

Draft document developed for Public Comment

Atlantic States Marine Fisheries Commission

**DRAFT ADDENDUM XXIV TO THE AMERICAN
LOBSTER FISHERY MANAGEMENT PLAN FOR PUBLIC
COMMENT**

State and Federal Regulatory Consistency



Vision: Sustainably Managing Atlantic Coastal Fisheries

This draft document was developed for Management Board review and discussion during the February 2015 meeting week. This document is not intended to solicit public comment as part of the Commission/State formal public input process. However, comments on this draft document may be given at the appropriate time on the agenda during the scheduled meeting. Also, if approved, a public comment period will be established to solicit input on the issues contained in the document.

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Public Comment Process and Proposed Timeline

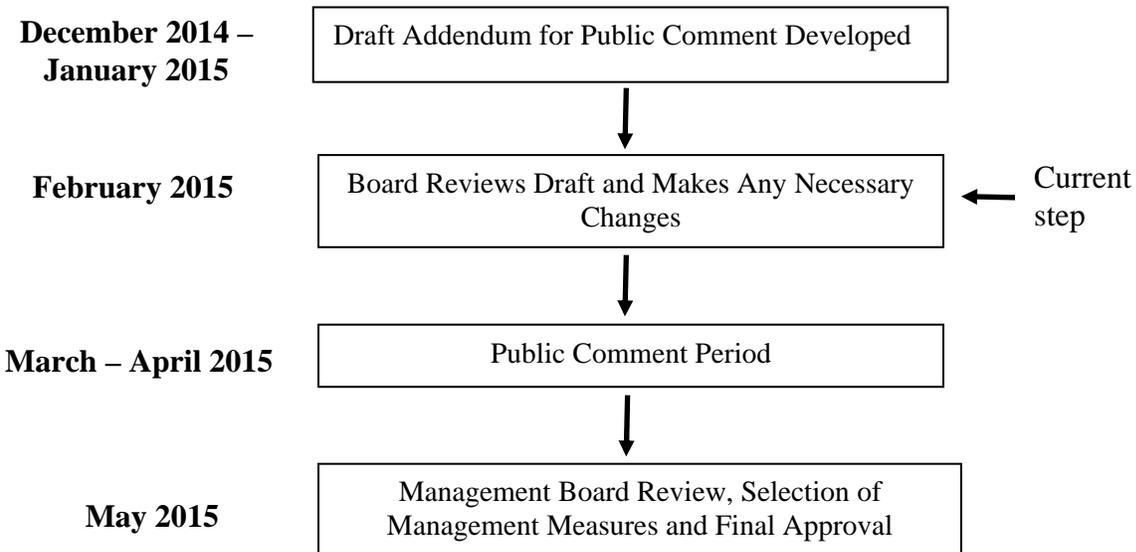
At the August 2014 Commission meeting, the American Lobster Management Board (Board) discussed the inconsistencies between federal and state trap transferability plans and developed a working group to determine solutions. The working group reported back to the Board in October 2014 with a series of recommendations to bring the federal and state plans in line with each other. The Board initiated Draft Addendum XXIV to considering implementing the working group recommendations to ensure consistent trap transferability programs between the state and federal plans.

The public is encouraged to submit comments regarding the proposed management options in this document at any time during the addendum process. The final date comments will be accepted is **XXX at 5:00 p.m. EST**. Comments may be submitted by mail, email, or fax. If you have any questions or would like to submit comment, please use the contact information below.

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Addendum XXIV)



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1.0 Introduction

The Atlantic States Marine Fisheries Commission (Commission) has coordinated interstate management of American lobster from 0-3 miles offshore since 1996. The management unit includes all coastal migratory stocks between Maine and North Carolina. American lobster is currently managed under Amendment 3 and Addenda I-XXIII 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 purpose of this draft addendum is to consider changes to the management program to ensure consistent lobster management measures between state and federal waters.

2.0 Overview

2.1 State of the Problem

In April 2014, NOAA Fisheries published a final rule on implementation of a limited entry program in Area 2 and Outer Cape Cod (OCC) as well as a trap transfer program to allow federal lobster permit holders with qualified allocations for Areas 2, 3, and OCC to transfer traps with other federal lobster permit holders. While the majority of the measures implemented are based on the Commission's recommendations and consistent with the Commission's plan, there are a few measures which are either not consistent with the Commission's plan or the Commission's plan does not address the issue. Inconsistent measures can provide advantages to certain fishery participants, such as allowing one permit holder more flexibility or treating permit holders differently. For example, if the Commission maintained its 10% conservation tax on full transfers, and NOAA Fisheries did not, such a program would result in differing trap allocations for specific individuals and would likely complicate the transfer process and could result in disconnects between federal and state trap allocations.

2.2 Background

This draft addendum addresses three specific inconsistencies between federal and Commission regulations: conservation tax of full business transfers, conservation tax increments, and dual permit transfers.

Conservation tax on full business transfers

Under the Commission's plan both partial trap allocation transfers and full business transfers (when the entire federal permit and trap allocation is sold) are subject to a 10% conservation tax, meaning that 10 % of the traps purchased are permanently retired from the fishery. The federal proposed rule did not include a 10% conservation tax for full business transfers. The Commission recommended that the federal rules include the conservation tax on full business transfers to allow for further reductions in latent effort,

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help recover the Southern New England lobster stock, and benefit the Atlantic right whale by reducing the number of vertical lines in the water.

In the final rule NOAA Fisheries defended its decision to limit the transfer tax to partial transfers by explaining that the transfer tax on full business transfers was not necessary to prevent the activation of latent effort and that existing trap caps, the transfer tax on partial transfers, and pending trap reductions in Areas 2 and 3 provide sufficient controls for latent effort. Further, NOAA Fisheries indicated that implementing the transfer tax on full business transfers is not possible because not all lobster management areas have individual trap allocations that can be summarily deducted when a permit and all traps are sold. Specifically, all federal lobster permit holders with Area 1 eligibility have an 800-trap limit, not a permit-specific trap allocation, and there is no administrative mechanism in place that could deduct the traps from an Area 1 permit. Consequently, NOAA Fisheries remained consistent with its proposed rule and published the final rule which assesses the conservation tax only on a partial trap transfer, not in the case of a full business transfer.

Trap Transfer Increments

Under the federal final rule, trap transfers may be processed in 10-trap increments. The Commission has adopted various transfer requirements that differ by management area. Addendum IV states that Area 2 transfers must be at least 50 traps and in increments of 10 traps when a transfer exceeds 50 traps. Furthermore, it states Area 3 transfers must be at least 50 traps, but with no specifics on the incremental amount for transfers in excess of 50 traps which is inconsistent with Area 2. Lastly, Addendum XIII required transfers for the Outer Cape in 50 trap increments, while also allowing those with allocations of less than 50 traps to transfer all of their trap allocation. Therefore, the federal regulations allow for fewer traps to be transferred at one time thus allowing more flexibility for a federal permit holder in the trap transfer process.

Dual Permit Transfers

Under the Commission's plan, a dual permit holder is restricted to transferring traps only to another dual permit holder from the same state. For the purpose of this addendum, a dual permit holder is an individual who holds a state and federal permit for the same Lobster Conservation Management Area (LCMA). The rule was crafted in an effort to allow the consolidation of trap allocations within specific state jurisdictions. This was done in order to maintain the character of each state's lobster fishery and to not increase effort in other state or federal waters. For example, if there were 55,000 traps allocated for Area 2 in Massachusetts, those 55,000 traps could only be transferred to individuals within Massachusetts. This was intended to maintain the character of the Massachusetts fishery, and also stop the consolidation of the industry in a single port.

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Under the federal trap transfer program, NOAA Fisheries will allow any federal lobster permit holder, even those who don't have a qualified trap allocation in a specific area, to purchase federal trap allocation from a federal lobster permit holder with a qualified allocation in Area 2, Area 3, or the Outer Cape Area. Allowing all permit holders to participate provides more opportunities for transfers while controlling effort in each area based on the overall cumulative trap cap. Additionally, a dual state/federal permit holder can purchase a federal allocation from a federal permit holder in another state, as well as an equal state-only allocation from a third individual in his or her own state for the purpose of matching the purchaser's state and federal trap allocations. Any dual permit holders with different trap allocations must agree to abide by the lower of the two trap allocations to take part in the trap transfer program.

NOAA Fisheries has indicated this allowance would not shift effort between states and would give more flexibility to the lobster industry and encourage transfers, which will add to the conservation tax benefits. Industry members and some state representatives supported the NOAA Fisheries measure to open up transferability to all federal lobster permit holders, and voiced concern that states with low numbers of Area 2 fishermen and low trap allocations would be disadvantaged if there were restrictions on who they could transfer traps with. Connecticut, in particular, voiced this specific concern during the public hearing process and Board meetings due to their very low number of LCMA 2 fishermen. The Commission was supportive of this allowance in the proposed federal rule.

3.0 Proposed Management Options

ISSUE 1: Conservation Tax of Full Business Transfers

This section proposes to remove the 10% conservation tax on full business transfers in all areas.

Option A: Status Quo

Under this option, the 10% conservation tax for both full and partial business transfers would continue.

Option B: Removal of 10% conservation tax on full business transfers

This option would remove the 10% conservation tax on full business transfers, and consequently modify Addendum IX *Section 3.0*, Addendum XIII *Section 4.1.5 Transfers Program Item C*, and Addendum XIX *Section 3.1 Transfer Tax*. These sections specify the full business transfer tax for Areas 2 and 3 and the Outer Cape Cod.

The transfer rates and rate of trap attrition in LCMAs with trap transfer provisions would be reviewed annually and reported to the Board.

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ISSUE 2: Trap Transfer Increments

This section proposes to align the state and federal trap transfer programs, by ensuring consistent trap transfer increments.

Option A: Status Quo

Under this option, the transfer increment will continue as currently specified under Addenda IV (Areas 2 and 3) and XIII (OCC). Trap increments will be determined for any Areas that adopt trap transferability in the future.

For Area 2, Addendum IV specifies the following:

A transfer must be comprised of a minimum of 50 traps. A conservation tax will be subtracted from the total number of traps transferred.

For Area 3, Addendum IV specifies the following:

A transfer must be comprised of a minimum of 50 traps and in units of 10 traps. The upgrading requirements will apply to the transfer; for example, a 20 foot vessel shall only transfer traps to a vessel under 23 feet.

For the OCC, Addendum XIII specifies the following:

- a) *Fishermen with OCC LCMA trap allocations may transfer some or all of their allocation to other lobstermen in 50 trap increments.*
- b) *Fishermen with a trap allocation less than 50 may transfer all of their allocation.*
- c) *Any fisherman whose trap allocations declines below 50 traps after transfer shall have the remaining trap allocation and the permit retired.*

Option B: 10 trap transfer increments

Under this option, traps shall be transferred in 10 trap increments in all areas that currently have a trap transferability program, unless specified otherwise. This option would repeal restrictions on vessel size and trap allocation transfers, and would not require a permit be retired if the permit holder has less than 50 traps. This option would replace the specified sections above if adopted.

ISSUE 3: Dual Permit Transfers

This section proposes to align the state and federal trap transfer programs, by ensuring consistent regulations for dual permit holders.

Option 1: Status Quo

Under this option dual permit holders would only be allowed to transfer to other dual permit holders from the same state.

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Option 2: Allowance of State-to-State Dual Permit Transfers

This option would allow dual permit holders to transfer allocation with dual permits holders from other states. It would modify Appendix 6 in Addendum XII, which specifies holder and recipient rules for trap allocation transfer.

In order to fish the higher allocation, the permit holder who purchases trap allocation must also purchase areas in question to align the federal and state allocations. If the state and federal allocations do not align, the permit holder is subject to the more restrictive of the state or federal allocation. Continued participation in the trap transfer program requires state and federal allocations for a LCMA to be aligned at the beginning of the trap transfer period. It is recommended that states submit transfer rates and rate of trap attrition in their annual compliance reports. The PRT will review these annually and provide a report to the Board. If the Board views the consolidation patterns as problematic, it can propose corrective actions at a subsequent meeting.

5.0 Compliance Schedule

Management programs for American lobster stocks will be effective immediately upon approval of the addendum document.

6.0 Recommendations for Actions in Federal Waters

The Atlantic States Marine Fisheries Commission believes that the measures contained in Amendment 3 and Addenda I-XXIV are necessary to limit the expansion of effort into the lobster fishery and to rebuild lobster stocks to recommended levels. The Commission recommends that the federal government promulgate all necessary regulations to implement the measures in a manner that supports the Commission's Interstate Fishery Management Plan for American Lobster.

Maine Department of Marine Resources Lobster Trap Tag – 2015 Pilot Project Proposal

Synopsis:

The Maine Department of Marine Resource's (DMR), Bureau of Marine Patrol (MMP) has vigorously enforced lobster trap limits since the effort limitations were implemented into this fishery over a decade ago. The MMP has conducted a number of complex and exhaustive investigations during that time frame, resulting in the successful prosecution of trap limit violators. Maine maintains its commitment to trap limit compliance with at sea inspections, gear inspection, strict enforcement, and stiff penalties.

Maine recognizes that trap limit compliance is based on enforceability. During a management review of our lobster trap tag exchange program DMR identified an avenue to streamline the program without compromising enforceability or compliance. In an effort to enhance our enforceability of trap limits, we are proposing a pilot project and the modification of our regulatory language regarding the attachment of tags to lobster traps in Maine.



Maine Marine Patrol Officers enforcing our lobster trap limit.

Trap Tag Exchange:

The Maine lobster fishery is dynamic by nature and involves considerable shifting of traps by individual lobster fishermen throughout the course of the fishing season. Maine fishermen also frequently cycle traps in and out of the fishery, and because traps are routinely bought and sold, the DMR has accommodated that complexity by administering a tag exchange program.

The tag exchange program, over time, has become an administrative burden to both DMR and the industry. It involves the sale, distribution, data entry, and tracking of 30,000 plus exchange tags annually. In order to proactively address this issue, DMR is proposing a change in the regulatory language regarding the manner in which trap tags are affixed to lobster gear.

In order to move this change going forward, DMR will need the approval of a pilot project, as ASMFC's American Lobster FMP, Addendum 1 (1999) Section 2.3.4 deals with the transferability of trap tags. The language reads as follows:

“Section 2.3.4 Transferability - All trap tags shall be of a permanent design not transferable once attached to a trap.”



In an effort to raise regional awareness on this subject, the MMP gave a presentation on this trap tag issue to the Law Enforcement Committee at ASMFC's 2014 Annual Meeting. Following the this meeting DMR decided to prepare a "pilot project" proposal which would incorporate amended regulatory language, industry outreach, project oversight, and project review and assessment. DMR would envision reporting the results of the pilot project to the LE Committee and the Lobster Management Board.

The Solution:

A change in the Maine regulatory language with respect to lobster trap tags will eliminate a cumbersome exchange program without impacting compliance or enforceability.

The following is an excerpt from Maine's current lobster trap tag regulation:

A. Prohibitions

- (1) No person shall fish with or have on board a vessel a lobster trap unless a valid lobster trap tag issued by the Commissioner is securely attached to the frame of the trap in a manner for which the tag was designed. The lobster trap tag shall be placed in the trap to be clearly visible for inspection by a Marine Patrol Officer.**

The following amended language is proposed and will address our concerns:

A. Prohibitions

- (1) No person shall fish with, or have on board a vessel, a lobster trap unless a valid lobster trap tag, issued by the Commissioner, is securely attached to the frame of the trap. The lobster trap tag shall be affixed to the bridge of the lobster trap by any means, so that the tag information is clearly visible for inspection by a Marine Patrol Officer.**



Conclusion:

The DMR is committed to maintaining the highest possible level of compliance with respect to our lobster trap limit and effort controls. This proposal will enhance both enforceability and compliance.

If authorized, we will implement this change with diligent oversight and monitor the program through a review and assessment process. Maximum compliance with the FMP is a common goal for both the ASMFC and the State of Maine.