

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

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

Approved August 6, 2013

## TABLE OF CONTENTS

<b>Call to Order, Chairman Douglas Grout.....</b>	<b>1</b>
<b>Approval of Agenda.....</b>	<b>1</b>
<b>Discussion of Proceedings from February 2013 .....</b>	<b>1</b>
<b>Public Comment.....</b>	<b>1</b>
<b>Discussion of Draft Addendum XX for Final Action.....</b>	<b>2</b>
<b>Discussion of Draft Addendum XXI for Public Comment.....</b>	<b>4</b>
<b>Discussion of NOAA Fisheries Lobster Proposed Rule .....</b>	<b>8</b>
<b>Discussion of the Mid-Atlantic Fishery Management Council Action for Special Management Zones.....</b>	<b>11</b>
<b>Other Business.....</b>	<b>12</b>
<b>Adjournment .....</b>	<b>13</b>

## INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move to approve Option 2 in Addendum XX to the American Lobster FMP.** (Page 2). Motion by Terry Stockwell; second by Bill Adler. Motion carried (Page 3).
3. **Move to approve Addendum XX as modified** (Page 3). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 3).
4. **Move that the board accept the changes to the document presented today concerning the ownership language in Sections 3.1.4 and 3.2.5, as well as the sunset provision for single ownership as presented in Section 3.1.3** (Page 7). Motion by Dan McKiernan; second by Bill McElroy. Motion carried (Page 7).
5. **Move to approve Section 3.1.1 C and Section 3.2.1 C in the document** (Page 7). Motion by Bill Adler; second by Bill McElroy. Motion was defeated (Page 7).
6. **Move to approve Addendum XXI as amended today for public comment** (Page 7). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 8).
7. **Move to adjourn by consent** (Page 15).

## ATTENDANCE

### Board Members

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

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

### Ex-Officio Members

### Staff

Robert Beal

Toni Kerns

### Guests

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

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

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 20, 2013, and was called to order at 1:15 o'clock p.m. by Chairman Douglas Grout.

### **CALL TO ORDER**

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

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

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

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

### **APPROVAL OF AGENDA**

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

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

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

### **DISCUSSION OF PROCEEDINGS**

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

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

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

### **PUBLIC COMMENT**

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

actually fully enforcing the definitions that they are operating under.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **DISCUSSION OF DRAFT ADDENDUM**

### **XXI FOR PUBLIC COMMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN GROUT: Are there any questions? Bill.

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

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

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

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

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

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

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

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

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

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

MR. McKIERNAN: Are you ready for a motion?

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

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

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

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

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

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

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

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

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

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

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

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

MR. ADLER: Yes.

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

(Whereupon, a caucus was held.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **OTHER BUSINESS**

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

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

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

### **ADJOURNMENT**

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

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