

Atlantic States Marine Fisheries Commission

**ADDENDUM XXIV TO THE AMERICAN LOBSTER
FISHERY MANAGEMENT PLAN**

State and Federal Regulatory Consistency



Vision: Sustainably Managing Atlantic Coastal Fisheries

Approved May 2015

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 Virginia. American lobster is currently managed under Amendment 3 and Addenda I-XXIV 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 Board initiated this Addendum to align Commission and federal regulations concerning the management of the American lobster. Addendum XXIV modifies the conservation tax on full business transfers, the increments of trap transfer, and the transfer options of dual permit holders to match those of NOAA Fisheries.

2.0 Overview

2.1 Statement of the Problem

In April 2014, NOAA Fisheries published a final rule on the 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 were based on the Commission's recommendations and consistent with the Commission's plan, there were a few measures which were either not consistent with the Commission's plan or the Commission's plan did 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, resulting in disconnects between federal and state trap allocations.

2.2 Background

Addendum XXIV addresses three specific inconsistencies between federal and Commission regulations: conservation tax of full business transfers, trap transfer increments, and dual permit transfers.

Conservation tax on full business transfers

Prior to Addendum XXIV, the Commission's plan stipulated that both partial trap allocation transfers and full business transfers (when the entire federal permit and trap allocation is sold) were subject to a 10% conservation tax, meaning that 10% of the traps purchased were 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, 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 was 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 final federal rule, trap transfers may be processed in 10-trap increments. The Commission had adopted various transfer requirements that differed by management area. Addendum IV stated that Area 2 transfers must be at least 50 traps and in increments of 10 traps when a transfer exceeded 50 traps. Furthermore, it stated 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. 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

The Commission's plan restricted a dual permit holder to transfer 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.

Under the federal trap transfer program, NOAA Fisheries allows 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 Cod 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 Management Measures

3.1: Conservation Tax of Full Business Transfers

Addendum XXIV removes the 10% conservation tax on full business transfers in all areas and consequently modifies 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 will be reviewed annually and reported to the Board.

3.2: Trap Transfer Increments

Traps shall be transferred in increments of 10 in all areas that currently have a trap transferability program, unless specified otherwise, thereby ensuring consistent trap transfer increments. This section repeals restrictions on vessel size and trap allocation transfers, and does not require a permit be retired if the permit holder has less than 50 traps. This replaces Addendum IV *Section 4.2.1 Minimum Transfer* and *Section 5.3.1 Effort Control Measures* as well as Addendum XIII *Section 4.1.5 Transfer Programs*.

3.3 Dual Permit Transfers

In order to align state and federal trap transfer programs, dual permit holders are allowed to transfer allocation with dual permits holders from other states. A dual permit holder is an individual who holds a state and federal permit for the same Lobster Conservation Management Area (LCMA). This modifies Appendix 6 in Addendum XII, which specifies holder and recipient rules for trap allocation transfer. If a dual permit holder chooses to purchase federal trap allocation from a dual permit holder from another state, only the federal allocation will transfer, so the buyer must also purchase state allocation from a permit holder in his or her own state 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 allocations. It is recommended that states submit transfer rates and rate of trap attrition in their annual compliance report. The PRT will review

these annually and provide a report to the Board. If the Board views the consolidation pattern as problematic, it can propose corrective actions at a subsequent meeting.

4.0 Compliance Schedule

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

5.0 Recommendations for Actions in Federal Waters

The Atlantic States Marine Fisheries Commission believes that the measures contained in Amendment 3 and Addenda I-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.