems like you'd think that they might be available and vulnerable at that point, but that doesn't guarantee it.

To suggest that a piece of ground that could be very valuable for the ground fishermen be held in abeyance because it might be a problem for lobsters, I don't think reaches the level of a recommendation by this board. We need some concrete evidence that in fact there would be the slaughter of eggers, and I for one don't think that would occur, and I'd be reluctant to support it.

MR. WHITE: Mr. Chairman, would it make any sense writing a letter to the council expressing our concern for the area and saying that we're looking at accumulating additional information and that we would certainly like the chance to give input if and when this process moves forward.

CHAIRMAN GROUT: That certainly is an option that we could do if the board feels that is warranted. Steve.

MR. TRAIN: Mr. Chairman, I could echo a lot of what Bill said. I'm a lobsterman and I'm also a ground fisherman and I go shrimping. A properly rigged net isn't going to dig much. A lot of them are going to get out of the way. The size mesh we have now, you're not going to see too many of the smaller eggers, anyway. I know in Georges you see a lot of big lobsters.

We work around draggers all the time when we're lobstering around the shrimpers. You don't get them the same way. If they're trapping they're not getting in the net. If the guy is getting them in the net, we're not always trapping them. Just because they're there when the trappers are seeing them, it doesn't mean they're going to be there when the groundfish boats want to work; and even if they are, it doesn't mean they're going to catch them.

CHAIRMAN GROUT: Anything further? Would you like a letter; is there any objection to a letter being sent? I see no objection. We will send a letter to the council to consider this and we'll task the technical committee with looking at the effects of

mobile-tending bottom gear on lobsters and berried females. Bob.

MR. ROBERT E. BEAL: Just to be consistent with the process, we usually send those letters through the Policy Board and then on to the council.

CHAIRMAN GROUT: That's a good point. The only thing we have is reporting on the implementation of Amendment XVII measures. Yes.

## OTHER BUSINESS

MR. HIMCHAK: Mr. Chairman, I'll be very quick and very brief here. I want to bring up some issues particular to Area 5 in lobster management; and if you read the proceedings from the February board meeting, Pages 21 to 23, it talks about de minimis requirements in states that are de minimis and that are fishing in Area 5.

It seems like nothing was really resolved at that point on if they didn't sea sampling how would you evaluate a reduction in that area. In some of these states they had confidential landings and they were actually higher than what New Jersey's landings are in Area 5. I see Delaware and Maryland here, but we are going to implement mandatory V-notching this July.

It's either this July or maybe a couple of weeks earlier than that when the document is filed. This was a recommendation of our Marine Fisheries Council Lobster Committee, was that we would put in mandatory V-notching for Areas 4 and 5 this year and then have a seasonal closure of February and March in 2013. We have sea sampling scheduled for 2012 for Area 4, eighteen trips; in Area 5, six trips. And, of course, we're going to raise the Area 3 minimum size gauge.

Again, I don't know – and if you read the proceedings in the February board meeting, we don't know what de minimis states are going to do as far as sea sampling and validation of the success of the V-notching. And if we can't pass through technical committee approval, then they have to fall back to the April 29 through the month of May closure, which is disastrous for the black sea bass fishery. When our council meets May 10<sup>th</sup>, we will our regulations finalized and I will reach out to the other states in Area 5 to see – although I don't know what they're required to do.

MS. KERNS: Pete, they're required to put in the same regulations that you have for Area 4 and the

onerous is on those states to prove to the technical committee that it did in fact do the reduction that it is supposed to do. If not, then you would fall back to the closure. The closure is for no permitted take of lobster. They would be able to continue to sea bass fish. They just would not be able to bring any bycatch in of lobster.

MR. HIMCHAK: Okay, that helps.

MR. SIMPSON: Along those lines, I was curious with the loss of interjurisdictional fisheries funds and a lot of states including Connecticut rely on that almost exclusively for lobster research and monitoring, how will that affect some of the states that are moving forward or LMAs that are moving forward with V-notching and their ability to verify that the appropriate amount of V-notching is taking place?

CHAIRMAN GROUT: Any of those states want to respond to that who were putting forward V-notching? Toni, do you know the answer?

MS. KERNS: We went over this discussion with the technical committee on Tuesday on what programs were going to be subject to potential no longer programs for next year. Across the board the ventless trap survey and port sampling would be the first to go for them, but sea sampling would still be a priority for the majority of the states.

There may be one state that thinks that they would still be able to continue to do the ventless trap survey next year unless other funding comes forward. It's important to note that to the board because it's a survey that we're putting a lot of effort into for this new assessment that we may not have any longer. Rhode Island may have some sea sampling?

MR. CARLONI: No.

MR. GIBSON: Our sea-sampling program is funded by an FTE supported entirely by IJF; and with that zeroed out as of May 1, we have no funds. We're looking right now to how we can reprogram what we have to get through 2012; but lacking a replacement or a reinstatement of that, we might not have a sea-sampling program in 2013.

MS. KERNS: So that will be a problem for validating the V-notching program for Area 2.

## ADJOURNMENT

CHAIRMAN GROUT: Any other comments on this issue? Any other items? So moved to adjourn.

(Whereupon, the meeting was adjourned at 6:03 o'clock p.m., April 30, 2012.)

*Atlantic States Marine Fisheries Commission*

**DRAFT ADDENDUM XVIII 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*



*ASMFC Vision Statement:*

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

May 2012

## Public Comment Process and Proposed Timeline

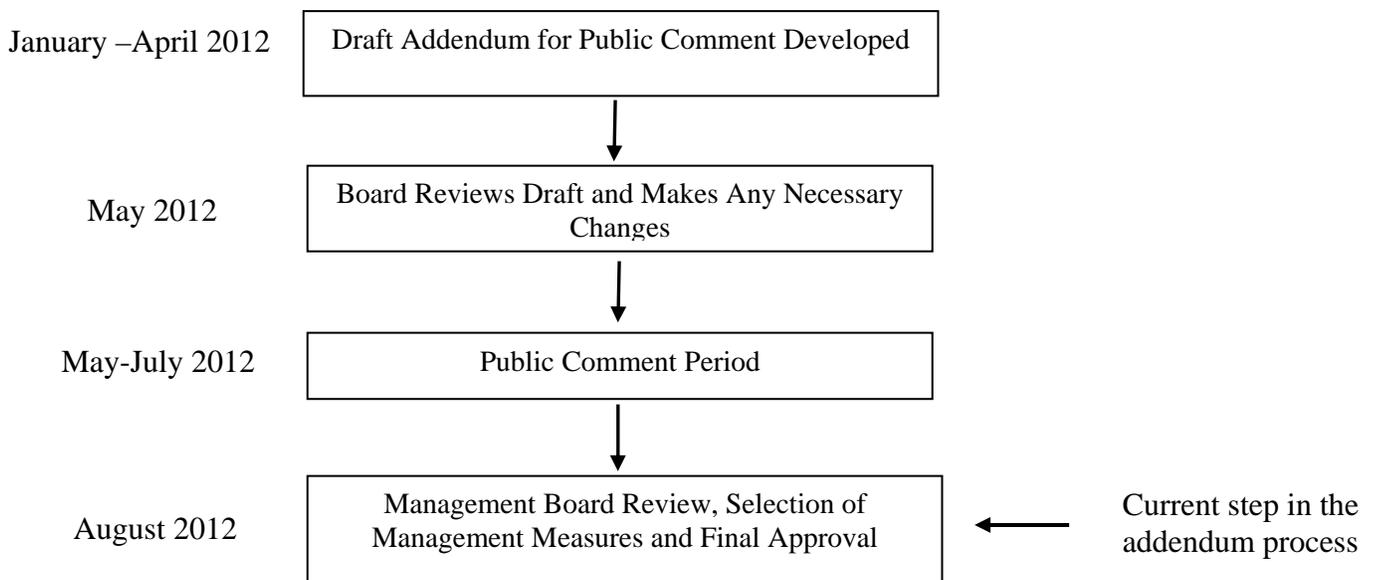
In December 2011, the American Lobster Management Board approved a motion to initiate the development of an addendum to the Interstate Fishery Management Plan (FMP) for American Lobster to respond to the poor stock condition in the SNE lobster stock area. The Board directed the Plan Development Team to scale the size of the SNE fishery to the size of the resource in the SNE stock. 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 July 10, 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.

Mail: Toni Kerns

Atlantic States Marine Fisheries Commission  
1050 N. Highland St. Suite 200A-N  
Arlington, VA 22201  
Fax: (703) 842-0741

Email: [tkerns@asmfc.org](mailto:tkerns@asmfc.org)  
(Subject line: Lobster Draft  
Addendum XVIII)  
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 goal may be different in each LCMA depending on the condition of the fishery and amount of unused traps in each area. 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 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.

## **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 this draft addendum to scale the SNE fishery to the diminished size of the SNE resource, including an option that would result in a minimum reduction in traps allocated by 25%. This addendum proposes a consolidation program for LCMAs 2 and 3 to address latent effort (unfished allocation) and reductions in traps fished.

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 LCMAs will have a finite number of traps that can be fished based on the total allocation of individuals qualified to fish in the areas. While difficult to calculate and confirm for all areas and jurisdictions, it is estimated that the effort control plans allocated more traps than were being fished at the time the allocation schemes were adopted. The effort control plan for Area 2 was adopted in the middle of the decade long decline in the fishery. Because the fishery was already seeing substantial attrition, the initial allocations in LCMA 2 and 3 created a pool of latent trap allocation that could be fished in the future. The number of fishermen and traps fished was substantially higher in the late 1990’s and continues to decline through the present day. Nevertheless, the proportion of trap allocation that is unfished is significant and continues to grow (Table 2).

Table 1. Initial Trap Allocation approval for each LCMA

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

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

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

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

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

Through Addendum XII, it was understood by the Board and NOAA Fisheries that before transfers would be allowed or resumed two things must occur: 1) NOAA Fisheries must adopt complementary rules to allocate traps for federal permit holders in LCMA 2 and Outer Cape Cod (OCC) and 2) a joint state/federal database must be created to track trap allocations and transfers among the permit holders for these three areas. NOAA Fisheries is currently in rulemaking to consider federal rules that would allow trap allocation transfers among LCMA 2, 3, and OCC permit holders, as well as establish complementary LCMA 2 and OCC trap allocations for federal permit holders in these areas. It is expected that the trap allocation transfers could happen for the 2013 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 2012.

The effort control plans in LCMA 2 and 3 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), 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%.

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**

### ***Trap Allocations***

Trap allocations are the only aspect of the current regulations that provide a means and mechanism to allow the consolidation of the industry. The industry will need to be reduced commensurate with the available resource in SNE, which is estimated at 50 % of its historic level according to the last assessment. The Board will update this value when the next assessment is complete in 2014. Industry members feel it is critical to maintain the economic viability of a downsized fleet, therefore it is necessary to gradually consolidate fishing rights on fewer vessels.

In order to facilitate the downsizing process, each allocation of qualified traps will need to be reduced. This would be effective when trap transferability is fully implemented by all management agencies, allowing some members of the industry to sell their allocations of qualified traps and exit the fishery, and allowing others to purchase traps and maintain full allocations. The current maximum trap cap is 800 traps in LCMA 2 and 2000 traps in LCMA 3.

### ***Trap Banking***

Trap allocation banking will allow a permit holder to obtain trap allocation from other permit holder in excess of the individual trap limit 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, 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 specific for each LCMA.

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

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

The following measures are being proposed for LCMA 2 only

#### **3.1.1 Active trap reduction**

##### **A. Initial Trap reduction**

Trap allocation would be reduced in year one by the percent chosen by the Board (below option). Trap allocation reductions would be from the original allocation that was given to the fishermen in 2007 for state-only permit holders and for federal permit holders the cut would be to the allocation accepted by the permit holder after NOAA Fisheries completes its allocations (it is expected to be complete before the 2013 fishing year). In addition, any other allocation that was obtained by the permit holder subsequent to the initial allocation would also be cut.

Option 1. Status quo: No action will be taken

Option 2. 25% reduction (LCMT preferred option) in trap allocation. Partial trap transfers would not occur until an entity's allocation was reduced by 25%.

Example: If an individual's allocation was 800 traps after a 25% reduction their allocation would be 600 traps, 200 traps will be retired for conservation purposes

**B. Annual Trap reduction:**

Trap allocations would be reduced each year by a specified amount over a period of 5 years. The annual trap allocation reduction will be assessed on both active and banked trap allocations with the annual trap reduction being permanently retired for conservation purposes. If an initial trap reduction is implemented in year one (above option), the annual trap reductions will start in year 2 and continue through year 6 (total of 5 years of annual cuts)

Option 1. Status quo: No action will be taken

Option 2. A 5% reduction in trap allocation per year for 5 years, totaling 25% (LCMT preferred option)

**Example:** The following example shows the reductions that would occur if an individual started with an 800 trap allocation

<b>Year</b>	<b>Starting Allocation</b>	<b>% reduction</b>	<b>New Allocation</b>	<b># traps retired for conservation</b>
<b>Year 1</b>	800	25%	600	200
<b>Year 2</b>	600	5%	570	30
<b>Year 3</b>	570	5%	541	29
<b>Year 4</b>	541	5%	514	27
<b>Year 5</b>	514	5%	488	26
<b>Year 6</b>	488	5%	464	24

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

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

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

Option 2: The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation must choose only a single LCMA that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other LCMAs will be forfeited.

### **3.1.5 Trap Allocation Banking**

Banked trap allocation refers to trap allocation that is owned but may not be fished and are held in a trap allocation banking account. An entity/individual who owns the maximum individual trap cap but less than the total ownership cap in an area may purchase traps from other fishermen and deposit the allocation in his/ her trap allocation bank account until the maximum ownership cap is reached.

Each entity with a state or federal permit for a LMCA is entitled to establish a single trap allocation banking account, for each permit, if the permit is at the area maximum allocation (currently for LCMA 2 it is 800 traps). Each trap allocation bank account will be partitioned by LCMA. An entity's total of active and banked traps may not exceed the total ownership cap for a LCMA (section 3.1.6). Traps in the account may not be fished until activated in accordance with the controlled growth provisions of the proposal. Release of banked trap allocation would be subject to the provisions established by the Addendum. Traps in the account would be subject to trap reductions. A transfer tax will not be assessed on traps activated from the permit holder's allocation bank account to that same permit owner's individual allocation.

Option 1. Status quo: No action (trap banking would not be permitted)

Option 2. Up to 800 traps can be banked by an individual or corporation at a given time (LCMT preferred option).

**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 and 90 traps will be placed into the trap allocation bank account.

### **3.1.6 Ownership Cap**

In order to inhibit the excessive consolidation of the industry, a cap on ownership is proposed. An ownership cap is the maximum number of traps that an entity may own in a LCMA which is any combination of individual allocated traps (active traps) and banked traps. Entity's who own traps above the cap in each area would be allowed to keep their allocations of qualified traps but all transfer of qualified traps after the date of implementation would be subject to the cap (meaning an entity would not be able to transfer more than the cap). *This 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)

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 cap.

### **3.1.7 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 (LCMT preferred option)

### **3.1.8 Transfer Tax**

Addendum IX and XII specified that a conservation tax to be applied on transfers in LCMA 2 is 10%. This addendum is not proposing the change the transfer tax for LCMA 2 but proposes to change the method the Board may take to alter the tax rate.

Option 1: Status Quo: Any changes to the conservation tax would be made through the ASMFC Addendum or Amendment process

Option 2: Allow the modification of the transfer tax rate in order to achieve the goals of the management program through Board action (a single vote at a meeting of the Board). The transfer tax rate may only be adjusted annually between the values of 0-20 %, and will become effective in the following year as part of the next tag issuance cycle.

**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 Annual Trap reduction:**

Trap allocation would be reduced each year by a specified amount, as listed in the options below. Trap allocation would be reduced from the current (2012) permit trap allocation. The annual trap allocation cut will be assessed on both active and banked trap allocations, be LCMA specific, with the annual trap reduction being permanently retired for conservation purposes.

Option 1: Status quo: No action will be taken

Option 2. 2.5 % reduction of trap allocation per year for 10 years (LCMT preferred option)

**Example** of a 2.5% reduction of trap allocation for 10 years for an individual with a starting allocation of 2000 traps

<b>Year</b>	<b>Starting Allocation</b>	<b>% reduction</b>	<b>New Allocation</b>	<b># traps retired for conservation</b>
<b>Year 1</b>	2000	2.5%	1950	50
<b>Year 2</b>	1950	2.5%	1901	49
<b>Year 3</b>	1901	2.5%	1853	48
<b>Year 4</b>	1853	2.5%	1807	46
<b>Year 5</b>	1807	2.5%	1762	45
<b>Year 6</b>	1762	2.5%	1718	44
<b>Year 7</b>	1718	2.5%	1675	43
<b>Year 8</b>	1675	2.5%	1633	42
<b>Year 9</b>	1633	2.5%	1592	41
<b>Year 10</b>	1592	2.5%	1552	40

Option 3. 5% reduction of trap allocation per year for 5 year

**Example** of a 5% reduction of trap allocation for 5 years for an individual with a starting allocation of 2000 traps

<b>Year</b>	<b>Starting Allocation</b>	<b>% reduction</b>	<b>New Allocation</b>	<b># traps retired for conservation</b>
<b>Year 1</b>	2000	5%	100	1900
<b>Year 2</b>	1900	5%	95	1805
<b>Year 3</b>	1805	5%	90	1715
<b>Year 4</b>	1715	5%	86	1629
<b>Year 5</b>	1629	5%	81	1548

### **3.2.2 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.

#### **B. Method to Adopt Transfer Tax Rate**

Option 1: Status Quo: Any changes to the conservation tax would be made through the ASMFC Addendum or Amendment process

Option 2: Allow the modification of the transfer tax rate in order to achieve the goals of the management program through Board action (a single vote at a meeting of the Board). The transfer tax rate may only be adjusted annually between the values of 0-20 %, and will become effective in the following year as part of the next tag issuance cycle.

### **3.2.3 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 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.

**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 LCMAs (area 2, 3, or 4) to fish the traps, the other 2 areas will lose fishing privileges for those traps.

Option 2. The recipient of a partial trap allocation from a permit that that has a multi-LCMA trap allocation would retain the multi-LMCA history. The recipient could fish in any of the LCMAs that the trap history allows. The recipient would be bound by the most restrictive rule when fishing multi-LMCAs.

**B. Full Business Transfers:**

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

Option 2. The recipient of a trap allocation from a permit that that has a multi-LCMA trap allocation must choose only a single LCMA that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other LCMAs will be forfeited.

**3.2.4 LCMA 3 Designation**

Option 1. Status quo: no change to the current LMCA 3 area designation.

Option 2. LCMA 3 Permit Designation

LCMA 3 will be split in the 3 permit designations: SNE, GBK, and GOM. As part of the permit renewal process, NOAA fisheries will require fishermen with LCMA 3 permits to designate if they will fish in Georges Bank, Gulf of Maine, or the Southern New England portion of 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. Fishermen will be bound by the most restrictive rule and trap allocation for the area that they designate into.

The boundary between SNE and GBK would be split by the 70° longitude. Those fishing west of 70° longitude would designate SNE, those fishing east would designate GBK.

The boundary between the GBK and GOM would be split by the 42° 20' latitude, those fishing North of 42° 20' latitude would designate GOM and those south would designate GBK.

### **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.

#### **3.2.5 Trap Cap (Maximum number of traps an individual vessel can fish)**

Each entity/vessel with an LCMA 3 allocation will be allowed to fish their active qualified trap allocation up to a maximum number of traps per year. This document proposes two different trap caps for LCMA 3, one for the SNE portion and one for the Gulf of Maine and Georges Bank portion combined. No single vessel with an LCMA 3 permit may fish more than the maximum number of 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: Annual trap cap as specified in the below table from 2012 to 2023. This trap cap schedule assumes that NOAA Fisheries will implement a 2000 trap cap with the next set of federal rules and also cut allocated traps by 25 % (as proposed in section 3.2.1 of this addendum). If NOAA Fisheries adopts a lower trap cap for LCMA 3 or different trap cut, the schedule will be adjusted accordingly.

Maximum number of traps that can be actively fished in Area 3:

<b>Year</b>	<b>GBK/GOM</b>	<b>SNE</b>
2012	2000	2000
2013	1950	1950
2014	1901	1901
2015	1853	1853
2016	1807	1807
2017	1762	1800
2018	1718	1800
2019	1675	1800
2020	1633	1800
2021	1592	1800
2022	1552	1800
2023	1513	1800

#### **3.2.6 Single Ownership Cap**

In order to inhibit the excessive consolidation of the industry, a cap on ownership is proposed. An ownership cap is the maximum number of traps that an entity may own in a LCMA which is any combination of individual allocated traps (active traps) and banked traps. Entity's who own traps above the cap in each area would be allowed to keep their allocations of qualified traps but all transfer of qualified traps after the date of implementation would be subject to the ownership cap (meaning an entity would not be able to transfer more than the cap). *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. Ownership Cap as specified 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 ten years. If NOAA Fisheries adopts a lower trap cap or cut for LCMA 3, the schedule will be adjusted accordingly.

Area 3 Maximum Ownership Cap

Date	Maximum
2012	2396
2013	2336
2014	2277
2015	2220
2016	2165
2017	2111
2018	2058
2019	2007
2020	1956
2021	1907
2022	1859
2023	1800

**3.2.7 Aggregate Ownership Cap**

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. 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: 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 ownership cap of traps. Aggregate trap caps are specified in the table below.

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.

### LCMA 3 Aggregate trap caps for GOM/GBK and SNE

Year	GOM/GBK	SNE
2012	10,000	10,000
2013	9,750	9,750
2014	9,505	9,505
2015	9,265	9,265
2016	9,035	9,035
2017	8,810	9,000
2018	8,590	9,000
2019	8,375	9,000
2020	8,165	9,000
2021	7,960	9,000
2022	7,760	9,000
2023	7,565	9,000

**Example:** In 2012 an individual would be limited to owning five times the individual vessel allocation (2396) or 11,980 active and banked traps. In 2023 the total aggregate ownership cap for an entity would be set at 9000 traps (five times 1800). Any entity that owns more than the aggregate 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 ownership cap.

### 3.2.8 Trap Banking

Banked trap allocation refers to trap allocation that is owned but may not be fished and are held in a trap allocation banking account. An entity/individual who owns the maximum individual trap cap but less than the total ownership cap in an area may purchase traps from other fishermen and deposit the allocation in his/ her trap allocation bank account.

Each entity with a state or federal permit for a LMCA is entitled to establish a single trap allocation banking account, for each permit. Each trap allocation bank account will be partitioned by LCMA. An entity's total of active and banked traps may not exceed the total ownership cap for a LCMA (section 3.2.5). Traps in the account may not be fished until activated in accordance with the controlled growth provisions of the proposal. Release of banked trap allocation would be subject to the provisions established by the Addendum. Trap in the account would be subject to trap reductions. A transfer tax will not be assessed on traps activated from the permit holder's allocation bank account to that same permit owner's individual allocation.

Option 1. Status quo: No action, trap allocation banking is not permitted

Option 2. Up to 396 traps can be banked by an individual or corporation at a given time

Option 3. Up to 900 traps can be banked by an individual or corporation at a given time

Option 4. Up to 2396 traps can be banked by an individual or corporation at a given time, this is equal to maximum ownership cap (LCMT preferred option)

**Example of banking:** A LCMA 3 fisherman has the maximum trap allocation of 2000 traps. He buys 100 traps from a LCMA 3 fisherman. 10 of those traps will be retired for conservation purposes and 90 traps will be placed into the trap allocation bank account.

### 3.2.7 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 action, no controlled growth provision

Option 2. A maximum of 100 traps could be moved per year (LCMT preferred option)

Option 3. A maximum of 200 traps could be moved per year

## 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

XXXXXX: 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*

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201  
703.842.0740 • 703.842.0741 (fax) • [www.asmfc.org](http://www.asmfc.org)

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**MEMORANDUM**

July 20, 2012

To: American Lobster Management Board  
From: Toni Kerns  
RE: Draft Addendum XVIII to the American Lobster FMP Public Comment

The following pages represent the comment received by ASMFC by July 10, 2012 draft Addendum XVIII to the American Lobster FMP.

A total of 10 comments have been received. Of those comments 7 were individual comment and 3 comments were from organizations.

One Public hearing was held, it was a joint hearing for Massachusetts and Rhode Island. Approximately 18 individuals attended the hearing. In general the majority of the commenters were in favor of the LCMT preferred options within the addendum with a few exceptions.

**Hearing Summary**

Addendum XVIII Public Hearing  
Massachusetts and Rhode Island Joint Hearing  
June 21, 2012  
12 members of industry; 6 State and NOAA staff

LCMA 2 Options:

3.1.1 Trap reductions

Initial reductions 25% reduction in trap allocation: 4 Support option 2

Annual reductions 5% reduction in trap allocation per year for 5 years: 4 Support for option 2

**3.1.3 Trap Allocation Transfers**

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

Support for option 1 status quo designate

2 individuals support for option 2, allow all the history to follow the traps

**B. Full Business Transfers:**

2 individuals support for option 1, allow all the history to follow the traps

**3.1.5 Trap Allocation Banking**

4 support option 2, up to 800 traps can be banked

NOAA is supportive of the process the commission is going through but several of the proposals in the addendum are new since the rule making analysis for transferability in area 2 and 3. NOAA highlighted they may not be done with the first rule that is done

### **3.1.6 Ownership Cap**

4 support option 2, an entity could not own more than 1600 traps (800 active and 800 banked traps).

The group discussed the possibility of buying an additional permit that could not be fished with the ability to transfer traps from that permit to active traps without the conservation tax.

### **3.1.7 Controlled Growth**

3 support option 2, maximum of 400 traps could be moved per year

### **3.1.8 Transfer Tax** (comments from both Area 2 and 3 fishermen)

One person support option one because it gives a fair chance for the public to provide comment.

NOAA supports option 1 to allow for the public review process, they have a concern for annual specs.

Three people supported option one unless there was industry involvement in the decision process of option two. The plans were crafted by industry so there should be collaboration with industry. There should be LCMT comments.

One person did not see a need for this option, favored status quo.

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

### **3.2.1 Annual Trap reduction:**

Two prefer option 2, .5 % reduction of trap allocation per year for 10 years.

### **3.2.2 Transfer Tax**

#### **A. Transfer Tax Rate**

Two favor option two, conservation tax of 10 % is assessed on any transfer or full business sale

#### **B. Method to Adopt Transfer Tax Rate- see above comments section 3.1.8**

### **3.2.3 Trap Transfers**

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

Two Support option 1 in the spirit of getting transferability into place, both would favor option 2. Both would like to see in the future the opportunity to allow fishermen to go back and pick areas for multi area fishermen

NOAA expressed support for option 1.

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

Three supported option 1, including NOAA.

### **3.2.4 LCMA 3 Designation**

Two supported option 2. LCMA 3 Permit Designation to allow the uniqueness of the history of the area 3 fishery to carry forward. The industry is not looking to break up area 3. Note this is not a restriction to fish in a given area.

NOAA stated that an area 3 designation will be a time consuming rule making process. This would unlikely incorporated into an immediately rule-making

### **Trap and Permit Caps on ownership**

#### **3.2.5 Trap Cap** (Maximum number of traps an individual vessel can fish)

Two support Option 2.

#### **3.2.6 Single Ownership Cap**

Two support option 2.

#### **3.2.7 Aggregate Ownership Cap**

Two support option 2, 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 ownership cap of traps.

Both also support asking NOAA to implement a control date.

#### **3.2.8 Trap Banking**

Two support option 4, Up to 2396 traps can be banked by an individual or corporation at a given time, this is equal to maximum ownership cap. This allows the smallest guy equal playing field with other permits.

#### **3.2.7 Controlled Growth**

Two support option 2, A maximum of 100 traps could be moved per year. It was the intention to have controlled growth on all partial transfers not just banked traps. Would want to change the addendum to reflect this.

### **WRITTEN COMMENTS:**



# Massachusetts Lobstermen's Association, Inc.

8 Otis Place ~ Scituate, MA 02066

Bus. (781) 545-6984 Fax. (781) 545-7837

July 10, 2012

Toni Kerns, Acting ISFMP Director  
Atlantic States Marine Fisheries Commission  
1050 N. Highland St., Suite 200A-N  
Arlington, VA 22201

Re: Lobster Draft Addendum XVIII

Dear Toni,

The Massachusetts Lobstermen's Association, Inc. would like to submit the following comments with regard to Addendum XV111 to Amendment 3 of the American Lobster Fishery Management Plan.

The Association is in support of the Area 2 Options that were listed as the Area 2 LCMT preferred option.

As listed they are the following:

- 3.1.1 P 6 Active Trap Reduction (A) Initial Trap Reduction  
Option 2
- 3.1.1 P 7 Active Trap Reduction (B) Annual Trap Reduction  
Option 2
- 3.1.3 P7 Trap Allocation Transfers (A) Partial Transfers of  
Multi-LCMA Trap Allocation  
Option 2
- 3.1.3 P8 Trap Allocation Transfers (B) Full Business Transfers  
Option 1
- 3.1.5 P8 Trap Allocation Banking  
Option 2
- 3.1.6 P9 Ownership Cap  
Option 2
- 3.1.7 P9 Controlled Growth  
Option 2

3.1.8 P9 Transfer Tax  
Option 1

We will not comment on the Addendum's section regarding the Area 3 Options other than to say, we do support options put forth as LCMT Preferred.

This Addendum to many may appear to be very complicated and to some degree, we share that feeling. What we want to emphasize however, is that this whole proposed program is a result of much hard work by the lobster fishermen who participated in the Lobster Conservation Management Teams, the LCMT's. It also involved working with State and Federal Agency representatives as well as lobster biologists.

It was the ASMFC Lobster Board that determined some measures needed to be taken in the Southern New England Stock area. Reducing effort was an option and this represents the Area 2 and Area 3 LCMT's work in order to achieve that goal.

We support their efforts and urge the Lobster Board to support them as well by approving the LCMT preferred options in this Addendum.

Respectfully yours,



Bernard Feeney, President



## ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

54 Chatham Drive Bedford New Hampshire 03110  
office 603.206.5468; fax 603.666.5601; offshorelobster.org

July 9, 2012

Ms. Toni Kerns  
Atlantic States Marine Fisheries Commission  
1050 N. Highland St. Suite 200A-N  
Arlington, VA 22201

Dear Toni;

I appreciate the opportunity to comment on draft Addendum XVIII on behalf of the Atlantic Offshore Lobstermen's Association (AOLA).

As I know you and the Commissioners are aware, the Area 3 industry worked diligently to craft an industry consolidation plan that, in lieu of a government funded buyout, presents itself as an industry funded buyout plan. Upon closer examination, this innovative approach will reduce overall traps in the fishery, limit transferability related growth to only 100 additional active traps per year, while also giving fishermen flexibility to buy up and hold traps via the banking provision. "Ownership" and "aggregate" caps, also allow for the following:

- Benefits of additional "unconsidered" conservation, due to the purchase and banking of up to the full "ownership cap," early on in the process, to ensure one's availability of traps in the out years of the plan.
- Equitable and non-discriminatory method for Area 3 permit holders to reach the full ownership trap cap to equalize the value of one's permit.

The following paragraphs will be in direct response to the methods and options listed in Addendum XVIII.

### **3.2.1 Annual Trap Reductions:**

AOLA supports **Option 2 – 2.5% trap reduction per year for 10 years:** We believe this trap reduction, in conjunction with the conservation tax associated with transferability, and limited growth and banking, will prove to remove both active and latent traps from the fishery. It is our intention to "right-size" the industry to the size of the fishery, and to reduce fishing effort/traps, in recognition of other, competing uses of the ocean.

### **3.2.2 Transfer Tax:**

#### **A. Transfer Tax Rate**

**Option 2 – A conservation tax of 10% is assessed on any transfer or full business sale.** AOLA supports a 10% conservation tax, and has included the support for the sale of a full business, simply because NMFS has indicated that all transfers, whether partial or the sale of a complete operation, will be considered as a regular transfer and taxed as such. However, we support, and hope that NMFS will consider the historical allocations in Area 3 and recognize the reductions that have taken place as well as those that are actively planned for the future, and re-evaluate the requirement to assess a transfer tax on the sale of a full business. Further, fishermen will be double taxed if they purchased traps to reach a certain allocation, they will again pay a tax when the full operation is sold.

## **B. Method to Adopt Transfer tax**

**Option 2 – Allow the modification of the transfer tax rate in order to achieve the goals of the management program through Board action.** We agree that by allowing the Board the ability to modify the transfer tax rate to achieve the goals of the management program is an expedient method to move the process forward. We support this, however we recommend the following language be added to the end of 3.2.2 Option B: ....” *LCMTs will be involved in the decision making process.*”

### **3.2.3 Trap Transfers**

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

**Option 1 – The recipient of a partial trap allocation from a permit that has a multi-LCMA trap allocation must choose only a single LCMA...** We support this option, as we feel the decision for this matter has essentially been predetermined by the Board. While an Area 3 fisherman is unlikely to use any other option presented, we believe that in the future the Board should reconsider this requirement, and allow the fisherman options for the future. Most Restrictive, in this case, would of course, be retained.

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

**Option 1 –** with zero tax after year 5; (this tax is a major economic impact at this time, as so many in Area 3 are close to retirement age); this year-choice reflects the same timetable as 3.2.5, in that it occurs along with other major changes in the plan, it may also take this amount of time to incorporate this provision into the management process.

### **3.2.4 LCMA 3 Designation\***

**Option 2-LCMA Permit Designation (with important alterations in the wording of this option)** It was not the intention of the Area 3 LCMT to create three sub-areas of LCMA 3; it was merely to identify a separate (active) trap cap within the well known and recognized SNE stock area. Therefore, we request the wording be modified to reflect the following: *“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). Should an entity designate Area 3, the Area 3 trap cap will apply. A permit holder’s designation within Area 3-SNE, would incorporate identical trap cap reductions until year five, when the trap cap is frozen and remains at 1800. Should a permit holder designate both A3 and A3-SNE, the most restrictive rule will apply. \*A3-SNE is applicable only to Addendum XVIII, and does not denote a separate LCMA.*

**3.2.5 Trap Cap (Maximum number of traps that can be *actively* fished)** *We recommend the addition of the word “actively” for absolute clarity.*

#### **Option 2 – Annual trap cap as specified in Addendum XVIII**

This table is representative of the two trap caps in Area 3, i.e. A3 and A3-SNE. AOLA requests a change in the wording to reflect the areas as Area 3 and Area 3-SNE; this was the intention of the Area 3 industry and the Area 3 LCMT. (see above)

### **3.2.6 Single Ownership Cap**

#### **Option 2 – As specified in the table provided in Addendum XVIII, for years 1 – 10.**

This table represents the 2.5% annual trap reductions and the absolute total number of traps that any individual/entity may *own* at any one time for each of the ten years of this plan. AOLA supports this LCMT recommendation.

### **3.2.7 Aggregate Ownership Cap**

**Option 2 – As specified in the table provided in Addendum XVIII; support for no more than 5 permits owned by any entity, and that NMFS publish a new control date in the federal register;** (this will essentially grandfather any additional permits, presently owned by any individual/entity); and ensures that in the future, every effort will be made to limit the permits and total number of traps, any one individual/entity may own within the Area 3 lobster fishery.

### 3.2.8 Trap Banking

**Option 4 – Up to 2396 traps may be banked by an entity at any given time.** This is nothing more than a “place to contain” the amount of traps equal to the maximum allowable ownership cap. It allows individuals to make business decisions relative to if/when to purchase traps, as well as where they would like to position themselves within the fishery. It also provides unintended benefits to conservation, as, in some cases traps will be banked, and not fished (in conjunction with limited growth), if large allocations are banked shortly after the implementation of this plan. Banked traps will continue to reduce by 2.5% annually, for ten years.

### 3.2.9 Controlled Growth

**Option 2 – A maximum of 100 traps may be added to an entity’s active allocation per year, resulting in totals of at or below any of the specified trap caps.** *We recommend a change in the wording of 3.2.9 to reflect the following, “Controlled growth is intended to allow an entity to annually add no greater than 100 traps to its active allocation, providing no other trap cap is exceeded. This controls the expansion of traps to a low and predictable rate. ”*

**Please note: traps added to an active allocation are NOT mandated to originate from the allocation bank account, as stated.**

### 4.0 – 6.0 – No Comment

I appreciate the opportunity to comment on behalf of my members, and will be available to answer any questions, should you have any. Looking forward to seeing you at the next Lobster Board meeting.

Regards,

*Bonnie*

Bonnie Spinazzola  
Executive Director



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

JUL - 6 2012

Mr. Robert E. Beal  
Acting Executive Director  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200 A-N  
Arlington, VA 22201-2196

Dear Bob:

My staff reviewed the Atlantic States Marine Fisheries Commission's draft Addendum XVIII to Amendment 3 of the Interstate Fishery Management Plan for American Lobster. The document proposes management tools to respond to the Southern New England lobster recruitment failure, including trap reductions for lobstermen fishing in Lobster Conservation Management Area 2 and Area 3. Under the Lobster Plan, Area 2 and 3 have historic qualification and trap allocation requirements that impact dual lobstermen; i.e., those with both state and Federal permits. As recommended by the Commission in Addendum I, approved in August 1999, NOAA Fisheries Service qualified vessels and assigned individual trap allocations to Area 3 Federal lobstermen. We also released a Draft Environmental Impact Statement (DEIS) on May 3, 2010 (75 FR 23245), to qualify and assign individual lobster trap allocations to dual lobstermen in Area 2 and the Outer Cape Area, and to allow for partial trap transfers for dual lobstermen in Areas 2, 3, and the Outer Cape Area, based on Commission recommendations in earlier addenda.

NOAA Fisheries Service previously informed the Commission's Lobster Board and Plan Development Team that we may not be able to incorporate certain elements of draft Addendum XVIII in our present rulemaking for dual lobstermen in Areas 2, 3, and the Outer Cape Area. Several management tools in draft Addendum XVIII post-date the DEIS, and many of the proposed tools are not just new, but fall outside of the scope of the DEIS. This is not to suggest that we are disinclined to entertain these management proposals if approved by the Commission, but to point out that we would need to do so separately from the current Federal rulemaking that has already begun. For example, we would likely initiate a new and separate rulemaking if the Commission were to request we incorporate the following proposed draft Addendum XVIII management tools:

- Allowing all traps to maintain authorization to fish in multiple areas in a partial trap transfer-Section 3.1.3.A/3.2.3.A;
- splitting of Area 3 by stock area-Section 3.2.4;



- banking of traps-Section 3.1.5/3.2.8;
- controlled growth-Section 3.1.7/3.2.7;
- allowing annual adjustments to the transfer tax-Section 3.1.8/3.2.2; and
- a request for a Federal ownership control date-Section 3.2.7.

This draft addendum contains proposals to reduce the number of traps authorized to be fished in Area 2 by 50 percent, and Area 3 by 25 percent. NOAA Fisheries Service fully supports options to continue trap reductions to address the Southern New England stock recruitment failure, as outlined in Section 3.1.1.A and B-Option 2 for Area 2, and Section 3.2.1-Option 2 for Area 3. At the same time, consistency of measures across and within management areas remains a concern to the Federal Government as the Lobster Plan becomes more complex with the potential addition of several management tools proposed in draft Addendum XVIII. With overlapping jurisdictions and licensing authorities, a dual lobsterman may possess several lobster licenses and fishery permits, and often these licenses/permits may have authorization to fish in the state and/or Federal waters of multiple management areas. Even the traps themselves may have qualified into multiple areas. Consequently, as the Lobster Plan becomes more complicated, and as the multi-jurisdictional impacts of measures become more evident, effective administration and enforcement becomes increasingly important. We recommend new measures be as simple as possible, including uniformity across management areas for such provisions as controlled growth, banking, and the transfer tax.

As NOAA Fisheries Service moves to publish a proposed rule to implement compatible measures for Areas 2, 3, and the Outer Cape Area, we continue to be challenged to align Federal management if Commission recommendations are modified prior to implementation. Draft Addendum XVIII contains several management options that appear to directly conflict with the current Lobster Plan, as specified in Addenda VII and XII, and with existing Commission recommendations to NOAA Fisheries Service on procedures to implement a uniform state/Federal transferable trap program for Areas 2, 3, and the Outer Cape Area. For example, draft Addendum XVIII's trap reduction provisions for partial trap transfers propose allowing a multi-Area trap (fishing rights in more than one management area) to retain its multi-Area history even after it has been transferred (See e.g., Option 2 in Section 3.1.3.A and Section 3.2.3.A). Such a concept, however, appears to directly oppose Lobster Plan guidance in Addendum XII. In Addendum XII, the Lobster Plan clearly states:

The recipient of a partial trap allocation from a permit that has a multi-Area trap allocation must choose only a single Area that the transferred trap allocation will be authorized to fish in; trap fishing privileges for the other Areas will be forfeited (Addendum XII, Section 4.3.3.3).

The Board gave great thought before enacting that provision in Addendum XII, the addendum containing the majority of the policy guidance for trap transferability in the Lobster Plan. A Transferable Trap Subcommittee made up of managers and industry experts examined these issues and set forth its logic in an important White Paper (see attached) that it presented to the Board in 2008-2009. The White Paper discussed the difficulty in administering multi-Area traps, particularly as the traps are transferred year after year. Those difficulties identified in 2009 (when Addendum XII was approved) still exist today. If the Board considers measures that dramatically change current Plan guidance on transferable trap policies, implementation of compatible Federal regulations would be facilitated if the Board provides its rationale, including any supporting documentation and analyses of potential future impacts across multiple Areas and jurisdictions. Also, it would create difficulties for us if the Board were to recommend a policy and then modify that policy before we can act on the original recommendation. Therefore, we support options in draft Addendum XVIII that maintain consistency with prior recommendations to us in earlier addenda.

With such a broad range of management tools in draft Addendum XVIII, in anticipation of future Federal rulemaking, we urge that the Lobster Board detail its rationale for its Addendum XVIII choices (whatever those choices might be) so that the administrative record is clear. For example, the Commission should explain its rationale behind the ownership cap proposals in Area 2 and 3. The document states a purpose of the cap is to avoid "excessive" consolidation of the industry, but the document lacks any discussion of what would be considered "excessive" or what the problem is that excessive consolidation would create. If, as indicated in the draft addendum, NOAA Fisheries Service were to receive a Commission recommendation to establish a control date to address excessive consolidation in the Federal lobster fishery, our regulatory process would benefit greatly if the rationale is clear as to why the selected maximum number of permits is appropriate to address the concerns for the affected Areas. The document states that capping ownership would prevent monopolies (Section 3.2.7), but to monopolize an industry or sector, one entity must exert control over the market. Monopolistic control of the domestic lobster industry by a limited number of Area 2 or Area 3 participants would appear doubtful, since combined landings from both Areas account for a small percentage of the overall domestic landings. NOAA Fisheries Service may also face challenges in any Federal regulatory action that relates to enforcing ownership caps described in the draft addendum. Federal permit holders, including Federal lobster permit holders, are allowed to incorporate their businesses. Were the Board to recommend an ownership cap, it is altogether unclear how that cap would apply to corporations and partnerships, including those owning Federal permits in multiple fisheries.

I appreciate the Commission's actions to address the scientific determination of a recruitment failure in the Southern New England stock area, and your consideration of the points outlined

above, in your decision-making process. If you have any questions or if you would like to discuss our comments on draft Addendum XVIII in more detail, feel free to contact Bob Ross (978) 281-9234, ([Bob.Ross@noaa.gov](mailto:Bob.Ross@noaa.gov)) of my staff.

Sincerely,



Daniel S. Morris  
Acting Regional Administrator

**Lobster History-Based Allocation and Transfer Issues**  
**Report to the ASMFC Lobster Management Board**  
*October 2007*

The following White Paper outlines critical issues associated with history-based effort control plans that are based on fishing performance, such as the Area 2 Limited Entry Program that is prominent now and the subject of this White Paper. The issues identified in this document are issues that have yet to be resolved consistently across all impacted management agencies, with emphasis on LCMAs that have implemented transferable trap programs. These issues include: assignment of fishing history, especially for individuals whom hold both a state license and Federal permit (dual permit holder); the potential for fishing effort to increase with trap transfers of multi-Area trap allocations; and review of the Most Restrictive Rule for multi-LCMA trap allocations.

**Objective: Identify issues associate with history based allocation and transfer programs and proposes approaches to create ITT programs that provide flexibility to the fishery and that meets the conservation objectives of the plan.**

**Definitions:**

**Individual Transferable Trap Program (ITT):** a trap transfer program for that allows permit holders to transfer their trap allocations (i.e. buy or sell traps, but not lease traps).

**Permit Holder:** a holder of a Commercial Fishing Permit or License from a Federal or state management authority (Note: the States license the individual; NOAA Fisheries permits the vessel )

**Dual Permit Holder:** a person with two fishing permits: one from the state that allows fishing in state water; and a second from NMFS, that allows fishing in federal waters. (Note: the States license the individual; NOAA Fisheries permits the vessel).

**Federally Permitted:** a vessel that is permitted to fish in Federal waters. This vessel might also need a state landing license to land in a particular state.

**Allocation Transferee:** the holder of a commercial lobster permit who receives an ITT allocation.

**Permit Transferee:** the person or vessel who receives/acquires a commercial lobster permit.

**Transfer Trap Tax:** the Area-specific percentage of each transferred ITT allocation required to be surrendered for conservation purposes

**Long-term policy questions that have been identified:**

What should be the eventual outcome of these Area-specific allocation schemes? Should these results be further delineation and isolation of permit holders to specific LCMA's? Should permit holders eventually be limited to fewer (or even just one) LCMA? Or should the program work to accommodate flexibility for permit holders by allowing free movement of trap allocations across the fleet. Under this approach, permit holders who currently fish in one (or just two) LCMA's can freely obtain allocation through transfers from additional LCMA's thereby resulting in a blurring of the LCMA and LCMT principles of distinct fleets and fisheries.

Moreover, the jurisdictional aspect of the trap allocations within an LCMA must be addressed. Does it matter if traps migrate from state waters to federal waters (or vice versa) within an

LCMA? Does it matter if traps migrate from the waters of one state into the waters of another state, or from the federal waters off one state to the federal waters off of another state? Committee members have identified scenarios where dual permit holders obtain trap allocation from a state-only permit holder within an LCMA and this could result in a migration of traps from the state- to the federal-waters portion of the fishery or vice versa.

Finally, the ASMFC approved a change to the “Most Restrictive Rule” in Addendum IV regarding trap limits that was not yet adopted by NMFS (currently under rulemaking). Should the “Most Restrictive Rule” be reevaluated given the advent of Area-specific ITT programs that have the potential to increase fishing effort, as discussed in greater detail below?

Potential options for addressing these questions and issues are outlined. It is important to resolve the issues identified in this paper for success of LCMA allocation and ITT programs. Once an ITT program is implemented and permits and traps are transferred, the ability to reverse and correct direction becomes almost impossible.

## **SECTION I – Background**

Through various addenda to the interstate fishery management plan for American lobster, history-based effort control plans based on fishery performance have been enacted by NMFS (Areas 3, 4, and 5) and states (MA in Outer Cape Cod; NY and CT for Area 6; and MA, RI, CT, & NY for Area 2). The only Lobster Management Area without a history-based effort control plan is Area 1. These effort control plans allocate fishing privileges to fish traps within a LCMA based on the permit’s documented fishing history. Some Areas have established programs to allow transfers of a portion of permit holder’s allocation. In such a program, the transferable allocations are commonly referred to as Individual Transferable Traps (ITTs)

A critical flaw lies in the stand-alone nature of these history based ITT allocation schemes, and the potential impacts that result once these multi-Area ITTs are allowed to be transferred and/or split for dual permit holders (with a single fishing history). The historical time period to qualify for these plans was distinct for each area plan. For Areas 3, 4, and 5 the period to demonstrate fishing performance was 1991-1999; for Outer Cape Cod, the period was 1999-2001; for Area 2 the period was 2001-2003; and for Area 6 the period was 1995-1998. Many vessels or permit holders (depending if it is a federal vessel or a state license) qualified for multiple area-specific trap allocations for the following reasons:

- The discrete qualifying time periods encompasses 12 years and some vessels fishing locations and fishing patterns have evolved and shifted to more than one area over the time period;
- Allocation criteria used to assign effort and landings to a specific LCMA were liberal because statistical areas and LCMA’s do not coincide or the area resolution of qualifying data was insufficient;
- Some vessels legitimately fish in more than one LCMA;
- Overlap zones (e.g. LCMA 2&3) are so expansive that landings coming from this area can be attributed to either LCMA

Criteria must be established to allow for consistent assignment of fishing histories for dual permit holders and, most importantly, for ITT transfers to take place once the history-based trap allocations are finalized. Criteria must also be established to address the potential impact of ITT transfers for multi-LCMA trap allocations.

State and Federal lobster fishery managers have identified the problems of “permit splitting”, where effort proliferates when a single fishing operation, dually permitted by a state and NMFS, could create a doubling of effort by shifting the state permit to a second vessel while the federal permit remains intact on the original vessel. Consider that a single vessel fishing in multiple areas over the span of 15 years or within the same year may have qualified for more traps in aggregate than it has ever fished. Aggregate trap allocations in excess of its historical maximum constitute latent effort.

## **SECTION II - Problem Statements**

### **A. Dual Permit Splitting**

**Example:** A dual permit holder accumulates fishing history on a single vessel and later splits the permits. This vessel is sold with the Federal permit/allocation but the individual retains his state license/allocation.

**Result:** This single lobstering enterprise with a single fishing history has now spawned twice the effort: i.e., both the Federally permitted vessel under new ownership and the original individual retaining the state permit may expect to receive trap allocations based on the same history, thus traps allocated would increase.

**Solution:** Policies should be developed requiring that all history follows the Federal permit for dual permit holders participating in LCMAs that are part of a history based allocation program.

Dual state/federal permit holders often have a fishing history that is so intertwined that it is, for all intents and purposes, both indistinguishable and indivisible. Records are not precise enough (and in most cases don't even exist) to determine what percentage of the catch was caught in state waters under the state permit, and what percentage was caught in the EEZ under the federal permit. Addendum VII acknowledges this situation by stating that one fishing entity equals one fishing history, even if the single fishing entity fished under both a state license and federal permit. Yet the states and federal government still have exclusive and separate authority over their respective permits even though the permits' history is identical. So, although the States and NMFS will be looking at the same history when making qualification and allocation decisions, those qualification and allocation decisions will be nevertheless separate and independent. Accordingly, there is tremendous need for the States and NMFS to interpret and treat that co-mingled history the same way.

Importantly, the states and NMFS have differing standards on how that history can be treated when transferred. For example, federal fishing history is permanently attached to the federal permit and cannot be split off of that federal permit. So, when a federal permit is transferred to another vessel, that permit's fishing history is automatically transferred to the new vessel with the permit. Certain states, however, allow their state permit's history to be split from the state permit and retained or transferred separately. So, when a dual permit holder (multi-area allocations that arose from a single fishing history) splits his state and federal permits, one full history stays with the federal permit and a duplicate history potentially stays either with the state

permit or if split off that state permit, then possibly stays with the person. In either event, there is the potential to double count the single history and thus proliferate traps, increase effort, and greatly confuse overall management of the fishery.

One potential solution would be for the State to carefully examine the permit history when it is involved in making qualification and allocation decisions. If the State finds that the state license was split from an enterprise that originally fished under dual state/federal permits (with a single fishing history), then the history accumulated during those dual permit years shall be considered to have left the state permit and to have followed the Federal at the time of the split. In other words, when the dual permits holder sells his Federal permit, all of the fishing history is transferred with that Federal permit. Note, this does not resolve the problem of the States and NMFS interpreting a common history differently, but it would help minimize the situations where the states and NMFS might double count a single history that has been split to different lobstering enterprises.

### **B - Regulatory Consistency**

**Issue:** Qualification and allocation criteria differ by state

**Result:** Interstate and State/Federal allocations is inconsistent

**Solution:** Only allow intrastate transfers for state-only permit holders (no dual permits holders) until all agencies that license fishing in trap transfer programs have allocated traps and a method for resolving conflicting allocations for a given area is adopted

Different regulatory strategies to allocations may undermine overall management based on trap allocations. This is less of a problem for state-only permit holders, but the problem is acute for dual permit holders with a single fishing history, especially where allocations and trap transferability is involved. Specifically, NMFS has one set of lobster regulations that apply equally to permit holders regardless of state citizenship. Accordingly, it is exceedingly difficult for NMFS to create one set of uniform federal regulations that match all of the state's regulations when inconsistencies in the states' regulations exist. The end result will be that the federal regulations will differ from at least some of the states' regulations, which will result in some dual permit holders receiving different allocations based upon the same fishing history. These differing allocations will create confusion and be difficult (and presently impossible) to track as they are transferred. It is also unclear whether differing jurisdictions will honor decisions made by another jurisdiction that differs from their own.

At present, there is no ASMFC approved Area 2 trap transferability plan (under development with this white paper), although the Commonwealth of Massachusetts has commenced transfers among its LCMA 2 and Outer Cape Cod permit holders. Addendum VII (November 2005) states that one be developed in the future. Addendum IX (October 2006) further acknowledges that the Area 2 transferability plan still has yet to be developed, although once one is, the addendum mandates that it contain a transfer tax component.

Near term restriction of trap transfers would help mitigate the potential for chaos and prevent further expansion of the problems created by state/state and state/federal disconnects. First, allow no dual State/Federal permits holders to transfer their traps until all agencies that license fishermen/vessels authorized to participate in such ITT programs have assigned initial historic

trap allocations, and resolved any differential allocations. Second, allow no multi-jurisdictional transfers (either from one state permit holder to a permit holder of another state, or permit holders with dual state/federal permits or a state-only to a dual permit holder with a single fishing history) until agencies within the effected LCMA adopt and implement the ITT program. In the meantime, trap transfers within a state (among the same state, state-only permit holders) or sales of full fishing business could be authorized (within existing agencies regulations).

It should be noted that many industry members who supported the effort control plan for LCMA 2 established by Addendum VII, as well as some state officials, envisioned a scenario where traps could be more freely transferred among permit holders and across jurisdictions especially between state-only permit holders and dual permit holders. This may not be possible without a formal position taken by the Board with consensus from NMFS

### **C - ITT Administration**

**Issue:** No multi-agency procedure to track ITT programs; annual application period for transfers varies by agency; no communication system between agencies for ITT transfers

**Result:** Inaccurate trap allocations and administrative burdens increase

**Solution:** Establish and fund a multi-agency tracking system

Tracking fishing history will create tremendous logistical issues as allocations are split amongst permits and transferred as part of an ITT program. There is presently no uniform mechanism to identify and track permit fishing history across all impacted state and Federal jurisdictions nor is there any uniform measure to identify and track traps as they become transferred within and among state jurisdictions. These logistical issues will become compounded and more problematic as transfers proliferate and are re-transferred in successive years.

There is a compelling need to establish and fund an expandable, web-based, tracking process for all multi-jurisdictional historic trap allocations and trap transfers. Initially this tracking process can address Area 2, but should be expandable to incorporate other Areas with ITT programs. This tracking system would be managed by one entity, but all agencies should supply supporting data. This tracking system will address the logistical issues, enable a measure of the success of ITT programs, and increase the understanding of how many traps have the potential to be fished in each LCMA area.

It also mitigates the potential for chaos and prevents further expansion of the problems created by potential individual and unique state/state and state/federal tracking systems. Creating and funding a single tracking system will reduce the administrative burden on all agencies working to coordinate ITT programs. It will create a single set of regulatory guidelines that is consistent across participating state and federal jurisdictions.

One solution: Do to administrative limitations, transfers among users would be allowed in the following sequential order as centralized tracking system evolves:

1. Transfer of allocation among state-only license holders (within the same state-only). This option will require funding for states with insufficient administrative support. A preliminary cost would be 30(K).

2. Dual permit holders from state to Federal waters (within the same state-only) [*Comment - NMFS is unclear on this option, we feel that anything other than “within state transfers by state-only coastal permit holders” would need a tracking system. If a dual permit holder buys coastal/state-only traps, the buyer may be at risk of losing or not being able to fish the new state-only traps if NMFS does not acknowledge that transaction when they qualify/implement*]
3. Complete ITT transfers. Any permit holder with traps in an LCMA with an established trap transfer program may sell traps. For this option to occur, a full tracking system must be established and funded.

### **Cost for a Complete Tracking System**

Preliminary estimates to fund a web-based tracking system:

1. Start up: 200(K) (design and implement tracking system)
2. Annual maintenance 80 (K) (salary and benefits for one individual to maintain database)

If this tracking program were not funded, then transfers across jurisdictions (e.g. state to state, or any transfer involving a dual permit holder) open access transfers would not be possible, resulting in a smaller pool of transfers. A smaller number of transfers result in less conservation value (fewer trap reductions through the conservation tax).

### **D - Multi-LCMA Trap Allocations**

**Issue:** Current Area-specific plans fail to recognize that many permit holders have distinct area-specific history-based allocations in more than one LCMA, and some Area-specific plans allow sale of allocations without recognizing the effect on the permit’s overall allocation and/or authorization to fish traps.

**Result:** Area specific allocations can be split by LCMA and sold; trap numbers increase if allocations are not reduced proportionally across all LCMAs

**Solution:** When area-specific allocations are transferred, apply an Anti-Stacking Rule trap sale

Because of the different qualifying periods, and the assignment of allocations in multiple areas due to a lack of LCMA-specific harvest information (such as the 2/3 Overlap), some permit holders have trap allocations in multiple LCMAs that, in combination, are greater than the number of traps the license (or vessel) has ever fished. For example, a person might have historically fished no more than 800 traps at any one time, but moved those traps seasonally, so that they received an 800 trap allocation in each LCMA 2, 3, and Outer Cape. These “additional” traps could increase the amount of effort in any given area if dual permits with a single fishing history are allowed to be split off while retaining the allocation in other areas (see Problem Statement A). Similarly, if a permit holder with a multi-LCMA trap allocation (be it a dual permit holder or state-only license holder) is allowed to treat that multi-LCMA allocation as separate and individual history and therein transfer some of that history (in the form of traps) without it impacting the history (in the form of traps) in the other LCMAs, then double and triple counting of history will occur and effort will similarly increase.

To resolve this problem, apply the Anti-Stacking Rule to trap transfers. Fishermen cannot stack (combine) histories or area allocations as if they were separate and distinct (the Anti-Stacking Rule) because, in reality, they weren’t separate and distinct when the qualifying fishing history was accrued. Nor for the same reasons should they be allowed to split and transfer LCMA

allocations as if the allocations (and the histories upon which they were based) were separate and distinct. For example, a dual permit holder with 800 Area 2 traps and 1000 Area 3 traps can't fish 1800 traps. Why? Because historically, the business operation never fished 800 traps in Area 2 whilst fishing 1000 traps in Area 3. It was one operation of 800-1000 traps historically, and it is the intention of the ISFMP to treat it as one operation of 800-1000 traps now. So, the business can not act as if there are 1,800 traps (800 Area 2 traps added to 1000 Area 3 traps) to transfer. A permit holder must subtract the number of traps transferred from each LCMA's starting number of traps allocated.

For example: if a permit holder has three trap designations: (1) LCMA 3: 1200 traps, (2) LCMA 2: 800 traps; and (3) LCMA 4: 600 traps, then at any given time this fisherman is not permitted to fish more than 1200 traps<sup>1</sup>. Applying this concept to transferability, if he sells 400 LCMA 2 traps, then his overall portfolio would be reduced by 400 traps. His portfolio would become (1) LCMA 3: 800 traps; (2) LCMA 2: 400 traps; and (3) LCMA 4: 200 traps, and can fish no more than 800 traps, and can only transfer 800 traps in the future.

Seller Current Allocation	Transfers	Seller Trap Allocation	10 % Transfer Tax	Buyer Trap Allocation
800 LCMA 2	400 LCMA 2	400 LCMA 2	40	360 LCMA 2
1200 LCMA 3		800 LCMA 3		
600 LCMA 4		200 LCMA 4		

This solution follows the ISFMP's effort control strategy articulated in its addenda and Amendments since 1997. From acknowledgement in Amendment 3 that "maintaining existing cultural and social features" was a goal, to the creation of history based limited access programs in six out of the seven LCMAs, and finally to Addendum VII's guidance that permit holders with single fishing histories not be allowed to split (replicate and double count that history) the Lobster ISFMP has consistently sought to recognize the actual on-the-water history of the lobster fishery and to prevent technical interpretations that would distort that history and lead to effort proliferation. This present solution follows this theme; it ensures that additional traps that were not historically fished will not enter into the fishery. It allows effort levels to remain consistent with what each entity traditionally has fished, thus protecting the lobster stock from additional mortality from increased fishing effort.

### **ITT Conservation Tax and Application Deadlines**

For each trap transfer program that is designed for a LCMA, it is recommended that a conservation tax of at least 10% be put in place to further reduce traps and allocations. For partial allocation transfers: all applications for transfers would have to be submitted by a date certain, annually (e.g. November 1). For full fishing business transfers: sale of an entire fishing business can take place at any point of the year.

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<sup>1</sup> Note: Under the federal version of the most restrictive rule, this permit holder would be limited to fishing the lowest trap allocation among the LCMAs they chose. For example, if the holder elected Area 4, the trap limit would be 400 traps regardless of where they fished.

### **ITT Ownership Limits**

An ownership limit (anti-trust clause) should be established. An ownership limit would ensure the existing social and cultural features of the fishery, as asserted in objective number 4 of Amendment 3 to the FMP. Owner-operated vessels predominate the lobster fishery. Allowing entities to freely purchase and lease ITT could result in the concentration of permits and traps into the control of a few entities thereby change the character features of this fishery. Once a buyer has reached the trap cap for the area, traps can no longer be purchased with that area designation (or any traps purchased over the cap would be automatically relinquished).

### **Declare Only One LCMA if Obtaining Trap Allocation from a Multi-Area Permit Holders.**

As noted in the examples for Issue C, some permit holders have been allocated traps in several ITT Areas. When held by a permit holder with historic trap allocations in several limited access LCMAs, one can view these as traps having fishing privileges for multiple LCMAs. When these traps are sold, the associated fishing privileges for multiple LCMAs must be accounted for. However, depending on the permit holders fishing history, it is possible for an individual trap to have fishing privileges for up to seven LCMAs. The potential for one entity to purchase traps from several permit holders, each potentially having fishing privileges in several different LCMAs, could result, over time, in the ownership of traps with dozens of combinations of fishing privileges. The ability of administering agencies to track, and the vender to issue trap tags under such a complicated ITT program is not practical. Therefore, to reduce the administrative burden (from accumulated LCMA permutations), and to enhance the ITT conservation benefits, when purchasing traps that were historically multi area traps, the purchaser must designate a single LCMA that the newly acquired traps will be authorized to be fished in.

### **Area 1 Conundrum**

LCMA 1 is the only LCMA that has not established a history based allocation program. While states (ME, NH & MA) have varying degrees of limited entry, permit holders are subject to trap caps, not permit-specific allocations based on prior fishing performance. Moreover, under Federal regulations, all federal permit holders are eligible to elect Area 1 and fish traps in that area. This includes 1) federal permit holders who fish non-trap gears; 2) those who may have fished in other LCMA's but have been granted inadequate levels of traps through history-based allocation programs; and 3) those who have never (or not recently fished) in the fishery. Any of the aforementioned permit holders with a Federal permit may designate LCMA 1 to his Federal permit.

As fishermen fail to qualify and are squeezed out of the other limited access areas, the potential for migration of effort into Area 1 exists. Further, by establishing a transfer program in these other areas, it is possible that additional effort (traps) may shift into the LCMA 1. For example, an entity that is operating under an LCMA 1 trap cap of 800 traps and an LCMA 3 allocation of 800 traps (he has both a ME state license and a Federal permit). That individual may have an incentive to sell his federal vessel and permit but retain his state license to fish up to 800 LCMA 1 traps in ME waters. The new buyer now owns the federal permit with an LCMA 3 allocation, but because there is no history-based program for LCMA 1, that buyer can also fish up to 800 traps in LCMA 1. The net result would be a doubling of effort in Area 1 (800 traps under the state license with the original owner and 800 traps under the Federal permit with the new owner).

One option to resolve this problem might be to develop some type of limited entry program in LCMA 1. While Draft Amendment 5 (under development) makes reference to an Area 1 limited entry program, the specifics on potential qualification and allocation criteria are lacking. Given LCMA 1's size and significance to the nation's overall lobster harvest, any potential LCMA 1 limited entry program should be set forth in great detail and only after significant input from the Area 1 fishermen, its LCMT, the Advisory Panel, and the public.

To resolve this problem, alternative approached should be considered:

For example, any permit holder who transfers or receives a trap allocation in a transfer may no longer be eligible to fish in Area 1 or elect Area 1 on their state or federal permit.

A type of limited entry program could be developed in LCMA 1. See example below:

Seller Current Trap cap or Allocation	Transfers	Seller Trap Allocation	10 % Transfer Tax*	Buyer Trap Allocation
800 LCMA 1 Trap cap – not an allocation)		Ineligible to fish in LCMA 1		Ineligible to fish in LCMA 1
1200 LCMA 3 Allocation	1200 LCMA 3	0	120	1080 LCMA 3

\*For this examples purpose, the buyer's trap allocation is based on a 10% conservation tax.

Another option could be developed for Area 1: The seller's A1 trap cap could be reduced by an equivalent amount to the number of traps for the LCMA that was sold.

Seller Current Trap cap or Allocation	Transfers	Seller Trap Allocation	10% Transfer Tax*	Buyer Trap Allocation
800 LCMA 1 Trap cap – not an allocation)		400 LCMA 1 (personal trap cap)		Ineligible to fish in LCMA 1
800 LCMA 3 Allocation	400 LCMA 3	400 LCMA 3	40	360 LCMA 3

\*For this examples purpose, the buyer's trap allocation is based on a 10% conservation tax.

**Subcommittee Process:**

The Lobster Transferability Subcommittee attendees (Dan McKiernan, Kim McKown, Mark Gibson, Mark Alexander, Bob Ross, Charles Lynch, and David Spencer; Staff: Toni Kerns) have met in March, July, September, and October (August via conference call) of 2007 to continue implementation of the Area 2 History Based Limited Entry and Individual Transferable Trap Program as specified in Addendum VII. As previously noted, several issues with assignment of fishing history and trap transferability were discussed at these meetings that could affect not only the LCMA 2 transfer program, but also any lobster transfer program for LCMAs with

transferable trap programs. The committee continued to refine solutions for the implementation of an Area 2 History Based Limited Entry and Individual Transferable Trap Program as specified in Addendum VII.

Dear Toni,

Addendum XVIII which contains measures for Areas 2 & 3, if adopted with the LCMT preferred alternatives, is a responsible and prudent approach to right sizing the lobster fleet to be compatible with the size of the lobster resource and the many other uses of the fishing grounds that are on the very near horizon. It is designed to be implemented at the same time as transferability comes on line. This proposal is nothing more or less than an industry funded buyout with some flexibility built in.

An industry group worked for over a year to craft a SNE government funded buyout program. However, the current fiscal climate and budget constraints made this program impossible. The Area 2& 3 LCMT recommendations contained in Addendum XVIII would achieve the same results as the government funded buyout, but will be funded by industry.

The specific provisions of controlled growth and banking will allow industry to enjoy the benefits and flexibility of transferability without compromising the rebuilding of the SNE resource.

The following are my recommendations for the specific options included in this Addendum.

#### **3.2.1 Annual Trap Reduction:**

I support option 2: 2.5% reduction per year for ten years

#### **3.2.2 Transfer Tax Rate:**

I support option 2: 10% transfer tax on any transaction either partial or full

Method to Adopt Transfer Tax Rate:

I support option 2: Allow the Board to modify the transfer tax rate but with LCMT input.

#### **3.2.3 Trap Transfers**

##### **A) Partial Transfers with Multi-area Trap Allocation**

I support option 1: A single mgt area has to be chosen for transferred traps. I do hope that after transferability has been implemented and the bugs have been worked out, that this issue can be revisited.

## B) Full Business Transfers:

I support option 1: The transferred allocation retains its history in its entirety.

### 3.2.4: LCMA 3 Designations

I support option 2: However there only needs to be one designation added to the Area 3 endorsement, which would be SNE. Both GOM and Georges will have the same measures. The measures in GOM and Georges could be the Area 3 measures and the designation of SNE could be the exception. This area 3 designation is only intended to be used for measures contained in this Addendum. It is not intended to permanently divide Area 3 into distinct areas. It is important to note that the LCMT wanted there to be no restrictions on fishing in either area, but doing so would result in the most restrictive rule taking effect.

### 3.2.5: Trap Cap: (actively fished traps)

I support option 2: Reduce the traps that can be actively fished to 1800 traps in SNE and to 1513 in GOM and Georges section of Area 3.

3.2.6: **Ownership Cap:** Total ownership of traps which includes actively fished traps (trap cap) and banked traps.

I support option 2: The max number of traps owned could not exceed 2396 in year one and reduced each year per the chart on page 14 to 1800 in year 10 of the reduction schedule.

### 3.2.7: Aggregate Ownership Cap: anti-monopoly clause

I support option 2: No single company or individual may own, or share ownership of more than 5 LCMA 3 federal permits and can own no more than 5 times the individual ownership cap of traps.

I do support the issuance of a new, fresher, control date for this measure which may possibly include other measures depending on how much NMFS can or cannot incorporate in their current transferability rulemaking.

3.2.8: **Banking:** A bank account of traps that may be owned and the total may exceed the number of traps that could actively be fished.

I support option 4: The total number of traps that would be allowed to be banked is 2396. This amount would be a maximum and is only valid for year 1 of the program. Subsequent yearly amounts would follow the maximum ownership cap schedule on page 14.

**3.2.9 Controlled Growth:** limiting the number of traps that can enter the fishery through transferability on a yearly basis.

I support option 2: A maximum of 100 traps can be added to your actively fished traps each year.

One important change is recommended. The document reads that controlled growth would only apply to traps taken from an individual's bank account. The intent of the Area 3 LCMT was that the controlled growth provision would apply to ANY increase to an actively fished allocation whether the traps came from a bank account or from a direct transfer. If the language in this document is not changed to reflect the LCMT intent, it is likely fishermen will elect not to bank traps but rather purchase traps through transferability and directly add them to their existing allocation well above the 100 traps per year allowed under controlled growth.

Thank You,

David Spencer

Ms. Toni Kerns  
Atlantic States Marine Fisheries Commission  
1050 N. Highland St. Suite 200A-N  
Arlington, VA 22201

Dear Toni,

I appreciate the opportunity to comment on draft Addendum XVIII. My name is Grant Moore and I have been offshore lobstering for over thirty years. I will give my comments on each item.

### 3.2.1 ANNUAL TRAP REDUCTIONS:

I support option 2. 2.5% reduction in traps for 10 years.

### 3.2.2 TRANSFER TAX:

#### A. TRANSFER TAX RATE

I support option 2 in part. A conservation tax of 10% is assessed on all trap transfers. On a full business sale the tax would be waived to keep the seller from incurring a double tax. This I feel will have to be discussed in the future. I believe AOLA has commented on this matter.

#### B. METHOD TO ADOPT TRANSFER TAX

I support option 2 allowing the modifications of the tax rate in order to achieve the goals of the management program through board action. I also feel it is imperative that the LCMTs be involved in the decision making process.

### 3.2.3 TRAP TRANSFERS

#### A. Partial Transfers Of a Multi-LCMA Trap allocation

I support Option 1. The person holding a permit that has multi area allocation must choose 1 area only. He or she may choose to change that area on the next permit date.

#### B. FULL BUSSINNESS TRANSFERS

I feel that there should be no tax on a full business transfer. If not able to implement this now we could look at a 5 year time frame. Meaning that after the first 5 years of transferability there would be 0% TAX ON THE SALE OF A FULL BUSSINNESS. BOAT, GEAR, PERMIT.

### 3.2.4 LCMA 3 DESIGNATIONS

I support option 2 with the important alterations in the wording of this option. As submitted by AOLA.

3.2.5 TRAP CAP (MAXIMUM NUMBER OF TRAPS THAT CAN BE ACTIVELY FISHED) The word actively gives this clarity.

I support option 2 – Annual trap cap as specified in Addendum XVIII.

### 3.2.6 SINGLE OWNERSHIP CAP

I support option 2 as specified in the table provided in Addendum XVIII, for years 1-10.

### 3.2.7 AGGREGATE OWNERSHIP CAP

I support option 2. No more than 5 permits unless grandfathered in after a control date is set.

### 3.2.8 TRAP BANKING

I support option 4- Up to 2396 traps may be banked by an entity at any given time.

### 3.2.9 CONTROLLED GROWTH

I support option 2 – A maximum of 100 traps may be added to an entity's active allocation per year, resulting in totals of at or below any specified trap caps. I also recommend a change in the wording of 3.2.9 as submitted by AOLA.

I appreciate the chance to comment on this Addendum and feel that this is another step to keeping our fishery healthy and prosperous.

Respectfully,

J. Grant Moore

Broadbill Fishing Inc  
P.O. Box 3428  
Westport, MA 02790

Brown Fishing Company Inc.  
Peter Brown  
PO Box 833  
Monument Beach, MA,02553

Ms. Toni Kerns  
Atlantic States Marine Fisheries Commission  
1050 N. Highland St. Suite 200A-N  
Arlington, VA 22201

Dear Ms Kerns;

I would like to comment on draft Addendum XVIII.

As I know you and the Commissioners are aware, the Area 3 industry worked diligently to craft an industry consolidation plan that, in lieu of a government funded buyout, presents itself as an industry funded buyout plan. Upon closer examination, this innovative approach will reduce overall traps in the fishery, limit transferability related growth to only 100 additional active traps per year, while also giving fishermen flexibility to buy up and hold traps via the banking provision. "Ownership" and "aggregate" caps, also allow for the following:

- Benefits of additional "unconsidered" conservation, due to the purchase and banking of up to the full "ownership cap," early on in the process, to ensure one's availability of traps in the out years of the plan.
- Equitable and non-discriminatory method for Area 3 permit holders to reach the full ownership trap cap to equalize the value of one's permit.

The following paragraphs will be in direct response to the methods and options listed in Addendum XVIII.

### **3.2.1 Annual Trap Reductions:**

**I support Option 2 – 2.5% trap reduction per year for 10 years:** I believe this trap reduction, in conjunction with the conservation tax associated with transferability, and limited growth and banking, will prove to remove both active and latent traps from the fishery. It is mine and AOLA's intention to "right-size" the industry to the size of the fishery, and to reduce fishing effort/traps, in recognition of other, competing uses of the ocean.

### **3.2.2 Transfer Tax:**

#### **A. Transfer Tax Rate**

**Option 2 – A conservation tax of 10% is assessed on any transfer or full business sale.** I support a 10% conservation tax, and has included the support for the sale of a full business, simply because NMFS has indicated that all transfers, whether partial or the sale of a complete operation, will be considered as a regular transfer and taxed as such. However, I support, and hope that NMFS will consider the historical allocations in Area 3 and recognize the reductions that have taken place as well as those that are actively planned for the future, and re-evaluate the requirement to assess a transfer tax on the sale of a full business. Further, fishermen will be double taxed if they purchased traps to reach a certain allocation, they will again pay a tax when the full operation is sold.

#### **B. Method to Adopt Transfer tax**

**Option 2 – Allow the modification of the transfer tax rate in order to achieve the goals of the management program through Board action.** I agree that by allowing the Board the ability to modify the transfer tax rate to achieve the goals of the management program is an expedient

Brown Fishing Company Inc.  
Peter Brown  
PO Box 833  
Monument Beach, MA,02553

method to move the process forward. I support this, however I recommend the following language be added to the end of 3.2.2 Option B : ....” *LCMTs will be involved in the decision making process.*”

### 3.2.3 Trap Transfers

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

**Option 1 – The recipient of a partial trap allocation from a permit that has a multi-LCMA trap allocation must choose only a single LCMA...** I support this option, as I feel the decision for this matter has essentially been predetermined by the Board. While an Area 3 fisherman is unlikely to use any other option presented, we believe that in the future the Board should reconsider this requirement, and allow the fisherman options for the future. Most Restrictive, in this case, would of course, be retained.

#### B. Full Business Transfers

**Option 2 – (with same caveat as partial transfer provision);** with a zero% tax after year 5; this year-choice reflects the same timetable as 3.2.5, in that it occurs along with other major changes in the plan, it may also take this amount of time to incorporate this provision into the management process.

### 3.2.4 LCMA 3 Designation\*

**Option 2-LCMA Permit Designation (with important alterations in the wording of this option)** It was not the intention of the Area 3 LCMT to create three sub-areas of LCMA 3; it was merely to identify a separate (active) trap cap within the well known and recognized SNE stock area. Therefore, we request the wording be modified to reflect the following: *“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). Should an entity designate Area 3, the Area 3 trap cap will apply. A permit holder’s designation within Area 3-SNE, would incorporate identical trap cap reductions until year five, when th trap cap is frozen and remains at 1800. Should a permit holder designate both A3 and A3-SNE, the most restrictive rule will apply. \*A3-SNE is applicable only to Addendum XVIII, and does not denote a separate LCMA.*

**3.2.5 Trap Cap (Maximum number of traps that can be actively fished)** *I recommend the addition of the word “actively” for absolute clarity.*

#### **Option 2 – Annual trap cap as specified in Addendum XVIII**

This table is representative of the two trap caps in Area 3, i.e. A3 and A3-SNE. I request a change in the wording to reflect the areas as Area 3 and Area 3-SNE; this was the intention of the Area 3 industry and the Area 3 LCMT. (see above)

### 3.2.6 Single Ownership Cap

#### **Option 2 – As specified in the table provided in Addendum XVIII, for years 1 – 10.**

This table represents the 2.5% annual trap reductions and the absolute total number of traps that any individual/entity may *own* at any one time for each of the ten years of this plan. I support this LCMT recommendation.

### 3.2.7 Aggregate Ownership Cap

**Option 2 – As specified in the table provided in Addendum XVIII; support for no more than 5 permits owned by any entity, and that NMFS publish a new control date in the federal register;** (this will essentially grandfather any additional permits, presently owned by any individual/entity); and ensures that in the future, every effort will be made to limit the permits and total number of traps, any one individual/entity may own within the Area 3 lobster fishery.

Brown Fishing Company Inc.  
Peter Brown  
PO Box 833  
Monument Beach, MA,02553

### **3.2.8 Trap Banking**

**Option 4 – Up to 2396 traps may be banked by an entity at any given time.** This is nothing more than a “place to contain” the amount of traps equal to the maximum allowable ownership cap. It allows individuals to make business decisions relative to if/when to purchase traps, as well as where they would like to position themselves within the fishery. It also provides unintended benefits to conservation, as, in some cases traps will be banked, and not fished (in conjunction with limited growth), if large allocations are banked shortly after the implementation of this plan. Banked traps will continue to reduce by 2.5% annually, for ten years.

### **3.2.9 Controlled Growth**

**Option 2 – A maximum of 100 traps may be added to an entity’s active allocation per year, resulting in totals of at or below any of the specified trap caps.** *I recommend a change in the wording of 3.2.9 to reflect the following, “Controlled growth is intended to allow an entity to annually add no greater than 100 traps to its active allocation, providing no other trap cap is exceeded. This controls the expansion of traps to a low and predictable rate. ”*

**Please note: traps added to an active allocation are NOT mandated to originate from the allocation bank account, as stated.**

### **4.0 – 6.0 – No Comment**

I appreciate the opportunity to comment on behalf of my members, and will be available to answer any questions, should you have any. Looking forward to seeing you at the next Lobster Board meeting.

Regards,

Peter Brown

Toni,

In addition to the comments I submitted verbally at the hearing, I would like to submit these written comments concerning addendum XVIII.

### **Partial Transfers of a Multi LCMA Trap Allocation**

I would support option two.

There are a number of reasons for supporting this option. If the current science is correct and the lobster and crab fisheries are moving offshore, without this option, Area 2 fishermen could potentially be put out of business due to being confined into a single LCMA. This could occur even though they may have purchased traps with history from Areas 2 and 3. The crab fishery is located along the southern portion of the 2/3 overlap zone, but primarily in Area 3. Some of the larger Area 2 vessels have the capabilities of fishing seasonally in the Area 3 lobster and crab fisheries. In addition it is unrealistic to expect an Area 2 vessel to purchase an Area 3 vessel, and a full 2000 tags allocation, as the finances do not support the purchase of an entire Area 3 permit. The only way Area 2 vessels will gain seasonal access to Area 3 is by purchasing small quantities of Area 3 tags over a long period of time. Requiring individuals to designate a single area will make it impossible for Area 2 vessels to gain seasonal access to the crab resource in Area 3. . Example: A fisherman has 800 Area 2 qualified traps as well as 800 Area 3 qualified traps. Fishermen could work in both LCMA's as long as they adhered to most restrictive measures, in this instance the difference in gauge size.

As far as administrative burden associated with tracking transfers, Area 2 is proposing to reduce trap numbers by 50 percent. We also anticipate a consolidation of the participants. This will result in the administrative agencies tracking 50 % less tags and possibly an equivalent number of participants. This should not be all that difficult to track. If the Board cannot support option two as is, then I suggest that they Board limit transfers and ownership to a maximum of two areas. This would make it quite simple to administer. If an individual purchased tags from fishermen who owns tags in three areas then that individual would lose fishing rights to one of the three areas, at their choice

### **Controlled growth;**

A minimum of 400 should apply in both Areas 2 and 3. It would take many years for an individual to be able to work in any LCMA with a controlled growth provision of 100 traps. It is ludicrous to expect someone to lay out thousands of dollars on qualified trap allocations and

then expect them to wait years in order to use them. Any differential rate of transfer (800 in Area 2, and 100 in Area 3) sets up a dynamic where by the offshore industry can gain access to the inshore areas and the inshore areas are essentially precluded from gaining access to the of It would take many years for an individual to be able to work in any LCMA with a controlled growth provision of 100 traps. This will repeat the mistakes made in the groundfish sector program. An individual would need to purchase 100 Area 3 tags for four years before it was possible to economically fish a single pot in Area 3. The distance from shore preclude fishing small strings of gear so the transfer limit should be at least one days worth of fishing effort i.e. 400 pots.

### **Full Business Transfers:**

Full business transfers should be defined as an individual who transfer 100 % of their qualifying trap allocations to all LMS's. Any requirement for an individual's to transfer all of their other federal permits including the lobster license will raise the cost of the transfer and make it highly unlikely that individual could buy into an LCMA , particularly Area 3. The only individuals who can afford to purchase all federal permits will be individuals that are well capitalized, which does not include the average Area 2 lobster fisherman. Example: fishermen would need to buyout another fishermen's scallop permit of ground fish permit in order to gain access to the lobster trap allocation, which just is not going to happen. .

### **Method to Adopt Transfer Tax Rate**

Option two, with the caveat that this would be done with LCMT input. If the Board wants to change the rate they should be required to solicit the views of the affected LCMT's, and receive a written recommendation on the issue.

Lanny Dellinger

President, RI Lobster Association

Tuesday, July 10, 2012

*W. William Anderson*

702 Dixie Road  
So. Trescott, Maine 04652  
Phone (207)733-2179  
Fax (207) 733-2179



July 5, 2012

Tony Kerns, Senior FMP Coordinator  
Atlantic States Marine Fisheries Service  
1050 N. Highland St., Suite 200 A-N  
Arlington, VA 22201

Dear Tony:

*I see you are going out to public hearing on Draft Addendum XVIII to Amendment 3 to the Interstate Fisheries Management Plan for American Lobster. This Draft Addendum proposes a consolidation program for lobster conservation management areas 2 and 3 to address latent effort and reduce the overall number of traps allocated. You talk about specific management tools being considered in this addendum include trap allocation, trap banking, and controlled growth for participants in the fishery. Proposing a unique plan for each area.*

*This Addendum is to respond to the depleted condition of the Southern New England lobster resource with the initial goal of reducing trap allocations by at least 25 percent over a five to ten year period. Now if my memory serves me well Areas 2 and 3 chose Historical participation to control effort and this removed traps from fishermen without adequate landings. Then after the stock problems appeared further effort reduction management measures were introduced. At the same time many fishermen left the fishery or reduced their effort on their own, because it no longer paid to go lobster fishing. Boats and permits were for sale. I understand that first there was a shell disease outbreak and now climate change and warming water temperatures, causing lobsters to move out of shallow bays and off into deeper cooler waters. I understand that Fishermen continue to catch lobsters in the deeper waters while there is little fishing activity now in some inner bays because the lobsters simply left for cooler waters.*

*It is nice that you are paying all this attention to this area. I am very concerned that you seem unable to notice what is going on in healthy fisheries such as lobsters in Area 1. You seem unable to manage effort in any fishery until something collapses. You allow federal permits in Area 1 to double in number since your effort management measures went into effect back in the late 1990's. These measures were supposed to control effort and hold it where it was. I believe many of them had history in area 2. So while one stock area is collapsing you allow effort in another area to expand exponentially. From what I have seen from lobster tagging studies this is all one stock and the lines drawn only separate fishermen. You try to blame all the problems in Area 2 on continued fishing effort while you allow effort in another area to expand. There is something wrong with*

*this picture. While there are talks going on about reducing the risk of entanglement for whales in Area 1. So you allow the number of traps being fished to grow to the point that a fisherman has difficulty finding room to set his traps. Then they start talking about the need to do something about buoy lines. Some seem to think we should fish without them.*

*This is the area with the largest historical landings. You seem to think record landings with record effort is just great in Area 1. While scientists and others tell me that this is a real cause for concern. Every time I pick up a news paper I read about problems with another fish or shellfish stock, with declining landings and how further restrictions are needed. As all this happens more effort moves into the lobster fishery. So you just sit back and wait for the collapse then you will move in and have another collapsed fishery to manage. Is this your management plan? It seems to me that is all you are capable of doing. Managing fisheries after they collapse is a terrible way to manage anything. A great disservice to anyone with any money invested in any part of the fishing business.*

*Where I live and fish we used to catch and sell a lot of herring but herring landings started to decline back in the late 80's and have only continued to decline. Today there are no landings and no one making a living fishing for herring in the towns around where I live. All the canneries have closed. You can not even buy a sardine packed in the USA any more. Then there used to be ground fish landing down here as well but it has been a long time since anyone living down here landed any amount of ground fish. They have been trying to rebuild ground fish for at least 20 years and the stock keeps going lower from what I read. There is continued argument over the condition of the stock and the level of fishing effort that should be allowed. While many of us have been unable to land fish for many years now. Then I could talk about the collapse of the Urchin and Scallop Fisheries. All of these fisheries declines have put more effort in the lobster fishery. Now with the decline in the herring quota and the rising demand for lobster bait to supply the ever growing effort in this lobster fishery. We are now pulling in fish from around the world to supply this lobster fishery with bait. There are those that are concerned what possible disease could be introduced into the Gulf of Maine by bringing this fish from around the world to use for lobster bait.*

*I have been watching fisheries management for a long time and am also living with the results of these management decisions. I saw the effect of having the foreign fleet off our shores and how quickly much of it all bounced back when they had to leave. Fishermen were again making money catching fish on tub trawls and hand lines, catching herring in weirs and with stop twine.*

*We took over only to grind most of those species down to much lower levels. No one in my local area is making a living today using tub trawls and hand lines. We continue to allow fishing on many species far beyond what is sustainable. Some species are at dangerously low levels.*

*The lobster fishery is currently having record landings, with a new record being set every year, as effort also grows every year and some think more licenses should be issued. While it seems that no one is making any money from what I read and experience. I have enclosed an article from the Bangor Daily News about boats being cut from their moorings.*

*From what I see the per pot average is the problem not the price. All my costs*

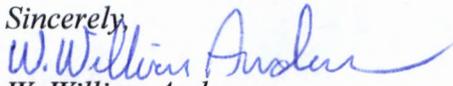
have been rising while my per pot average has been steadily dropping ever since a plan to manage effort in the lobster fishery came into effect back in the 1990's. The number of pots fished and active fishermen only continue to increase in Area 1 where I fish.

There are those who think that pouring millions into marketing will solve our problem. While this could expand markets and improve prices some. Record landings with record prices paid to fisherman would only encourage additional effort which would only further decrease per pot averages meaning no one would receive any benefit from the money spent on marketing.

While I offer no solutions. We are now trying to catch every lobster the minute it sheds to a size. Basically selling it in the poorest shell condition. These soft shelled lobsters do not live well, so they are difficult to hold them in tanks or ship them anywhere. You best cook immediately. Then we expect to get top dollar for this product. The good hard shell lobsters that we get paid premium prices for are becoming very difficult to find.

I do not like what I see and am concerned about the future of all fish stocks. The North East has a poor record in fish management and stock rebuilding. It appears to me that the plan is to deplete all fish stocks and place all of them in condition of need for rebuilding. This is a very poor way to manage our fish stocks. I have enclosed two articles that appeared in the June 6, 2012 edition of the Bangor Daily News. Examples of what I continue to see in the paper regarding condition of fish stocks. I am concerned that lobsters in Area 1 will next. I have been seeing more shell disease in my lobsters and some fully covered now, some carrying spawn or oversize males so I can not bring them in. I have mentioned this to Carl Wilson out state lobster scientist.

Sincerely,



W. William Anderson

# Lobster boat sinkings bring attention to past host

BY CLARKE CANFIELD  
THE ASSOCIATED PRESS

**FRIENDSHIP** — The sinking of two lobster boats is rekindling memories of hostilities among lobstermen three years ago that led to a near-fatal shooting, boats being sunk and a barrage of lobster trap vandalism along Maine's lobster-rich coast.

Someone this week sabotaged two lobster boats, allowing them to drift free and flood with water before washing ashore in this postcard-pretty harbor. The dispute has shone a light on the unwritten rules of the sea, where fishermen often take matters into their own hands to settle grudges.

Lobstermen for generations have cut trap lines and shouted threats to settle differences over who can set their traps where. In more extreme instances, they've been known to ram boats and fire warning shots into the air.

The vandalism crossed the line late Monday night, when the 28-foot Lobstah Taxi and the 35-foot Fantaseas were sunk. Only a portion of the larger boat's cabin was above water when it was found Tuesday morning on an island outside the harbor. The smaller boat was found on a mainland beach, but escaped serious damage.

Investigators don't know if the attacks were the result of a personal vendetta or a territorial feud. At the least, they've brought unwanted attention to this fishing community 75 miles northeast of Portland.

"It's sad, awful sad," said lobsterman Doug Simmons, 60, as he worked on his gear Thursday in preparation for setting his traps in the coming weeks. "It's cost people a lot of money."

The boats were owned by Gary Jones and his 15-year-old son, Logan, who live in the neighboring town of Cushing, said Marine Patrol Sgt. Rene Cloutier, who is investigating with the Knox County Sheriff's Department and the U.S. Coast Guard.

"There's nothing that says this is a territorial thing," Cloutier said. "It could be, but nothing points that way now."

Gary Jones has been on the receiving end of vandalism before. In 2009, another Cushing lobsterman was charged with cutting 22 of his lobster buoys. At the time, Jones said trap and gear vandalism had cost him nearly \$10,000 over three years.

Gary Jones' wife, Tina Jones, said she and her husband aren't commenting on this week's incident, adding that her husband and son are hard-working fishermen.

"People are looking at us and thinking if that happened to us we must be bad-assed people," she said.

This week's boat sinkings are bringing back memories of 2009, when hostilities especially were in high gear.

On remote Matinicus Island, 20 miles offshore, a lobsterman fired a handgun at two fellow lobstermen, hitting one in the neck in a near-fatal dispute over lobster traps. A jury later found Vance Bunker not guilty of elevated aggravated assault.

Two weeks after the shooting, someone sank two lobster boats and damaged a third in Owls Head, another midcoast fishing harbor. Throughout the summer, police investigated a rash of complaints about lobster trap lines being cut, resulting in lost lobster gear.

Last year was relatively calm,



AP PHOTO BY ROBERT F. BUKATY  
One of the two lobster boats recently sunk by vandals is seen in a boatyard in Friendship on Thursday. The sinkings are bringing back memories of territorial tensions in the industry that led to a shooting two summers ago.

but the sinkings in Friendship are raising questions about whether this coming summer will be heated.

For now, there aren't any indicators that tensions are ready to erupt, "knock on wood," said Marine Patrol Maj. Alan Talbot.

"Hopefully it's just a random thing," he said. "But who knows what's to come."

Gary Jones' boat was taken to a boatyard in Owls Head for repairs. His son's boat sits on boat jacks at Lash Boatyard in Friendship.

Lobstermen in town are a reticent bunch, but they'll tell you

they think the perpetrator was from somewhere other than Friendship. The Joneses are from Cushing and don't even fish the waters off Friendship, they say.

"You might be able to say this was a Friendship thing if he fished here — but he don't," said lobsterman Kendall Delano as he sanded his trap buoys in a waterfront building.

Wesley Lash, who works for his father at the boatyard, said the sinkings don't reflect well on this sleepy town, which has about 1,200 residents, just a sin-

gle store and not even a traffic light.

"It gives Friendship a bad name," he said. "People'll say Friendship, that doesn't sound like a friendly place."

Lash's father, also named Wesley, said there have been feuds as long as there's been a lobster industry.

"You go from Portsmouth (N.H.) to Eastport and it's the same thing," he said.

Still, Friendship gets its share of feuding.

Simmons remembers years ago when somebody slammed a

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# Sinkings bring attention to past hostilities

owned by Gary Jones, a 20-year-old son of the neighborly lobsterman, said Marine Lt. Cloutier, who is in the Knox County Sheriff's Office and the

that says this is not the case," Cloutier said, "but nothing is going on."

seen on the television news before. The sinking of the lobster boat on Thursday cutting 22 was a major event. At the time, the boat was valued at nearly \$10,000.

Tina Jones, the wife of Gary, said she and her husband aren't lobstermen. They are fishermen. They are not at us and they are not related to us we are not people," she said.

The sinkings are part of a series of 2009, which were in

the case of Cushing Island, 20 miles from Friendship, a lobsterman fired a shot from the neck in a feud over lobster. The boat was found by Vance and elevated again.

The shooting, which was on lobster boats in the area of Owls Head for repairs. His son's boat sits on boat jacks at Lash Boatyard in Friendship.



AP PHOTO BY ROBERT F. BUKATY

One of the two lobster boats recently sunk by vandals is seen in a boatyard in Friendship on Thursday. The sinkings are bringing back memories of territorial tensions in the industry that led to a shooting two summers ago.

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Still, Friendship gets its share of feuding.

Simmons remembers years

crowbar through the hull of another boat, causing it to sink. This past winter, somebody fired a shot from a high-powered rifle into the hull of a lobster boat, Cloutier said. The shooting is under investigation.

"It happened late at night, nobody saw anything and Friendship is a pretty tight-kipped community," he said.

# Tighter urchin restrictions proposed in eastern Maine

BY BILL TROTTER  
BDN STAFF

ELLSWORTH — Having weathered years of tight fishing restrictions on the state's sea urchin industry, fishermen are expected to face even tighter harvesting limits next year in eastern Maine.

Exactly what additional restrictions will be put in place is unknown, but officials with the Maine Department of Marine Resources are seeking feedback from Maine fishermen to see if some measures might be more palatable than others.

Along the western half of the coastline, where sea urchin restrictions have been more severe, things are looking up, however. From the western shore of Penobscot Bay to the New Hampshire border, DMR is proposing to increase the total number of urchin fishing days for the year from 10 to 15.

According to Trisha Cheney de Graaf, resource coordinator for DMR, urchin fishermen in eastern Maine have been limited to 45 days a year since 2004 because of poor stock assessments. In the early 1990s, after demand for urchin roe in Japan created a boom for Maine's urchin industry, fishermen had been allowed to harvest urchins 180 days each year.

The annual yield of Maine's urchin fishery peaked in 1993, when divers and draggers brought more than 41 million pounds of the spiky creatures ashore, according to DMR statistics. The value of the fishery hit its zenith two years later, when fishermen earned a fleet-wide total of \$35.6 million for the 34 million total pounds of urchins they harvested.

In the late 1990s and early 2000s, landings fell off sharply and have remained under 4 million pounds every year since 2005. Last year, only 2.2 million pounds of urchins worth a total of \$4.5 million were harvested in Maine.

De Graaf said Monday night that scientific staff at DMR is concerned Maine's coastal urchin population is still in decline and recently recommended a 50 percent cut in the harvest. DMR administrators think a 50 percent cut would be too harsh, she said, and so have come up with measures that could reduce the harvest between 22 and 33 percent.

One option being considered is keeping the number of fishing days in Zone 2, which extends from mid-Penobscot Bay to the Canadian border, to 45 days but adding a daily allowable catch of 10 totes, each of which is about the size of a recycling bin and generally holds about 80 pounds. Another Zone 2 option being considered is reducing the number of days to 36 but not imposing a daily catch limit.

In both of these scenarios, divers would have to limit the number of undersize urchins they bring to the surface, which many divers say they do already. Divers cull their catch by sorting them by hand on the bottom. Draggers would be allowed to have a certain percentages of undersize urchins among their catch, depending on whether they had culled through the pile when inspected by Marine Patrol, the law enforcement division of DMR.

Fishermen can only keep urchins that have a shell between two and one-sixteenth inches and three inches in diameter.

Culling urchins for size on the bottom instead of bringing them to the surface and then dumping undersize urchins back overboard helps minimize mortality, de Graaf said, because urchins can die if exposed to subzero temperatures above the surface or if they are dumped back overboard in water deeper than where they were caught. "They're really finicky animals," de Graaf said.

A third option for Zone 2, she

said, is to set a 30-day fishing season without a daily catch limit or requiring culling on the bottom. This option is the least palatable, both for fishermen and the department, she added.

Fifteen fishermen attended a public hearing Monday night at Ellsworth City Hall to weigh in on the options. The vast majority seemed to support the option of fishing for 45 days but limiting the daily catch and requiring divers to cull their catch on bottom.

Jeremy Card, a diver from Franklin, said he would rather have a daily limit so that he might have more consistent catches throughout the fishing season.

"I can't stress enough — we can't lose any more days in any of our fisheries," Card said. "I'd rather see nice, steady fishing so I can know what I'm going to [earn]."

Byron Matthews of Lubec and other draggers at the meeting said they could support a 45-day season and a daily catch limit as long as it wasn't less than 1,000 pounds per day, or 100 pounds per tote. Milton Chute, a dragger who also lives in Lubec, was the only one at the meeting who said he would prefer a 36-day season without a daily catch limit.

DMR plans to hold another public hearing on the proposal at 6 p.m. Wednesday, June 6, at the Portland office of ferry company Casco Bay Lines. Written comments on the options will be accepted through Monday, June 18, and can be sent to: Department of Marine Resources, attn. K. Rousseau, 21 State House Station, Augusta 04333-0021. Comments also can be emailed to [kevin.rousseau@maine.gov](mailto:kevin.rousseau@maine.gov).

DMR's advisory council is expected to meet in Augusta on July 11 to decide which option to recommend.

Follow BDN reporter Bill Trotter on Twitter at @billtrotter.

# New rotational scallop closure management plan in the works

BY TOM WALSH  
BDN STAFF

**EAST MACHIAS** — Balancing the dynamic biology of different marine resources seems to Trisha DeGraff to be a never-ending challenge.

A marine resource management coordinator with the Maine Department of Marine Resources, DeGraff was in Washington County on Tuesday soliciting advice from scallop fishermen in East Machias and Jonesport on how best to prevent overfishing while allowing for enough catch to sustain the local economy.

DMR has closed some Down East areas to scallop fishing as part of a strategy to rebuild Maine's scallop resource. After being in place for three years, those closures will end this year, prompting the agency to develop a new rotational management plan for waters between Lubec in Washington County and the Schoodic Peninsula in Hancock County.

Tuesday morning's meeting at Washington Academy was the sixth of eight scoping sessions that began on May 21 in Milbridge and will continue through June 11 in Stonington. A second Washington County session was scheduled for Tuesday afternoon at Jonesport High School.

DeGraff, a marine biologist, said Tuesday that the current

closures have allowed scallop stocks to rebound.

"All the areas have responded well," she said. "We want to build on that momentum and continue on a path to bring up the resource by giving different areas a break, allowing them to take a rest and rebuild."

Sessions like those Tuesday are providing front-lines input that will be used to draft a new rotational management proposal. The new proposal will be reviewed by the Scallop Advisory Council before being discussed at more public hearings, including in Down East coastal areas.

The closure maps discussed Tuesday remain very much a work in progress, DeGraff said.

"It's a real balancing act," she told the eight people who attended the session in East Machias. "And there may be some portions of areas that are currently closed that will remain closed. A lot of next year will involve determining how to shut down a targeted area without decimating it. We need to make sure there's still stuff on the bottom needed to rebuild. The ideal situation is to stop harvesting after taking 30 percent of what's there."

Some of those attending Tuesday morning's session pointed out that areas closed to scalloping also may need restrictions on dragging for mussels and urchins, as those activities impact scallop survival.

CAR DETAILING - PHOTOGRAPHY - RESTAURANT MEALS - TANNING - MANI

## Maine's Daily Deal



John Peabody

to:

Toni Kerns

07/10/2012 02:34 PM

Hide Details

From: John Peabody <jpeab6375@gmail.com>

To: Toni Kerns <tkerns@asmfc.org>

History: This message has been replied to.

Dear Toni

I support Addendum XVIII as proposed by AOLA. A lot of work has gone into this and it is well thought out.

John Peabody  
F/V Lady Clare

Arthur DeCosta  
F/V Sherri & Deke  
MASS Area 2

In regards to the Area 2 LCMT proposal to reduce the capacity of the lobster fishing fleet by 50%. I would like to say I am in favor of this proposal. A smaller but more efficient and prosperous fleet would better serve the industry. However, I have some regards as to how we get there. In Mass we have only 53 dual license holders with an average trap allocation of 467 traps, 8 federal only license holders with a 409 trap average, and 71 state only holders with a 277 average. After reducing these license holders by 50%, rebuilding back to your original allocation will be extremely difficult and costly. However, we could lessen the financial and stressful burden of the rebuilding process by having a split allocation.

For example:

A split allocation would be. An individual with a dual license may purchase tags from a state only or federal only license holder and these tags would only be used in their respective area. An individual may end up with 800 tags, 400 state and federal waters from his initial allocation, and purchase any amount to 400 from a single license holder. These tags would only be used in there respective area. If a state only license holder wants to purchase tags from a federal holder he would have to purchase a license with the tags and visa versa for a federal only permit.



**Paul J. Diodati**  
Director

# *Commonwealth of Massachusetts*

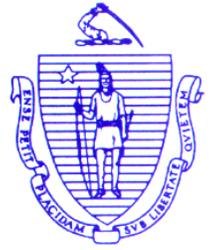
## **Division of Marine Fisheries**

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617)626-1520

fax (617)626-1509



**Deval Patrick**  
Governor

**Timothy P. Murray**  
Lt. Governor

**Richard K. Sullivan, Jr.**  
Secretary

**Mary B. Griffin**  
Commissioner

To: Paul Diodati, Director

From: Daniel McKiernan, Deputy Director

Date: May 29, 2012

Subject: V-notch definitions and recent request from Massachusetts Area 1 lobstermen to replace the zero tolerance definition with a less ambiguous standard

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### **Introduction**

At the Massachusetts Lobstermen's Association Annual Meeting in January, *Marine Fisheries* staff held a seminar on v-notch rules, compliance, and enforcement to address lobstermen's concerns about the vagaries of the "zero tolerance" v-notch definition in Lobster Conservation Management Area 1 (Gulf of Maine). As a result of this meeting and subsequent discussions with the Massachusetts Lobstermen's Association, I have undertaken the initiative to propose rule changes at the state and federal levels to establish a less ambiguous standard for v-notch possession for Massachusetts lobstermen fishing in Area 1.

### **Statement of the Problem**

Since the Commonwealth adopted the zero tolerance standard for Area 1 female v-notched lobster protection in 2000 (i.e., that it is unlawful "to possess any female lobster bearing a v-shaped notch of any size with or without setal hairs"), *Marine Fisheries* and the Office of Law Enforcement have fielded numerous questions and some complaints about the vagueness of the rule. The v-notch restriction as currently written appears to be undermining the intent of the rule as compliance and enforcement wane. At the same time, its strictness is unwarranted given new research and changes in stock status. Massachusetts industry support has been building for the Commonwealth to consider applying the 1/8" standard to Area 1.

### **Background**

The Commonwealth currently has three different standards governing the possession of v-notched female lobsters (see attached regulation). In Area 1, the "zero tolerance" *v-shaped notch* standard applies; in Area 2 and Area 3, a 1/8" *notch or indentation* standard applies (note: notch need not be "v-shaped and can be with or without setal hairs"); and in Outer Cape Cod, the traditional 1/4" v-notch definition (tapering to a sharp point without setal hairs) still applies for state-only permit holders<sup>1</sup>.

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<sup>1</sup> NMFS in 2009 enacted the 1/8" v-notch standard for federal permit holders in Outer Cape Cod.

## **Past Proposal**

Recall that in 2008, I proposed to the Atlantic States Marine Fisheries Commission (ASMFC) to adopt a 1/8" possession standard for Massachusetts Area 1 fishermen as a conservation equivalency to zero tolerance. The Lobster Management Board did not approve my proposal for two primary reasons: 1) the Technical Committee cautioned that the change in the definition could result in some increase in fishing mortality and expressed further concern that the status of the stock in Statistical Area 514 (southern Gulf of Maine) had warranted further restrictions due to low levels of recruitment and high levels of fishing mortality; and 2) it was recognized by Maine Commissioner George Lapointe that without a complementary change in federal regulation, all federal lobster permit holders in Massachusetts would be bound by the more restrictive rule which would minimize the benefits of the rule change.

## **New Initiative**

The new initiative will include proposals to:

- 1) Amend the v-notch possession definition for Area 1 to replace the zero tolerance standard with the federal "standard v-shaped notch," defined as: *a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch (0.32 cm), with or without setal hairs*; and
- 2) Allow state jurisdictions to develop or maintain more conservative standards (including the existing zero tolerance standard) for its state permitted fisheries, landings into its ports, and possession by persons within those states.

The strategy will be to get the Area 1 Lobster Conservation Management Team to take a position on this proposal at the upcoming June 14 meeting and then take the issue to the Lobster Management Board in August. If the Board decides an addendum is warranted, then we will draft an addendum for public hearing and approval at a subsequent Board meeting. Once approved, we will request National Marine Fisheries Service conduct complementary rulemaking for federal waters.

## **Rationale**

### *Biological*

Since 2008, stock conditions have improved substantially in Statistical Area 514. Moreover the new overfishing definition and reference points approved by ASMFC in May 2010 indicate the Gulf of Maine (GOM) lobster stock is not overfished and overfishing is not occurring. With fishery performance improving in the past three years and record landings coming from the GOM, it is an opportune time to refine the regulation and bring about more consistency across the Lobster Conservation Management Areas (LCMAs) and improve compliance and enforcement.

The zero-tolerance rule along with a mandate to v-notch all egg-bearing female lobster was originally adopted as part of an LCMA 1 management plan designed to meet the biological reference point  $F_{10\%}$ , but that management objective has been replaced by new objectives with revised overfishing definitions and reference points by Addendum XVI. With the move away from  $F_{10\%}$  and the current positive stock status based on the new reference points, now may be the most opportune time to make adjustments to the v-notch regulations.

The v-shaped notch that is carved into the uropod of egg bearing females as a conservation measure becomes increasingly obscured as the notch heals and progressively fills in after each molt. A recent study conducted by Bryan DeAngelis of NOAA<sup>2</sup>, as part of the North Cape Oil Spill Mitigation program, demonstrated the transition of notch shape from being straight-sided (truly v-shaped) when first cut to being more obscure as the notch fills in progressively through each molt. The study

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<sup>2</sup> DeAngelis, B. 2007. Studying the effects of v-notching on the American lobster (*Homarus americanus*). A Report to the Atlantic States Marine Fisheries Commission. NMFS – Narragansett, RI. 2007

showed that under a 1/8" definition, all v-notched lobsters were protected after the first molt, and the vast majority (75%) was still protected after the second molt. The zero-tolerance definition for Area 1 that was incorporated into the stock assessment model and Addendum 3 (2002) assumed protection to the lobster through two molts. Consequently, the 1/8" measure *approaches* the zero tolerance standard when considering the model objectives.

Much of the previous plan's conservation benefit was attributed to the buildup of broodstock through the notching and release of mature females<sup>3</sup>. The response to the mandatory v-notch program since 2002 has been dramatic. The incidence of v-notched lobsters in Massachusetts sea sampling catch of females has been above 14% every year since 2006, up from less than 1% prior to the mandate (Figure 1). Furthermore, the proportion of the female stock that is part of the broodstock (sexually mature and potentially egg-bearing) is substantially higher in Statistical Area 514 than it is throughout the higher latitudes of the GOM, because of the smaller size at maturity observed there. In Mid-Coast (Boothbay) and Down East (Sorrento), the regions from which the majority of catch in the GOM are harvested, only 16 % and 3% respectively, of the female lobsters are sexually mature below the minimum size (< 83 mm carapace length). In contrast, 26% of the female lobsters in Statistical Area 514 are sexually mature below minimum size. As such, any potential conservation benefit lost due to the implementation of a 1/8" v-notch definition in Statistical Area 514 is more than made up for by the substantially higher effectiveness the 3/4" minimum size has in this region.

#### *Compliance and Enforcement*

There have been slight declines in the incidence of v-notched females in the last two years. Based on communications with Area 1 fishermen, DMF staff believe fishermen's frustration with the (lack of) definition may be in-part behind this recent decline as participation has lessened. We anticipate better compliance to the standard and better participation in mandatory v-notching with a change to the 1/8" definition. This will result in increased conservation benefit as compared to the status quo zero-tolerance definition.

It appears that the conservation standard in Maine for determining whether a v-notched lobster must be released has evolved into what industry perceives as a "perfect flipper rule" meaning any injury to the lower edge of the uropod can be interpreted as a v-notched lobster required to be released. Moreover, since all fishermen in Maine are bound by Area 1 rules, there is only one standard (zero tolerance) that applies to all fishermen and dealers; however, even with this consistency in definition, law enforcement officials in Maine can find the lack of a measurable notch to be challenging. According to Commercial Fisheries News coverage of the April 2012 meeting of the Maine Lobster Advisory Council, Maine enforcement officials "wanted input on enforcement guidelines that would help eliminate ambiguity and give Marine Patrol Officers (MPO's) defensible cases to take to court."

The lack of a consistent state-wide definition in Massachusetts means that dealers may purchase lobsters from fishermen operating under one of three possible definitions. This makes it virtually impossible to enforce v-notch regulations at dealers, requiring increased burden on law enforcement to dock-side or at-sea. Enforcement officers may then be hesitant to issue citations on v-notch violations due to the vagaries of the definitions and different standards between Massachusetts fishermen. Law enforcement officials and court officials can find the lack of a measurable notch standard to be challenging. This is especially true in Massachusetts where we have a much more liberal standard in Outer Cape Cod. This "double standard" can make court cases difficult to prosecute when the courts see the different standards among permit holders and dealer vs. harvest sectors.

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<sup>3</sup> Note: The final regulatory component designed to reach the F<sub>10%</sub> was the 2007 requirement to increase the escape vent to 2" by 2007. That action was repealed in 2006 after the new overfishing definitions were established and the Gulf of Maine stock was no longer considered overfished.

The subjective nature of the zero tolerance standard among fishermen and law enforcement officers means that some of the lobsters enter a “gray area” of compliance and enforcement after having molted a second time. We believe that multiple recaptures of these v-notched lobsters will result in many eventually being harvested, once caught by a fisherman (and inspected by an enforcement officer) whose version of zero tolerance is less restrictive. Thus the issues related to inconsistent compliance and enforcement of this definition likely make the relative conservation value of zero-tolerance and the 1/8" definition similar.

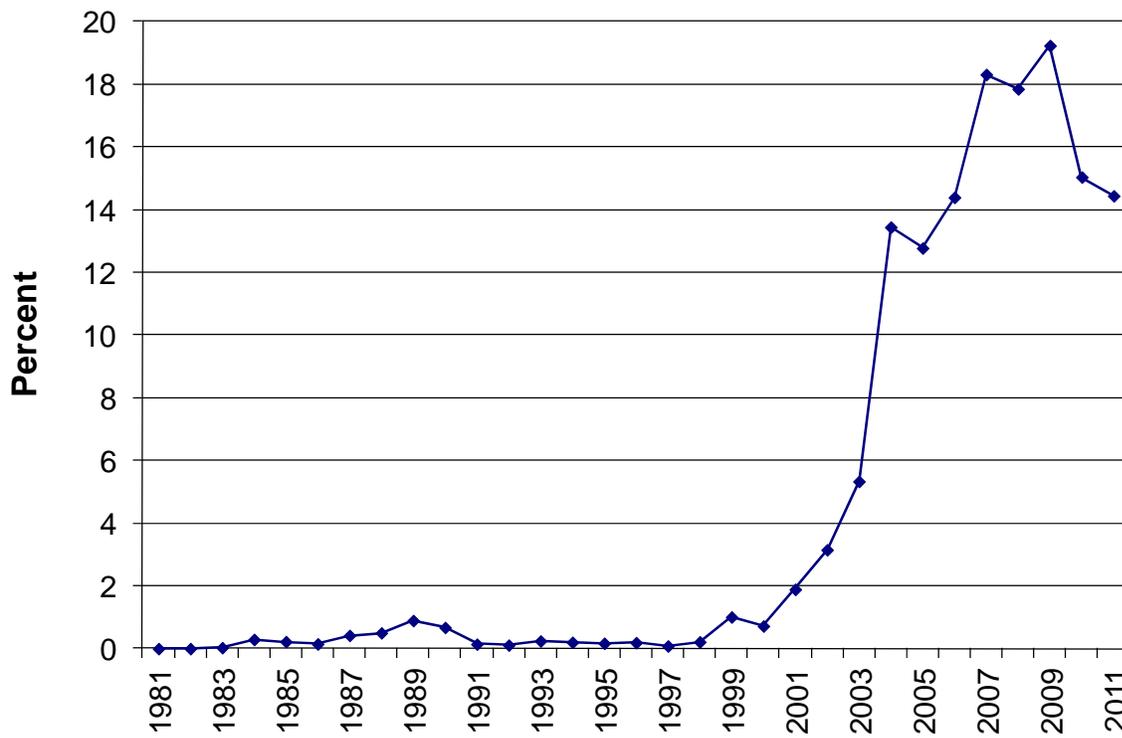
In the absence of uniform guidance for fishermen and law enforcement we have situations of unfettered discretion by both fishermen and the officers. It is prudent to create a firm detailed definition that can guide both fishermen and enforcement officers to determine whether a violation has occurred.

### **Conclusion**

The most recent stock assessment (2007) concluded the Gulf of Maine stock was not overfished nor was overfishing occurring. While the Massachusetts portion (Statistical Area 514) showed signs of decline back in 2007, the stock in this subarea has since rebounded. Stock condition in the Gulf of Maine is not a reason to reject this proposal. Lobstermen continue to notch egg-bearing females at unprecedented levels, and there remains strong support for this conservation measure. Making this minor amendment to the LCMA 1 v-notch definition will greatly improve both compliance and enforcement of v-notch regulations in Massachusetts and will maintain conservation of the Gulf of Maine stock.

Please contact me if you have any questions.

Attachment: Current Massachusetts regulations



**Figure 1.** Percentage of the female catch bearing a v-notch in southern Gulf of Maine (Statistical Area 514). Mandatory v-notching was required beginning in 2002.

## Massachusetts Regulations: 322 CMR 6.02(3)

### (3) V-notched Female Lobster Protection

(a) Purpose: The purpose of 322 CMR 6.02 (3) is to protect certain female lobsters from harvest that bear a v-shaped notch or the remnant of a healed notch on a specific flipper, evidence that the lobster has been marked and released for conservation purposes. Area-specific v-notch standards regarding the possession of previously notched lobsters are created by this regulation consistent with the area-specific components of the interstate management plan. For purposes of complying with 322 CMR 6.02(3) commercial fishing areas and non-commercial fishing areas are those referenced in 322 CMR 6.33 and 322 CMR 6.01, respectively.

(b) V-notching Methods. Any commercial fishermen required by 322 CMR or authorized to mark lobsters with a v-shaped notch shall carve a v-shaped notch in the base of a specific flipper by means of a sharp bladed instrument, at least  $\frac{1}{4}$  inch and not greater than  $\frac{1}{2}$  inch in depth and tapering to a sharp point. For purposes of 322 CMR 6.02 (3) the specific flipper is to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down.

(c) Mutilated V-notch. For purposes of complying with 322 CMR 6.02(3), it is unlawful for any person to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a v-shaped notch.

(d) LCMA Specific Requirements for Commercial Lobstermen to V-notch.

1. LCMA 1. Commercial lobster permit holders, as defined in 322 CMR 7.01(2)(a)&(b), authorized to fish in LCMA 1, as defined in 322 CMR 6.33(2)(a), must v-notch and then immediately release all egg bearing female lobsters.
2. LCMA 2. Commercial lobster permit holders, as defined in 322 CMR 7.01(2)(a)&(b), authorized to fish in LCMA 2, as defined in 322 CMR 6.33(2)(e), must v-notch and then immediately release all egg bearing female lobster of legal size as defined in 322 CMR 6.01(1)(a)(2).

(e) Area-specific Restrictions on Possessing V-notched Female Lobsters

1. Commercial Fishermen in LCMA 1 and Non-commercial fishermen in the Gulf of Maine Recreational Lobster Area. It is unlawful for any commercial fisherman fishing or authorized to fish in LCMA 1 and non-commercial fishermen fishing in the Gulf of Maine Recreational Lobster Area as defined in 322 CMR 6.33 to possess any female lobster bearing a v-shaped notch of any size with or without setal hairs.
2. Commercial Fishermen in LCMA 2. It is unlawful for any commercial fisherman fishing or authorized to fish in LCMA 2 as defined in 322 CMR 6.33 to possess any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as  $\frac{1}{8}$  inch, with or without setal hairs.
3. Commercial Fishermen in LCMA 3, 4, 5, and 6. It is unlawful for any commercial fisherman fishing or authorized to fish in LCMA 3, 4, 5, and 6 to possess any female lobster bearing:
  - (i) a v-shaped notch that is at least  $\frac{1}{4}$  inch in depth and tapering to a sharp point without setal hairs, through June 30, 2008;
  - (ii) a notch or indentation in the base of the flipper that is at least as deep as  $\frac{1}{8}$  inch, with or without setal hairs, from July 1, 2008 and beyond.
4. Commercial Fishermen in the Outer Cape Cod LCMA, Non-commercial Fishermen in the Outer Cape Cod Recreational Lobster Area and Dealers. It is unlawful for any commercial fisherman fishing or authorized to fish in the Outer Cape Cod LCMA or any non-commercial fisherman fishing in the Outer Cape Cod Recreational Lobster Area as defined in 322 CMR 6.33 or any dealer to possess any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as  $\frac{1}{4}$  inch and tapering to a sharp point without setal hairs.
5. Non-commercial fishermen fishing in the Southern New England Recreational Lobster Area. It is unlawful for any non-commercial fisherman fishing in the Southern New England Recreational Lobster Area as defined in 322 CMR 6.33 to possess any female lobster bearing a notch or indentation in the base of the flipper that is at least as deep as  $\frac{1}{8}$  inch, with or without setal hairs.