

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

**The Westin Crystal City  
Arlington, VA**

**August 2, 2022  
Hybrid Meeting**

**Approved November 7, 2022**

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## INDEX OF MOTIONS

1. **Approval of agenda** by consent (Page 1).
2. **Move to approve Proceedings of March 31, 2022** by consent (Page 1).
3. **Move to postpone consideration of public hearings on Draft Addendum XXVII until the Annual Meeting to allow the PDT time to address challenges raised by existing MSA language regarding possession of lobsters smaller than the lowest minimum size limit specified in the American Lobster FMP. This could include language which differentiates harvest vs. possession limits to reduce impacts on dealers and processors. The LEC should also review new language that may be suggested by the PDT** (Page 10). Motion by Pat Keliher; second by Cheri Patterson. Motion carried (11 in favor) (Page 13).
4. **Move to approve Advisory Panel nominations for Eric Lorentzen and Todd Alger from Massachusetts, and Chris Welch from Maine** (Page 26). Motion by Dan McKiernan; second by Pat Keliher. Motion carried (Page 27).
5. **Move to elect Commissioner Pat Keliher of Maine as Vice-Chair of the American Lobster Management Board** (Page 27). Motion by Dan McKiernan; second by Emerson Hasbrouck. Motion carried (Page 27).
6. **Move to adjourn** by consent (Page 27).

## ATTENDANCE

### Board Members

Mike Armstrong, MA, proxy for D. McKiernan (AA)	Colleen Bouffard, CT, proxy for J. Davis (AA)
Pat Keliher, ME (AA)	Bill Hyatt, CT (GA)
Stephen Train, ME (GA)	Jim Gilmore, NY (AA)
Cherie Patterson, NH (AA)	Emerson Hasbrouck, NY (GA)
Ritchie White, NH (GA)	Joe Cimino, NJ (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Peter Clarke, NJ, proxy for T. Fote (GA)
Dan McKiernan, MA (AA)	John Clark, DE (AA)
Raymond Kane, MA (GA)	Roy Miller, DE (GA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Mike Luisi, MD, Administrative proxy
Jason McNamee, RI (AA)	Russell Dize, MD (GA)
David Borden, RI (GA)	Pat Geer, VA, proxy for J. Green (AA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	Allison Murphy, NOAA

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

### Ex-Officio Members

Kathleen Reardon, Technical Committee Chair

### Staff

Bob Beal	Lisa Carty	Adam Lee
Toni Kerns	Emilie Franke	Sarah Murray
Maya Drzewicki	Lisa Havel	Joe Myers
Tina Berger	Chris Jacobs	Mike Rinaldi
Kristen Anstead	Jeff Kipp	Julie Defilippi Simpson
Pat Campfield	Dustin Colson Leaning	Caitlin Starks

### Guests

Katie Almeida	Noah Cluster	Caroline Good, NOAA
Jordan Andrews, <i>Press Herald</i>	Colleen Coogan, NOAA	Melanie Griffin, MA DMF
Pat Augustine, Coram, NY	Heather Corbett, NJ DEP	Catherine Fede, NYS DEC
Rachel Barrales, Cape Cod CFA	Nicole Lengyel Costa, RI DEM	Jon Hare, NOAA
John Bello	Caitlin Craig, NYS DEC	Amalia Harrington, Univ. ME
Alan Bianchi, NC DENR	Maria Fenton, NOAA	Marin Hawk, MSC
Jeff Brust, NJ DEP	Marianne Ferguson, NOAA	Heidi Henninger, AOLA
James Burns	James Fletcher	Jay Hermsen, NOAA
Josh Carloni, NH FGD	Erica Fuller, CLF	Matthew Heyl, NJ DEP
Beth Casoni, MLA	Brian Galvez, NOAA	Jesse Hornstein, NYS
Danielle Chesky, Embassy of Canada	Marty Gary, PRFC	Jeff Kaelin, Lund's Fisheries
Matt Cieri, ME DMR	Lewis Gillingham, VMRC	Ellen Keane, NOAA
	Jennifer Goebel, NOAA	Kiana Kekoa, Ofc. Sen. Reed, RI

**Guests (continued)**

Joelle Kilchenmann, Univ. ME  
Nancy Koenig  
Rob LaFrance, Quinnipiac Univ  
Chip Lynch, NOAA  
J A Macfarlan, RI DEM  
John Maniscalco, NYS DEC  
Eric Matzen, NOAA  
Kim McKown, NYS DEC  
Conor McManus, RI DEM  
Meredith Mendelson, ME DMR  
Steve Meyers  
Henry Milliken, NOAA  
Jack Molmud, NewsCenter, ME  
Lorraine Morris, ME DMR  
Gunda Narang  
Lindsey Nelson, NOAA

Virginia Olsen, Local 207  
Scott Olszewski, RI DEM  
Michael Pentony, NOAA  
Nick Popoff, US FWS  
Chad Power, NJ DEP  
Tracy Pugh, MA DMF  
Brad Schondelmeier, MA DMF  
Amanda Small MD DNR  
Melissa Smith, ME DMF  
Somers Smott, VMRC  
Rep. Elizabeth Snyder, AK  
Renee St. Amand, CT DEEP  
Terry Stackhouse, WMTV  
Lauren Staples, NH FGD  
David Stormer, DE DFW  
Jason Surma, Woods Hole Grp

Pam Thames, NOAA  
Andrea Tomlinson  
Corinne Truesdale, RI DEM  
Mike Waine, ASA  
Jessica Waller, ME DMR  
Megan Ware, ME, DMR  
Craig Weedon, MD DNR  
Ashley Weston, NOAA  
Kelly Whitmore, MA DMF  
Erin Wilkinson, ME DMR  
Chris Wright, NOAA  
Jordan Zimmerman, DE DFW  
Erik Zlokovitz, MD DNR  
Renee Zobel, NH F&G

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Jefferson Ballroom of the Westin Crystal City Hotel, Arlington, Virginia, via hybrid meeting, in-person and webinar; Tuesday, August 2, 2022, and was called to order at 10:35 a.m. by Chair Jason McNamee.

### **CALL TO ORDER**

CHAIR JASON McNAMEE: While we're waiting for folks to settle in here in the room, just one announcement. We're going to have a series of discussions on right whales, and I know there are some folks that may be in the back of the room from some of the southern states, that aren't necessarily on the Lobster Board.

But we welcome you to come up to the table and ask questions during that point in the agenda, if you wish. Just a reminder of that opportunity, if folks have questions about the speed rule or the ropeless work that's going on. Okay, looks like everybody is mostly settled in here, so why don't we get going with the agenda.

Welcome everybody! This is a meeting of the Lobster Management Board. We have kind of a hybrid thing going on here. It looks like most folks are in the room, but I know we have a couple of folks online as well. I think when we get to points of asking questions, and things of that nature, I'm going to look to the room first, and then follow up with the folks online, if that is okay.

### **APPROVAL OF AGENDA**

CHAIR McNAMEE: With that, first I'll ask the question about the agenda. Are there any changes to the agenda that anybody wishes to make? Okay, no hands here in the room. Anybody online? No hands online, so we will call the agenda approved as submitted.

### **APPROVAL OF PROCEEDINGS**

CHAIR McNAMEE: Next up are the proceedings from the last meeting. Are there any additions, changes, edits? Looking in the room here for any edits.

Not seeing any, anyone online? Nobody online either, so we will consider the proceedings approved as submitted. Great, thanks everybody.

### **PUBLIC COMMENT**

CHAIR McNAMEE: Now is a point in time when we can take some public comment for things that aren't on the agenda. Are there any public in the room that wish to speak?

Did anybody sign up or anything like that, Caitlin? Okay. Nobody here in the room, anybody online that wishes to speak to anything not on the agenda? Okay, not seeing any hands, so we will keep moving along.

### **UPDATE ON JUDGE JAMES BOASBERG RULING IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IN CENTER FOR BIOLOGICAL DIVERSITY VERSUS SECRETARY RAIMONDO AND THE MAINE LOBSTERMEN'S ASSOCIATION**

CHAIR McNAMEE: Next up is a Discussion on the Judge Boasberg Ruling, and I believe we have Chip Lynch from NOAA here to talk us through that agenda item. Whenever you're ready, Chip.

MR. CHIP LYNCH: Hi everybody, Chip Lynch with NOAAs Office of General Counsel. As many of you are aware, we received an opinion from the Court on July 8th, identifying defects in NOAAs recent biological opinion and in its final rule from 2021. But in order to, I think better frame the conversation, I would like to take everybody back to 2017, because that is really when this all began.

As you recall, in 2017 scientists and other individuals started noticing a series of mortalities and serious injuries to right whales. It was unusual at the time, because in 2017 the prevailing belief

was that right whales were on a positive trajectory. NOAA and the states had implemented a number of rules in the past, protective measures, sinking ground line.

Massachusetts did its Bay closure, etcetera. It looked as though the population was responding positively. But in 2017 there was a number of these whale mortalities that undermined that belief. NOAA at that time convened the Take Reduction Team, which is a team that is created or identified under the Marine Mammal Protection Act.

It's a team of advisors, industry experts, scientists, managers. The charge was to look at this unusual mortality event. I mean that's what it was called. It had been termed a UME or an unusual mortality event, and to look at the condition of the species, and to come up with some ideas.

Around this same time, a number of environmental organizations brought suit, challenging against NOAA, essentially saying that NOAA needed to do more, and needed to do more faster. One of the ways in which this challenge took effect was to challenge NOAA's earlier biological opinion from 2014, sort of called a batched biological opinion, because it looks not only at lobster and Jonah crab, but at a number of fisheries up and down the coast.

That biological opinion concluded that it did not contain an incidental take statement, which is sort of a term of ours created by the Endangered Species Act. The case, which was brought by Center for Biological Diversity, I believe the Humane Society, Conservation Law Foundation, Defenders of Wildlife. That proceeded along, lawyers and everybody kind of had their own nomenclature on naming cases.

Center for Biological Diversity just happened to be the first name in the caption, so it's called the Center for Biological Diversity Case, even though it encompasses all those others, or the

CBD case. That case proceeded along, the TRT proceeded along, coming up with ideas to decrease whale mortality.

Then the Court, the CBD Court rule in April of 2020, and then a little bit after in August of 2020, and found that NOAA's earlier biological opinion was defective, because it lacked an incidental take statement. The judge in that case is Judge Boasberg. That is why you will all hear people talk about the Boasberg Opinion. That is what they are referring to.

The Court found NOAA's biological opinion defective, and gave NOAA time to cure that defect, which it did. In May of 2021, NOAA issued a new biological opinion, again it looked at impacts from Maine all the way down to Florida. It included not only lobster and Jonah crab, but other species such as bluefish, squid, mackerel, butterfish, scup, summer flounder, black sea bass, spiny dogfish, groundfish. It's a big, biological opinion, it's not just about lobster and Jonah crab. The opinion looked at what was at that time NOAA's intended plan to bring back whales, bring back the right whales.

That plan at the time was a phased approach to recover the right whale. There was a first phase, which was intended to be, at that time was going to be a rule. It turned out to be the September, 2021 rule, where NOAA and the states would implement regulations to achieve about a 60 percent risk reduction to the northeast trap fisheries, lobster, Jonah crab.

Phase 2 approach was going to achieve by 2023, was to achieve a 60 percent risk reduction in all the other fisheries, gillnet, Mid-Atlantic, trap pot fisheries, sort of leveled the playing field. Everybody gets a 60 percent risk reduction. Then there was going to be a third phase that was going to again look at all of the fisheries once again, and achieve additional risk reductions, and actually bring down mortality in whales or biological removal (you know, mortality) from fishing to about one.

That was scheduled for 2025. Then a further rulemaking that would bring the number of whales well below one, or 0.136 or something like that by 2030. That was the plan. The biological opinion looked at that plan, said there was no jeopardy, good to go. NOAA then issued its Final Rule on the Phase 1 fishery, Phase 1 measures. That happened in September of 2021, so a little less than a year ago.

Those are the measures that you're all familiar with, the weak rope, the breakable links, some seasonal closures. Soon after that the environmental plaintiffs, most of them, renewed their challenge to the now new biological opinion, the 2021 batch biological opinion. It also challenged the 2021 rule.

We can get into it if you want, but for the purposes of this discussion, we'll simplify it to say that the challenge was that NOAA needed to do more, and needed to do more faster. At the same time, industry was involved in the case, but it had also brought its own case, Maine Lobstermen's Association, Massachusetts Lobstermen's Association, etcetera, essentially arguing the flip side of this same coin, challenging the biological opinion and the rule for some of the assumptions, the technical assumptions and math that NOAA did.

That case is also before Judge Boasberg, and we refer to that case as the MLA Case for Maine Lobstermen's Association, because they were the first in the caption. Those cases were proceeding forward, and we briefed the matter in the spring, and we got a decision from the Court this past July.

The July 8th ruling, is only a partial ruling. The ruling essentially states, the Court ruled in two parts, one part on the biological opinion, and one part on the 2021 rule. As to the biological opinion, the Court, and I have to clarify it's the judge sitting in with jurisdiction over the CBD case. The judge also has jurisdiction over the MLA case, again, flip side of the same coin, hasn't ruled on that. But as far as the CBD case,

the judge ruled and said, NOAA's biological opinion is again defective. Essentially the reason is because NOAA issued an incidental take statement, but the incidental take allowed was 0, and the Court said, you can't allow a fishery with a 0 ITS when your own documents say that the fishery is going to take something greater than 0, 2.65 I think is the number. As to the rule itself, the Court said, you need to get to PBR, which I'll define in a minute, within six months of the rule.

PBR is a term of art. It's a term under the Marine Mammal Protection Act, its potential biological removal, and essentially what it means is, how many whales can the fishery seriously injure or kill. That is a standard under the MMPA, and still allow the fishery to be at sustainable levels. The rule, scientists say that the current PBR, or at least the PBR at the time, was 0.7, so 0.7 whales per year.

I have to say that when we're talking about numbers, the numbers are great to add so it is not so esoteric. You're dealing with hard numbers. But they are only a snapshot at the time. The whale population, the models show the numbers altering slightly as you put more inputs and different inputs, but basically for the purposes of this discussion, PBR, potential biological removal for whales is 0.7.

The final rule that came out, or the plan being proposed by NOAA had this Phase 1, which would lower PBR all the way down from 4.5 to approximately 2.5, so almost cutting it in half. Then by the time you're getting down to this Phase 2, it's down to a little bit under 2.5. Phase 3 it's down to 1. Phase 4 at 2030 is, again as I mentioned before, down to 0.136.

The Court said, you need to get to PBR within six months of your rule, and if PBR is 0.7, then you need to get to 0.7 within six months of your rule, and this rule did not do so. The rule, again, was part of a plan to get to that number, but it didn't get to that number within six months. The Court said, these are the defects, we need to figure out what to do about this.



It set up a further round of briefing, which we call the Remedy Briefing, you know the okay, now what briefing. We were just in front of the Court, and the Court set up a schedule and said that the environmental plaintiffs have to submit their remedy briefing by August 12. NOAAs is going to be September 19.

Some of the intervener defendants, such as Lobstermen's Association, will have their chance at briefing in early October, and the Plaintiffs get the final say on or around October 21st. What that means is the Court will be in a position to render a decision sometime after October 21st. The Court in its original opinion July 8th, did make note of how difficult a problem this is, and how there are tremendous impacts on all parties involved, including the fisheries in the coastal communities in New England.

I don't think it would be, if the briefing is done on October 21st, I don't think the Court will be able to round up an opinion by the 22nd, so we're talking probably an opinion a month or two after that, probably a holiday season. It could be later, but that is probably, consistent with past practices by this judge, that is where it would go.

There is one other intervening issue here though. Again, as I mentioned, the MLA case being brought by industry is still pending. The Court has not ruled on it. I mean you can't look at the CBD end of this case and not have a sense of where the judge is going. But nevertheless, there are important questions being raised in the MLA case that could bear on what the parties would say in the briefing on remedy in the CBD case. For example, the MLA case, the challenge there has been to some of the assumptions that NOAA has made in its modeling, and an allegation that NOAA is relying too much on the worse case scenarios to come up to its numbers.

Many would say we need to know what the Court thinks of that, because that will inform

where we need to go forward, how we need to go forward in the CBD case. The Court understood that and said, okay, the judge said that he would take briefing on that particular topic by August 5th, which is a couple of days from now.

We are waiting, or we will be waiting to hear from the Court, to see what it's going to do with the MLA case, and options would include. The judge could say, we will stay the case until sometime in the future, maybe even after the final decision in the CBD case, or even a rule that may come out by NOAA.

The idea being that depending on what the parties do here, it could obviate the need for the Court to rule in MLA. It could moot things out, or the Court could say, I agree there needs to be an opinion, and here it is, just issues its opinion in MLA, or the Court could say, we'll stay the briefing schedule until after it issues an opinion in the MLA case, which would happen probably forthwith. There may be other options that I haven't even thought about.

But that is pending, and that is what we're working on now. That which I've spoken to you is obviously generalized and probably over simplified in a way. But there are many moving pieces. There is a lot going on. There are even other cases involving whales. I'm happy to answer any questions you have on them to the extent that I can, to the extent that I know. But with that, I think that encapsulates where we all are in the process here.

CHAIR McNAMEE: Awesome, thanks so much, Chip, really complicated stuff. I think you boiled it down in a way that was understandable. Thanks for that. Why don't we take some questions for Chip, if anybody has any? I'm looking around the room. Okay, I'll go to you first, Pat.

MR. PATRICK C. KELIHER: Chip, that was a thorough presentation and there is a lot there. If you're not involved in it day to day, minute to minute, it might seem like this is something that is workable in many ways. But I'm wondering, and if it's too much to ask, I understand. But I'm wondering if you could put a finer point on the seriousness of the issues

related to, not PBR, but to negligible impact, and whether that can be reached. Because I think it's important for this Board in particular to understand the potential ramifications of this decision and where it's going.

MR. LYNCH: I can answer some of that. I can certainly give you my understanding of where we come up with this negligible impact thing. A negligible impact determination is a phrase of art. It's something that is in the law. You'll hear people talk about a NID all the time. That's what it is. It's the negligible impact determination. The negligible impact determination is the crosswalk from between the ESA, the Endangered Species Act and the Marine Mammal Protection Act. It comes up in this case, because one of the chief criticisms, or a criticism of the Court was that NOAA did not, originally, did not include an incidental take statement, which is a term under the ESA, in its biological opinion. Then NOAA put in a 0 incidental take statement in its biological opinion.

The crosswalk is that in order to issue an incidental take statement for whales, the Agency needs to make a determination that the continued action that it is consulting on will have a negligible impact on the survivability or the status of the stock in a sustainable way moving forward. It's not so simple as coming up with a rule that gets to achieve PBR, or this potential biological removal within six months.

The issue also involves being able to determine that the fishery, in getting to PBR, will have a negligible impact all the while. Now, PBR, and this is where I got out of my league, because I am not a scientist. PBR is a number that is, excuse me negligible impact determination number is a number that is equal to or less than the number for PBR.

I've seen scenarios where the negligible impact determination number is 50 percent of PBR. It can be 30 percent of PBR, it can be 10 percent of PBR. I don't have a precise number as to

what it is here. But suffice it to say, in order to get to negligible impact, well I mean let's just use common sense.

The word is what it says it is, it's a negligible impact, and it's something that the scientists would calculate as to what that number is. It's likely to be at, and quite potentially below PBR, maybe even significantly below PBR. Does that answer your question, Pat? I'm not sure I can get to.

MR. KELIHER: It does, but this is my perception, and if you believe I'm wrong you can tell me, but just for the Board's understanding. We believe that the potential to reach PBR is there to continue this fishery. We don't believe this fishery will be able to continue if we have to reach a negligible impact. That's where we are with this lobster fishery, an either/or scenario. We've got two steps. We've got an interim step for remedy, and then a final rule that then moves us out to PBR.

The timeframe on those things, you know are going to be argued in the Court. But I just want to make sure that this Board is clearly understanding the seriousness that this fishery faces, a billion-dollar industry on the east coast. The most valuable single-species fishery in this country could be closed, because of this tie between the Endangered Species Act and the Marine Mammal Protection Act. This has been my worst nightmare, and it's moving in that direction.

CHAIR McNAMEE: Go ahead, Chip.

MR. LYNCH: To underscore the gravity. I hope I didn't misdirect the Board. There will be a briefing remedy, and there will be a Court ruling. I don't know what the Court is going to say. The last time the Court found NOAA's biological opinion to be defective, the Court gave us time to correct it, and allowed the biological opinion to continue to exist in the meantime. My personal opinion notwithstanding, the reasonableness and necessity of such an approach. It's possible the Court could be even more draconian than that, meaning the Court could vacate the biological opinion. It's

possible. I didn't want to mislead anybody here to think that the Court is going to give time. It might.

CHAIR McNAMEE: Thanks for that. Jim Gilmore, go ahead.

MR. JAMES J. GILMORE, JR.: I'm not sure if this is a question to either Pat or Chip. Pat just said, so if they can't reach the NID it's a complete closure of the fishery, there is no option for? Not that it's a good solution, but I mean a reduction. Say if you said, well, if you reduced harvest by 50 percent hypothetically. That's not an option? You either have to have a fishery or no fishery? It sounds a little bizarre to me. But anyway.

CHAIR McNAMEE: Go ahead, Chip, if you feel like you can answer.

MR. LYNCH: I don't know that I can. I quickly get out over my skis when we talk about the specifics here. But suffice it to say that the severity of a potential result is not being overstated.

CHAIR McNAMEE: Thanks for that. John Clark.

MR. JOHN CLARK: Thank you for the explanation, Chip. Is this a uniquely bad situation because of the interaction of the Marine Mammal Protection Act and the ESA, and as such may be limited in its precedent, or could this just be the start of more draconian interpretations of these laws, and if so, is there any thought of appealing this? Who would appeal this? Would NOAA appeal this if it is as extreme as Pat is saying, where the fishery is closed, or would that have to be a state appealing this, or the Lobstermen's Association?

MR. LYNCH: Any party to the lawsuit can appeal the result. When you have in the CBD Case combined with the MLA Case, there is state, there are numerous industry groups, there are environmental organizations. Any of

them could appeal any potential result. As to the novelty of the situation, it is different, because it involves the interplay between the MMPA, the Marine Mammal Protection Act, and the Endangered Species Act.

Were this only an Endangered Species Act issue, we would be talking about that which could, the standard would be federal actions that jeopardize the continued existence of the species, and we could issue a biological opinion based thereon, and reasonable and prudent measures or alternatives, depending on the finding, and we would issue an incidental take statement. With the Marine Mammal Protection Act there is this additional hoop to jump through. In this instance it does complicate matters.

CHAIR McNAMEE: Good, John? Okay, next up I have Dan McKiernan, and this will be the last question on this, and we're going to move on to the next agenda item. Go ahead, Dan.

MR. DAN MCKIERNAN: Thanks, Chip, great summary. I do have a question on a technical level. The biological opinion only dealt with the federal waters permit holders fishing in federal waters. Where does that leave the state fisheries, legally, in all of these deliberations?

MR. LYNCH: That is going to take a lot longer to answer, Mr. Chairman. The most acute issue would relate to the federal fisheries, or fisheries in federal waters, because that is what is at bar. There would not need be very many ripples from where the stone falls to eventually hit the state fishers. Right, I mean everything is related.

We're talking, and everything is related in perhaps my oversimplified version of, at the end of the day we are talking about ways to preserve the resource. By that I mean the right whale resource, and how and when and means and methods to do that is something that I just would not be in a position to be able to talk about. I just don't know about it. But I think the gist of your question, Dan, is that would there be reverberations. Yes, I can't imagine how there would not be.

CHAIR McNAMEE: Okay, thank you very much, Chip, that was a tough one. Good job doing the best you could to answer the questions. We really appreciate the opportunity. We're going to move on to, sorry, go ahead, Steve.

MR. STEPHEN TRAIN: It's not your fault, I've been holding my tongue, because I'm afraid once I get started, I may have trouble stopping here. Chip, I appreciate every bit that you said, and when I ask these or make these statements, it is not out of ignorance or stupidity nor anger. What I'm trying to understand, and I guess I'm saying it now so it is on the record.

The goal of both of these federal acts is to make sure we don't kill whales. Essentially this is what it comes down to. That is what is being applied, that's why there is a lawsuit. In over 25 years of research by your own Agency and studies, there has never been a case of a fatality caused by Maine lobster gear, not one documented case.

To the best of my knowledge, there have only been two entanglements, and they were freed or released. I understand the law is not specific. I understand the ESA has the term pose risk. But all of this is done to accomplish a goal, that it appears we have already met, and there is the overlying threat of closing a fishery to meet it.

I don't see how we have defense for this. I mean I understand why you're in this position you're in at NOAA, when it appears we've done what we've had to do to accomplish the end goal. Yet we're being challenged again by one agency or another, or one NGO or another, by a judge who is required to enforce the law.

I guess what I'm leading to with all of this. I told you I might go too long. How do you see this working forward in the next two or three months? I mean I know 5,000 families whose income depend on this fishery, that we've managed very sustainably, and we get something thrown from the stands instead of the outfield.

CHAIR McNAMEE: Chip, do you want to take a shot at it?

MR. LYNCH: I'm not sure I can say a whole lot more than, I hear you. This is an extraordinarily difficult situation for all people to be in. I hear you. Whales are in the ocean. It's unlike documenting what happens to a species that is terrestrial. There are few sightings of whales that can be attributed to any one state. I think that is part of the problem. I can understand Maine people saying that they haven't seen a whale. It hasn't been documented mortality from Maine gear. I think most states can say that though, because whales don't have gear that can be attributed to a particular fishery or area, sometimes they're dying out at sea.

But it makes it extraordinarily difficult. As to where this is headed in the future. Tough to say, because so much is going to be dependent on what the Court says next. I can tell you that the Agency, NOAA, is committed to moving forward, because there is no other option. What that looks like remains to be seen. I wish I could give you a better answer than that. I know it's not fulfilling, but I think that is about as much as I can say.

CHAIR McNAMEE: All right, thank you, Chip, let's move on to the next item.

**DISCUSS IMPLICATIONS OF PROPOSED MEASURES OF DRAFT ADDENDUM XXVII ON INCREASING PROTECTION OF SPAWNING STOCK BIOMASS OF THE GULF OF MAINE/GEORGES BANK STOCK**

CHAIR McNAMEE: The next item on the agenda is a discussion on Addendum XXVII, which is focused on Increasing Protection of Spawning Stock Biomass of the Gulf of Maine/Georges Bank Stock. Caitlin has a brief presentation, and then we'll get to our discussion. Caitlin, whenever you're ready, take it away.

MS. CAITLIN STARKS: I'm just going to go over where we currently stand with Draft Addendum XXVII, which is on increasing the protection of the spawning stock in the Gulf of Maine and Georges Bank. I'll start off with some background quickly,

and then review the proposed management options in the document.

Then I'm going to outline some of the concerns that have been brought forward, related to the proposed gauge sizes in the document. Then lead the Board into discussion on how to move forward. Just to recap really quickly the history on this. The Board initially initiated this Addendum in August, 2017, and that was in response to concerns about decreasing trends in Maine's larval settlement survey, and the potential for future declines in recruitment and landings.

At that time the Addendum focused on standardizing management measures across the lobster conservation and management areas or LCMAs within the stock. Then draft Addendum XXVII was put on hold for a few years, as the Board had to prioritize work related to right whale risk reduction efforts.

Then in February, 2021, after approving the 2020 benchmark stock assessment, the Board reinitiated work on this Addendum with a new motion that changed the focus of it to consider a trigger mechanism, such that upon reaching that trigger, measures would be automatically implemented to improve the biological resiliency of the Gulf of Maine and Georges Bank stock.

That was responding to trends since the Addendum was initially started, which have continued to be a concern with the settlement surveys over the past five years remaining below the 75th percentile of their time series. We've also seen declines in recruit abundance in the ventless trap survey and trawl surveys for the Gulf of Maine and Georges Bank stock since that 2020 assessment.

Considering all that information, the Board updated the objective of this Addendum to this statement on the screen, which focuses in that trigger mechanism that when we reach that trigger, it would automatically implement

measures to increase the protection of spawning stock biomass. After we reinitiated this in February, 2021, the Board did approve the draft Addendum for public comment in January of 2022. But at that same meeting the Policy Board decided to delay the release of the document for public comment, because there were concerns that upcoming actions and information could impact the ability to get useful public comments.

In particular, thinking about upcoming information on the stock condition from data updates that could impact the trigger index in the draft Addendum, and also some potential management related to right whales, which we've been talking about this morning. The states also wanted the opportunity to hold safely some in-person hearings before any Commission hearings.

That is where we left off with this Addendum, and then I quickly want to refresh everyone's memory, and go through the proposed management options in the Addendum. This Addendum has two separate issues in it. Issue 1 is addressing the standardization of a subset of management measures within the LCMAs and across the Gulf of Maine and Georges Bank stock.

Then Issue 2 considers applying either a trigger mechanism, or a predetermined schedule for implementing biological management measures that would be expected to provide increased protection to the spawning stock biomass. Just for reference, these are the current measures for the areas within the Gulf of Maine and Georges Bank stock, which are Area 1, 3, and Outer Cape Cod.

As you can see here, there are differences between each of the areas for pretty much each of the measures. Then under Issue 1, the two main options are Option A, status quo, or Option B, which is to implement some standardized measures upon approval of the Addendum. Option B has four sub-options to define what those standardized measures would be.

B1 would be standardizing measures only within LCMAs where there are current discrepancies, B2

includes standardizing the V-notch requirement across the LCMAs. B3 would standardize the V-notch possession definition, and B4 would standardize the regulations for issuing additional trap tags for trap losses.

It's important to note here that the Board could choose multiple of these sub-options from the list, depending on which issues they would want to address. Then Issue 2 focuses on implementing management measures to increase the protection of spawning stock biomass. The proposed options under Issue 2, consider changes to the minimum and maximum gauge sizes, along with corresponding vent sizes for the LCMAs within the stock.

Those would be expected to both increase the spawning stock biomass, and result in the minimum gauge size increasing to meet or exceed the size at 50 percent maturity for each LCMA. The vent sizes would then change according to the final minimum gauge size that gets implemented in each area.

There are two proposed approaches again for implementing these changes to the gauge sizes. The first approach is to establish a trigger mechanism that would have a predetermined set of management measures that would be implemented upon reaching a defined trigger level based on changes in recruit abundance indices. Then the second approach would be to establish a predetermined schedule for future changes to the management measures. Options A through D, which I'll go through, use that first approach with the trigger mechanism, and Option E uses the second. These are the five options under Issue 2.

We have Option A, no additional changes to the measures, B is the gauge size changes would be triggered by a 17 percent decline in the trigger index, and then additional changes would be triggered by a 32 percent decline in the index. Option C is that gauge sizes would be triggered by a 20 percent decline, and then additional

changes triggered by a 30 percent decline, and D is that a 17 percent decline in the index would trigger a series of gradual changes in the gauge sizes over several years.

Then lastly, Option E considers changes to the minimum gauge size in LCMA 1 only, on a predetermined schedule, as opposed to being triggered by the index. I'm going to run through these fairly quickly, because they are in the document and we've seen them before. But these are the proposed measures that would be implemented, if each of the two triggers is reached under Option B.

You see the minimum gauge size at LCMA 1 increasing to 3 and 5/16 of an inch in the first trigger set of measures, and then in the second trigger you have a change to the minimum gauge to 3 and 3/8 of an inch, and also the maximum gauge size in LCMA 3 and Outer Cape Cod. Option C is identical to Option B with the exception of what the trigger levels are.

Whereas it was 17 and 32, these are 20 percent and 30 percent declines in the index that would trigger these measures. Then Option D considers implementing the gradual changes in gauge sizes, which would be triggered by a 17 percent decline in the trigger index, to start. The minimum gauge size would increase in 1/16 of an inch increments, and the maximum gauge size would decrease in increments of 1/4 inch.

The first gauge size again, would be triggered by 17 percent decline. Then after that first set of changes, the incremental changes to the gauge sizes would occur every other year as shown in the table. Then the vent size in LCMA 1 would be adjusted only once, to correspond with the final minimum gauge size change in Year 5. This is a reminder of what the trigger index that is being proposed to trigger these management measures looks like.

The combined index is shown in the upper left panel, and the other panels show the three datasets that go into that combined index, and this is for the available time series through 2020. Each of the

proposed trigger levels considered in this Addendum are shown with the horizontal dashed lines. We've got 17 percent to 32 percent shown there. Then this is our last option, Option E, which is to establish a schedule for changes to the minimum gauge size in LCMA 1 only.

This would increase the minimum gauge size from its current size to 3 and 5/16 of an inch in the 2023 fishing year, which is how it was proposed back in January, when this was approved. Then two years after that the final adjustment would be made to the minimum gauge size in Area 1 to 3 and 3/8 of an inch, and the vent sizes would also be adjusted according to that.

Since the Board met last in March, and this Addendum was approved for public comments, a concern has been raised about the minimum size that was proposed for LCMA 1 in the Addendum options in Issue 2, and implications that they could have for commerce. Specifically, the options proposed an increase in the minimum size in Area 1 from 3 and 1/4 of an inch to 3 and 5/16 of an inch. But Magnuson-Stevens Act, as written, prohibits the import and sale of lobster smaller than the minimum possession size, in effect under the Commission's FMP.

Since Area 1 has the smallest minimum gauge size, the concern is that increasing it would result in lobsters under 3 and 5/16 of an inch not being able to be imported from Canada any longer. This could obviously have potential impacts on the market and supply chain. As we just heard from Chip Lynch, there is a likelihood the states might need to implement changes to the fishery in the near-term, to address right whale serious injury and mortality.

We're not sure what impacts those might have on the stock and the fishery at this time. These are two concerns that have been brought forward, and the Board may want to discuss today. Given those, I'm looking to the Board for

some discussion and guidance on how to proceed with Draft Addendum XXVII at this time. That is my last slide, so I can take any questions.

CHAIR McNAMEE: Great, thanks so much, Caitlin. Nice presentation, and you got through that quickly, so nice work. I'm going to give an opportunity for questions for Caitlin, but first I just wanted to lead in here a little bit to say, so we have this document that we've been working on. This is a possible action item on the agenda, so we've got a couple to pass. There are probably more than a couple.

But at the highest level we could conceivably dispense with this document today and get it out, or think about delaying based on some of the concerns that have been brought up. If we can kind of focus on those two paths, at least to start, hopefully that will kind of get us to, we only have about 20 minutes for this agenda item, so we can't spend too, too much time on it. With that I will go to questions, and I saw Dan McKiernan's hand first. Go ahead, Dan.

MR. MCKIERNAN: My question is a technical one regarding Magnuson. Is it unique to lobster that there is a prohibition on imported undersized animals from out of country? In other words, do we allow the import of undersized, say cod or halibut under Magnuson?

MS. STARKS: I can attempt to answer. I believe it is specific to lobster. Bob, if you know more, please jump in. But the language that I'm looking at specifically says for *Homarus americanus*.

CHAIR McNAMEE: Okay. Other heads were nodding in the room, so I believe that is correct. Other questions for Caitlin, before we get into the discussion here. Is there anyone online, Caitlin? Just sort of multitasking at this point. Okay, no hands online. Pat.

MR. KELIHER: Mr. Chairman, if you don't have any more questions, I would be happy to put a motion onto the board.

CHAIR McNAMEE: Okay, one last pass through the room here for hands. Not seeing any; so Pat, if you would like to make a motion to kick us off here, please do.

MR. KELIHER: Great, and I believe staff have this, if they wanted to load it up. Thank you, and if I get a second, I'll give some additional rationale. But I think after today's conversations you probably all understand it. **Move to postpone the consideration of the public hearings on Draft Addendum XXVII until the Annual Meeting to allow the PDT time to address challenges raised by existing MSA language regarding possession of lobsters smaller than the lowest minimum size limit specified in the American Lobster FMP. This could include language which differentiates harvest vs. possession limits to reduce impacts on dealers and processors. The LEC should also review new language that may be suggested by the PDT.**

CHAIR McNAMEE: Okay, thank you. We have a motion on the table and looking for a second. I see multiple hands; I saw Cheri's first. Cheri Patterson gets the second. Let's open it up for discussion. Pat, do you want to speak to your motion?

MR. KELIHER: Yes, thank you, Mr. Chairman. I mean clearly the Magnuson issue is raised within the motion itself. I've spent a lot of time talking to dealers and processors who live in Maine that probably handle between 50 and 75 percent of the product that come through, and learned clearly what the impact would be on those businesses, especially in the springtime of the year.

It doesn't seem like a lot when you're talking about a gauge size change of 16th of an inch, but if they are not allowed to bring that product in at certain times of the year, especially considering the increased yield that they have out of those harder shell lobsters. It's a massive economic hit to them, so it reverberates through the market chain.

For those reasons, I believe we need to make sure we understand exactly what the ramifications are, and if there is a way around it. I believe looking at harvest vs. possession, because the Magnuson Act is specific to possession. There may be a solution here. I want to make sure it's clear. My goal is not to continue to kick the can down the road on this Addendum. We need this Addendum, from a resource standpoint.

But we need to resolve these other issues. Lastly, I will just say, without belaboring the issues. We heard a lot about whales today. Understanding at least the direction that the Agencies may be going in with remedy, and what the ramifications are, and what that means to the lobster harvest itself. That may play into, I know we don't like to use resiliency anymore, but it may play into the stock resiliency, and certainly benefit the spawning stock biomass. With that I'll end my conversation.

CHAIR McNAMEE: Cheri, do you wish to add anything?

MS. CHERI PATTERSON: Pat definitely covered most of it. I think the one thing I just wanted to add is, without having clarity for law enforcement with this MSA concern. I think we just need to wait until this gets resolved, so that it's actually something that is enforceable in the future, if need be.

CHAIR McNAMEE: Others wishing to discuss. Go ahead, Dan McKiernan.

MR. MCKIERNAN: I hope that we would entertain discussing with Canada the potential for them to increase their minimum size along with us, because I recall when the Mitchell Bill, I guess this is my Tom Fote imitation. When the Mitchell Bill was enacted back in the early nineties, I think it was in response to the industry being upset about the small Canadian imports being on the market.

It seems like if we do survive the hurricane that is the litigation on right whales, I could foresee a very similar outcome. I think it would be prudent to at least consider requesting Canada, since we do share to some degree that Gulf of Maine stock with them,



to see if they would consider going up with us, and make our lives that much simpler.

CHAIR McNAMEE: Is there anyone online, Caitlin?

MS. STARKS: Alli Murphy.

CHAIR McNAMEE: Alli Murphy from NOAA, go ahead, Alli.

MS. ALLISON MURPHY: I just wanted to say, I think that this is a reasonable path forward here. I've been a part of the Addendum XXVII PDT, and look forward to continuing discussions with this, and pulling in other NMFS folks as needed to work through this issue. Thank you.

CHAIR McNAMEE: Thank you, Alli. I've got another online, David Borden. Go ahead, David.

MR. DAVID V. BORDEN: If it's an MSA problem, then is it going to require a Congressional action to change the language? That is one question. The other concern I've got about this. We started this Resiliency Addendum, I think in 2017, if my memory is correct, for a very good reason. We wanted to avoid a situation like the situation that developed in southern New England. The longer we go with this, the more difficult it's going to be to do this. I'm also getting more and more concerned about these indices, which continue to trend down.

If that continues, what you're going to find is, based on the experience from southern New England, is that the industry will get their backs up much more on even minor changes, because the changes will have really pronounced negative economic impacts. As I have echoed at prior Board meetings, the time to do this is when the resource is in relatively good shape, when it's in horrible shape, like the southern New England resource, it becomes that much more painful.

CHAIR McNAMEE: Thanks for the comment, David, and I think we have an answer to your initial question there, so Caitlin, go ahead.

MS. STARKS: I believe that the way the language is written in MSA, is it prohibits transfer, offer for sale, selling, purchase of any whole live lobster smaller than the minimum possession size in effect under the American lobster FMP. I believe if we thought about changing the language to a harvest size, rather than a possession size in the FMP, that we could avoid this. But that is my initial read, so I think it would be worthwhile to have the PDT take a closer look and discuss it.

CHAIR McNAMEE: Good Dave, okay great. Maybe I'll ask a quick question first, and looking to my colleagues here at the Commission. We have this motion to delay; it is to kind of investigate this MSA concern. We think there is a potential path here that Caitlin just offered. But is there a mechanism between now and annual meeting to kind of sort through this? Is there a plan there?

MS. TONI KERNS: Jay, we can work with NOAA Fisheries and the PDT, to the extent to try to resolve this, as long as there is a path forward to do so. I just don't want to guarantee it.

CHAIR McNAMEE: Understood. At least the mechanism was just the ability to kind of get whoever together, to see if there is a way, so that we have something to report in October or November, whenever the annual meeting is. Okay, great. Steve Train, go ahead, Steve.

MR. TRAIN: I'm going to support the motion to delay, not because I want to delay this action. Dave Borden said that very well. The indices are turning the wrong way. I'm going to support the motion to delay, because it's an enforcement issue that needs to be done. It needs to be straightened out before this can happen. I do think convoluting this with possible whale action is the wrong reason not to do it.

I think we need to move forward with this, if we see those triggers. This doesn't mean it's mandatory, it

doesn't mean it's going to have to happen. But to have the opinion that there is too much hitting us at once, when there are separate issues, and this is a resource health issue, doesn't sit well with me. I think we need to separate the issues. I'm glad that that is how this deals with this, it's enforcement, not other issues hitting us.

CHAIR McNAMEE: Eric, go ahead.

MR. ERIC REID: I just had a question about process. If this motion passes today, we're going to find out the results of the investigation, let's call it an investigation, in, when is our annual meeting, beginning of November, right? What happens then? If there is a way forward, whether it's changing the language in the plan, is that a framework? What does that look like, and then what does that do to the underlying efforts timeline?

CHAIR McNAMEE: Good question, Eric. Is there a response? Caitlin.

MS. STARKS: Yes, I can take a stab at that. I believe that in November, we could come to the meeting, we the PDT, with some recommendations for how to modify this document, specifically to address this issue. At that time, if those modifications are possible and completely resolve the problem, and the Board is comfortable moving forward.

Then we could just take the document out for public comment after the November meeting, so probably during holiday season, and maybe come back before the Board at the February or late January winter meeting for considering it for final approval. If I could just add one more bit of information that might help. The index that I showed earlier is through 2020, and the TC is currently working on updating that through 2021. I think we would have a better idea of where the index stands, in relation to the trigger points that have been identified in the document. If the Board wished to, I think modifying those trigger points would be within

the prerogative of the Board, based on where we are with that trigger in 2021.

CHAIR McNAMEE: Thanks, Caitlin, are you good, Eric? Okay, Dan McKiernan, go ahead.

MR. MCKIERNAN: Caitlin, as a follow up to Eric's question. It seems to me like there are three different paths forward. One is modification to Magnuson, which is statutory, which sounds pretty challenging. Modification to federal regulations, which could be done, but it would take longer. But then modification to the Addendum itself, regarding possession, etcetera. Are all three of those going to be sort of examined by the staff in the interim? Is that the thought?

CHAIR MCKIERNAN: Go ahead, Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Maybe I'll take those in reverse order. Yes, definitely the staff and the PDT will look at the Addendum modifications. We can talk with NOAA, your second option, about federal regulatory modification and the timeline associated there.

I think modifying Magnuson, everything that we're hearing right now is there is probably going to be no motion on modifying Magnuson, you know, unless there is something tucked into another bill that Congress is moving forward. That is usually risky, and with something as big as Magnuson.

It often doesn't go very well, just trying to get one or two sentences modified in another Congressional action. We can investigate that a little bit. But I think that option of updating Magnuson to either remove this language about the import size limit. I wouldn't count on that one being a viable option, or a very timely option either.

CHAIR MCKIERNAN: Are you good, Dan? Okay. All right, looking around the table, not seeing anybody with hands up here, online is there any hands? No hands online. Maybe I'll take a moment to see if there is any public that wishes to offer, before we dispense with this motion, any comments or

questions? Nobody in the room here, no hands popping up online.

All right, so let's get to calling the question then. We've got a motion on the board, it's been seconded. All those in favor of the motion, oh, time out. Sorry, you've got it, Eric. We're going to call the question, so let's take a two-minute caucus, and we'll come back. I've got 11:48, we'll be back at about ten of. Thanks for slowing me down, Eric.

Okay, so the time limit is up. Does anybody need a little more time? Flag me down here at the table, or raise your hand online if you need a little more time. Not seeing any. All right, because we have sort of two parallel universes operating here, what we're going to do is, I'm going to call the question for the folks in the room, and then I'll do the same for the folks online. We'll tally all of those. All at once, oh, okay. We're going to go simultaneously. When I call the question, folks in the room please raise your hand, and folks online also, please raise your virtual hand. Oh, we've got a timeout, go ahead, Dan.

MR. MCKIERNAN: I think that's a little bit of a challenge, because one of our members of our delegation is not present, so I think you only want one hand from Massachusetts, for example. I don't think you want a third member of the delegation to vote.

MS. KERNS: What I'm just saying is that like for example, Alli is not here, so Alli will be raising her hand online. But I assume that the delegations have worked out who will be raising their hand for their state. I will call your state name. Please do not lower your hand until after I've said your name.

CHAIR McNAMEE: I made the same assumption, and we know who you all are, so we'll know if somebody is trying to trick us. Back to the question. **All those in favor of the motion, please raise your hand.**

**MS. KERNS: I Have NOAA Fisheries, Rhode Island, Massachusetts, Connecticut, New York, New Jersey, Virginia, Maryland, Delaware, Maine, and New Hampshire.**

CHAIR McNAMEE: Okay, anyone opposed to the motion, please raise your hand. Okay, no hands, any abstentions, please raise your hand? No hands, and finally any null votes, please raise your hand. No hands. **We had 11 in favor, no one opposed, no abstentions, no null votes. The motion passes.** We will be talking about this again in early November. Thanks for that everybody.

#### **UPDATE FROM NOAA FISHERIES ON ONGOING ACTIONS RELATED TO NORTH ATLANTIC RIGHT WHALES**

CHAIR McNAMEE: All right, so we're going to move on with the agenda. The next agenda item is another discussion on North Atlantic Right Whales. There are two components of this discussion. I'm not sure who all is speaking to it, so I apologize for not recognizing. Oh, I do have that.

#### **PROPOSED RULE NORTH ATLANTIC RIGHT WHALE VESSEL SPEED REGULATIONS**

CHAIR McNAMEE: All right, so if it's okay, we would like to talk about the Speed Rule first, and I believe Caroline Good will be giving that information to us. Caroline, are you ready?

MS. CAROLINE GOOD: I am indeed, thank you.

CHAIR McNAMEE: Okay great, take it away.

MS. GOOD: Today I'm going to be talking to you about a new proposed rule that we actually just released yesterday. This has to do with modifying the current North Atlantic right whale vessel speed regulations along the U.S. East Coast. Just to start off, I wanted to review the current speed rule regulations for everyone.

The current rules were put in place in 2008, following a series of events of right whale strikes along the U.S. coast. These restrictions place mandatory 10 knot speed limits on most vessels

equal to or greater than 65 feet in length in these specified seasonal management areas along the U.S. coast. They are collectively effective between November 1st and July 31st every year, although as you'll see, they turn on and off at different times, depending on when right whales are likely present in those areas. The speed regulations also include a special safety deviation provision, whereby vessels may exceed the 10-knot speed limit if they encounter conditions that may severely impact vessel maneuverability, and they make a special notation in the vessel log book.

There are also on certain vessel types and categories that are exempt, including military vessels, federally owned or operated vessels, vessels that are engaged in active search and rescue, or enforcement activities as well. We conducted a broadscale evaluation of the compliance with the current rule, and found that current compliance levels exceeded 81 percent, and they had essentially gone up year after year since 2008, when the rule was first put in place.

This is a very busy, active vessel transit corridor. We documented more than a million nautical miles of transit distance each year within these active, just during the periods of the year seasons, when these seasonal management areas were active. I'll also note too that the vessel types that we found that most frequently were exceeding that 10-knot speed limit, tended to be ones, unsurprisingly, that are designed for speed, and included container ships and pleasure vessels, so these could be large luxury yachts, they could be large sportfishing vessels, that sort of thing.

Again, these are all vessels that are designed for speed, and are also racking up a lot of, again, transit distance within these areas. I also want to comment briefly on our current voluntary speed programs as well. We will right now declare voluntary dynamic management areas or slow zones along the coast, when either three right whales are detected in proximity, or

right whales are acoustically detected outside of those active seasonal management areas.

We will declare a DMA or slow zone boundary around those for usually 15 days, and request that vessels transit at 10 knots through those areas or avoid those areas. In 2021, just to give you an idea, we had 67 such DMAs or slow zones declared along the coast. You can see on the map here.

But the key takeaway I want to highlight about this voluntary program, is that cooperation with this program is fairly poor. Despite our efforts to get the word out, to ensure that mariners are aware of this, we just are not seeing a level of cooperation that we need to really get sufficient conservation benefits for the whales from this program.

I'll also note too that this program was released in 2008, concurrently with the mandatory speed restrictions, and at the time this did indicate that if mariners did not cooperate at significant levels with this program, that the Agency would likely look at making something similar to this mandatory.

That brings us to today, and the proposed changes to the rule. We have four primary types of changes that are included. The first and probably most significant, are changes to the seasonal management area boundaries, both temporal and spatial boundaries, and also, we're going to be renaming the two seasonal speed zones, and that is just really to make it a little bit more obvious what they are, since a seasonal management area, they said oh, it could be anything. These changes would really substantially expand the spatial footprint of these areas. It almost doubles the area that would be covered under the rule. Most of that expansion is occurring in the Northeast and Mid-Atlantic, with more modest changes in the Southeast. But these changes are being put in place to address that misalignment that we are seeing between areas of elevated lethal vessel strike risk for right whales, and where the current boundaries are found.

Second thing the proposed regulation change would do is add additional vessel size classes into the vessels that are currently regulated. We would add

vessels that are between 35 and 65 feet in length, and this is to address an ongoing problem with strike risk from this smaller vessel size class. We've had six lethal collisions that are documented in U.S. waters since 2006, involving this size class.

Third, we would create a new mandatory speed zone framework. This is somewhat similar to the DMA and Slow Zone program, but we would have different protocols for determining where these would be. But again, these would be again, temporary speed zones established when right whales are detected outside of the new seasonal speed zones, and they would be in place for a limited period of time.

We have some new protocols that I'll talk about later, about how those would be determined as well. Finally, we will also be making some updates to the safety deviation provision, and this is to enhance our ability both to monitor the rule, enforce the rule, and for safety of mariners. These updates would now require mariners who use the safety deviation exemption to report in electronically to NMFS within 48 hours of doing so, and to fill out some information.

Very similar to what is required right now in the vessel logbook entries, just so that we understand when and where vessels are needing to use that safety deviation. We would also be expanding the definition to, obviously the deviation to include medical emergencies, so if somebody has a heart attack or something, they need to speed in. That would also be included.

Then finally, because we're adding vessels that are smaller in size, we're also adding a special exemption for severe weather conditions for vessels that are less than 65 feet. Vessels that would be subject to regulation but transiting in areas where there is an active gale or hurricane warning or similar wind warning, would be exempt from those speed requirements, again for safety purposes.

As you can see here, the map on the right shows you in the light colors, are the new boundaries for the proposed seasonal speed zones. The dotted lines show you the current seasonal management area boundaries. Just to walk you through this very briefly. As you see up off Massachusetts, there is actually a combination of changes going on here.

We actually have some spatial and temporal contraction east of Cape Cod, with some areas we feel are no longer needed, based on our updated risk assessment model. But in other areas in the Mid-Atlantic, and again off Massachusetts, there is also spatial expansion in other areas where we are seeing that elevated risk.

As you move down the coast there is less expansion in the southeast region, and we do have a little bit again of a temporal contraction off South Carolina that will now be turning off April 15, as opposed to April 30, again, based on the data that we have. There is a new area added southeast of the current southeast SMA in Florida, extending down to Cape Canaveral. Again, due to areas where we are seeing potential elevated vessel strike risks in that zone. Another thing I just want to point out here is, all of these boundaries were based on a new coastwide risk assessment model that we developed, looking at the latest information we have on vessel traffic, and whale distribution and habitat use in that area.

It was aimed at addressing, along with the dynamic mandatory program, in excess of 90 percent of the risk that accrues from these vessels transiting at high speed, so over 10 knots in this area. I also want to note to that we did, as we looked at this, consider other ongoing factors that we know are coming up, such as for example, future wind development, also the U.S. Coast Guard has proposed new offshore fairways as well.

We did also look at that when we were identifying some of these boundaries. But in many cases what we found, interestingly enough, is areas that have elevated vessel strike risk right now, even before there is any offshore wind development, for example, would just essentially have additional development in that area.

This would cover those future activities as well. Then regarding the addition of the 35-to-65-foot vessels. We've had a number of collisions in U.S. waters involving vessels within this size class, including again, as I mentioned earlier, six lethal events since 2005. We also have, in addition to that six, additional collisions that have been reported involving vessels between 35 and 65 feet, where the species of the whale was unknown, but the location and timing is potentially consistent with right whales.

We may have even more events that we don't actually understand involve the right whale. In many cases, especially with these smaller vessels, the vessel sustained significant damage. In a couple cases vessels have sunk, and in most cases, you have seven of the eight cases where the vessel operators do not see these whales prior to impact. This is really an issue of safety, both for the whale and as well for the vessel operators, when you're talking about vessels in this smaller size class.

Additionally, all of the other restrictions, regarding the exemption of military federal vessels, enforcement vessels, etcetera, would also apply to this size class, so they would not be included in vessels that would be included under the mandatory restrictions. Then with regards to these dynamic speed zones. These are designed to protect areas of right whale aggregation or extended presence in these discreet areas of limited time periods that would not be covered by the seasonal areas.

As you can imagine, there are certain times and places along the coast where right whale presence is more ephemeral, more unpredictable, or there is a more moderate risk, because the type of traffic transiting or the amount of traffic transiting is either not very fast, or there is the lower density of traffic.

These zones are established to address that risk where and when it's needed, without having to do a greater expansion of the seasonal speed zones. These again would be triggered either

by visual or acoustic detections outside the proposed mandatory seasonal speed zones. When we determine that there is a greater than 50 percent likelihood that the whales will remain within the zones, so this is an important new component that is different from the current voluntary program, because we want to ensure that the nature of the data that we have is consistent with whales likely to remain in the same spot.

There is no point in us requiring vessels to slow down if we think we have a situation where whales may just be heading through, and are going to be gone in two days. If that doesn't help the whales, then it puts an unnecessary burden on the regulated community. Also, what has triggered these dynamic areas would be announced via our official website.

We would also put out the announcement either through U.S. Coast Guard notices, National Weather Service Alerts, Apps, e-mail notification list, etcetera. We would also publish a notice in the Federal Register as well, because again, these are mandatory. We anticipate that most of these dynamic areas will occur in the Mid-Atlantic and Northeast.

If you look at this map here on the right, the zones that I've highlighted in pink are dynamic areas, based on the 2021 voluntary areas that were declared, that would have been declared had the SSZs been in effect already. We sort of tried to evaluate where they are most likely to occur. Again, we are mostly seeing a likelihood of those types of dynamic areas need to be in the Mid-Atlantic and the Northeast.

I also want to touch on some of the economic impacts to the regulated community. Based on our assessment, we estimate that just under 16,000 vessels could potentially be affected by the proposed amendments, at an estimated cost of approximately 46 million dollars per year. The majority of the affected vessels, about 60 percent, were recreational or pleasure boats.

With about 22 percent large commercial ships, and 19 percent other types of commercial ships, industrial or other vessel types. I do want to note that when it came to evaluating the impact on vessels under 65 feet in length, particularly the large number of recreational vessels in this category. We overall aim to be more conservative, and overestimate rather than underestimate. But because many of these vessels lack AIS, we had to use some different methods to be able to evaluate how many vessels this may include. We likely overestimated that total number.

I'll also point out too that overall, even though we are including vessels within this size class. The vast majority of recreational boaters are likely to be not impacted by this, because most recreational boats are well under 35 feet in length, based on registration data between Florida and Maine. Finally, I'll highlight too that commercial ships would bear the majority of cost from these amendments, along with passenger vessels and industrial work vessels.

We also expect that certain types of vessels, including commercial fishing vessels and sailing vessels, although they are subject to speed restriction, would likely be less impacted by the restrictions, because the majority transit at speeds around or under 10 knots. Just because a vessel is subject to the speed restriction, doesn't mean they're going to be impacted by it depending on their normal, usual traveling speeds.

Finally, there is also some geographic differences, in terms of cost accrual, so about 89 percent of the cost we anticipate according to vessels operating in the Northeast and Mid-Atlantic, and this just has to do mainly with the enormous density of vessel activity in that area, relative to the Southeast averages. Just to sum up, the Rule is out as of yesterday morning. It is going to be open for public comment until September 30, and obviously we very much welcome comments on the proposed rule. There are definitely a lot of changes in the rule,

and so we are eager to hear from members of the regulated community in particular.

Also, we are working very hard to finalize the Rule before the end of the calving season next year, to provide additional protection to the mother/calf pairs, which are some of our most vulnerable members of the right whale population, especially from a vessel strike perspective. We'll be working very quickly to get this Rule into a final stage. That's about it, thank you.

CHAIR McNAMEE: Excellent, thanks so much, Caroline, great presentation. Just a quick time check here. We're a bit behind. I'm going to give an opportunity to ask Caroline some questions. I'm just asking that folks be succinct with their questions. Then we'll roll into the next presentation from John Hare. Questions from the Board for Caroline, and I saw Senator Miner, go ahead.

SENATOR CRAIG A. MINER: My question is, who provides enforcement of this Rule? If this was a speeding enforcement on a highway, and it came in at 81 percent, someone would be doing enforcement. I'm just curious as to how the enforcement is done.

MS. GOOD: Certainly. NOAA's Office of Law Enforcement is the primary enforcement agency. They bring official enforcement cases for the Rule. We do also receive assistance from the U.S. Coast Guard as well. We are actually in the process right now of doing really a top to bottom evaluation of both our current enforcement methods, as well as looking at potential changes needed for enforcement moving forward, particularly with the addition of the smaller vessel size class, between 35 and 65 feet.

We have very heavily relied, although not exclusively, on AIS data for a lot of the Rule enforcement. But only about, from our best estimates, about a third of vessels in the 35-to-65-foot class are currently using AIS. We've already taken some steps to prepare for some of these challenges. We are upgrading, you know our

capabilities for tracking vessel speed at sea. We've initiated research into some new vessel tracking technologies. We're investigating land and aerial based monitoring options as well.

We've also had conversations with the U.S. Coast Guard. They've already actually stepped up some of their assistance for our current enforcement actions, as well as indicated additional assistance coming in the future as well, so that is very helpful. We've also had some early conversations with U.S. Coast Guard too, about potential expansion of the U.S. Coast Guard AIS on vessel requirements that might include vessels of smaller length as well.

CHAIR McNAMEE: Senator, okay? Next up I have Eric Reid, go ahead, Eric.

MR. REID: Part of your last answer helped me out a little bit. But when it comes to AIS, it's over 65 feet within 12 miles, so maybe that is going to change. My concern is about the unit itself, whether or not it has to be an AIS-A or an AIS-B unit, because of the range of the unit itself. Those are my quick questions, thank you.

MS. GOOD: Yes, so as many people know, fishing vessels and other vessels currently are only required to have a Class B AIS unit, which essentially means it transmits location a little less frequently than a Class A unit, which would be required on most large commercial ships, and other types of industrial ships.

Either of those for our purposes is fine. Either would provide sufficient information. Moreover, we are finding that there are both the official U.S. Coast Guard regulations regarding who has to have AIS. Then we also find that there are many vessels that may not be required to have AIS, but do so anyway, either because they are part of companies that require AIS, they have insurance policies that require AIS.

Also, they voluntarily use AIS for their own purposes for safety or interest, and just wanting

to be able to track vessels in their fleet, etcetera. There is a variety of reasons why people may use it, but we're well aware that not all vessels have it, and we already have been working for months on looking at additional options for tracking the speeds of vessels, and being able to enforce the speed rule, most importantly, on vessels that may not carry AIS.

CHAIR McNAMEE: Good with that, Eric? Okay, thank you, Caroline. We have one question from the public online. I have a question from Virginia Olsen, so go ahead, Virginia.

MS. VIRGINIA OLSEN: Thank you. My question is, how do you enforce ships that are flagged under foreign countries, and how would that change if this was mandatory? Thank you.

MS. GOOD: Sure, we currently enforce the speed rule on foreign flagged vessels all the time, and many vessels that come to U.S. ports for commerce and for trade are foreign flagged vessels, so that is a very common occurrence. They are still beholden to our federal regulations when they are transiting within U.S. Federal waters.

CHAIR McNAMEE: Great, thank you very much. Okay, I don't see any more hands up around the table or online, so thank you very much, Caroline. I appreciated the presentation.

#### **OVERVIEW OF DRAFT ROPELESS ROADMAP STRATEGY TO DEVELOP ON-DEMAND FISHING**

CHAIR McNAMEE: Let's move on now to the second topic, which is on ropeless gear, and I believe Jon Hare will be giving that presentation. Jon, whenever you are ready, feel free to take it away.

DR. JON HARE: Great, thank you very much, Dr. McNamee. I've just got a quick overview of the draft Ropeless Roadmap Strategy to develop on-demand fishing. Just sort of an overview, you know the intent of the roadmap, why a Ropeless Roadmap. The intent is to provide a unified vision of on-demand fishing gear adoption throughout fixed gear fisheries in our region.



It's to help align partners and stakeholders, in understanding the technological and regulatory changes that are needed to implement the roadmap. We had committed, the Agency, NOAA Fisheries, had committed to producing a Ropeless Roadmap within one year of the batched fishery's biological opinion published in May 27, 2021. We're putting it out now, in July, now August, to receive public comment. One just sort of conversation on, you know Ropeless Roadmap, a strategy for on-demand fishing. You know those two sorts of ropeless and on-demand are synonyms, but they do sort of have different specific meaning. Ropeless implies no ropes at all, on-demand implies the gear is available on demand with or without rope, so we're using both currently, just to sort of make sure that the intent is understood. The next steps that we see for this strategy, again we put it out for public comment, so we're going to collect feedback from partners and stakeholders.

We're presenting at the Marine Mammal Biennial Conference, which is happening this week. We're also presenting at the Atlantic Large Whale Take Reduction Team meeting in August. Then we'll be talking about it at upcoming New England and Mid-Atlantic Fisheries Management Council meetings, and happy to spend more time talking about it, sort of going through it at a future Atlantic States Marine Fisheries Commission meeting, if there is interest.

Then we will refine the roadmap based on public feedback. We really see this as a living document. That term can be overused, but we continue seeing sort of editing and updating this roadmap as we make progress, and as we learn more about it. First draft is out, open for public comment. But then our vision is to work with all of you to continue to update this roadmap as we move forward.

What's in the roadmap itself? First it defines sort of on-demand fishing gear. It lays out the case for why on-demand fishing gear is needed,

and you heard about some of that earlier in this meeting. It talks about the current availability of on-demand fishing gear. It then lays out how on-demand fishing gear can be used. It touches on the regulatory requirements, and identifies sort of the stages of development of on-demand fishing gear operationally being used.

Step 1 is technological developing and testing. Step 2 is resolving gear conflict between fixed gear and mobile gear and other types of gear. Step 3 is expanding the experimental fishing, both to test the technology, and to test sort of ways that have been developed to resolve gear conflicts, and then Step 4 would be FMP and other regulatory changes needed to implement on-demand fishing gear throughout the region.

Again, why is on-demand, where is on-demand fishing gear needed? The roadmap does some evaluation of the decision support tool that is being used to decrease entanglement risk, to identify the proportion of vertical lines that pose the highest relative risk to North Atlantic right whales, and those areas could be sort of an emphasis for on-demand gear development and application. That is laid out in more detail in the strategy.

Then the other piece is, how do we locate gear that is deployed on demand, so no surface marker? Sort of the roadmap itself discusses the current developments in geolocation technology. It also lays the groundwork in a statement advocating for sort of an open-source nonproprietary technologies to be used in this space.

It can be a much more collective community development, as opposed to a one group developing and then selling the technology. That is just a quick outline of the roadmap itself. Again, we're asking for your comments. There is the link to our code, link to it or the link itself, it will take you to a questionnaire, where you can insert your comments. We're happy to come back to Atlantic States Marine Fisheries Commission in the future, and spend more time going through this if that is helpful. With that I'll stop and take any questions.

CHAIR McNAMEE: Thank you, Dr. Hare. Let's have any questions for Dr. Hare. Jim Gilmore, go ahead, Jim.

MR. GILMORE: Hey Jon, I hope you're doing well. Are there any cost estimates that you guys are putting in for either retrofitting existing gear, or what those new gears would cost? Obviously, with some of the statements this morning about shuttering an entire fishery that we're talking big numbers, billions of dollars, so that might be helpful. Thanks.

DR. HARE: I don't think we have explicit cost estimates. I think there is some cost information about specific units. But you know at some point, understanding what the cost would be sort of fishery wide, that is a good suggestion, thank you. We have some people who are working on it, I'm just not quite sure where they are with their analysis.

CHAIR McNAMEE: Okay, thank you for that. Other questions, Megan.

MS. MEGAN WARE: Thank you, I'm contributing for Pat here for a second. I was curious, and Jon, this may be more a question for someone at GARFO. But I'm curious if there are any plans to have a bit of a coordination meeting between GARFO and the states, regarding more of the regulatory or EFP aspects of ropeless. We recently had a meeting with Science Center staff about ropeless, and I think that was a really fruitful conversation. But likely something on the regulatory side is also needed.

MR. HARE: Yes, thank you very much, Megan. You know we can certainly, we heard the comment, and I think useful, we kind of split regulatory and sort of science. But I think it would be good for us to start having sort of more just conversations that include all the parties. I certainly will make note of that and see if we can make that happen.

MS. WARE: Okay, great. Yes, I think there has been a couple EFPs that have come through the Federal Register recently. I think those have maybe shown some light on areas where we could improve communication. I think that would be great if we can organize something like that.

MR. HARE: Thank you for the comment.

CHAIR McNAMEE: Next up I have an online hand, David Borden. Go ahead, David.

MR. BORDEN: Jon, good report. I'm just curious about the gear conflict aspect of it. Are the NOAA staff looking at who is responsible for losses when they incur, if ropeless gear is being used? We've gotten to the point, at least with the offshore lobster industry, where 50 pot lobster trawls now cost almost \$22,000.00. If we get into a situation where there are no buoys on it, and there is some kind of interaction between fixed and mobile gear. Who pays the cost? Who is responsible for paying the compensation for the lost gear? Are your attorneys looking at that?

MR. HARE: It's a good question. I don't know, David, I can look into it and get back to you. I'll be at the Commission meeting tomorrow and Thursday. But that brings up, it's similar to Megan's point as well. There is a technological and science, but there are also the regulatory and legal pieces of this that we all need to make sure we're moving forward on sort of the same pace and taking steps together.

That is in part why the roadmap is out there, to help us coordinate around one document, one way forward. I'll see if I can touch base with GC before I get down to the Commission meeting tomorrow. But certainly, who is responsible for costs is an important question to ask.

MR. BORDEN: Thank you very much.

CHAIR McNAMEE: Just a quick time check. We're at time now. Toni said we can go to 12:50 without impacting the rest of the day, so try not to go that far, but just to give folks an idea of the slack that I'm

looking at for this meeting. With that we have public question from Andrea Tomlinson. Andrea, go ahead.

MS. ANDREA TOMLINSON: Yes, hi, thank you so much, and thanks Dr. Hare for that presentation. I'm the recent founder of the New England Young Fishermen's Alliance, and I'm happy to report we had Zach Cliver from Blue Planet Strategies come down to our Deck Hand to Captain Training Program two weeks ago tomorrow, and do some demonstration on the ropeless gear work that he's doing in the Gulf of Maine.

My understanding through Zach is he has an EFP for the entire Gulf of Maine, and he's doing some hybrid research with the lobster industry from basically Northern Massachusetts up to Downeast Maine, with both ropeless and single vertical line gear. I just wanted everyone here on the meeting, to understand that we do have some reservations, obviously, from the young lobster fishermen that I found really revelatory, in that they are very concerned about, basically their reputation and their safety amongst the industry if they are participating in this research.

They wanted to ensure that there was full confidentiality if they were to participate in it. That was something I found quite striking, and just thought it would be interesting to share today. Then speaking with Zach Cliver from Blue Planet Strategies about that further. He did indicate that every participant in the program was very concerned about their confidentiality.

Basically, what my young lobstermen are saying is they feel as though there would be a target on their back, sadly, if they were to participate in this hybrid research project. That said, the major question from the trainees that are involved in the Deckhand to Captain training, six of them, four of which are young lobster sternmen being trained with business

management strategies and other strategies, to get into the captain's wheelhouse.

They are very concerned. Dr. Hare, to just touch on the previous comment, about the cost to their pocket. The industry cost to ropeless gear, because they were gasping when Zach shared that you know, he was using the bag inflatable model, they were gasping, you know their first question of course was, how much does this cost, and can we use 1-per-20 trap trawl, can we use 1-for-40 trap trawls. Zach was sharing that it cost 10 to 15 thousand dollars currently. I ensured them that would not be the cost in the future, if this were to be implemented in policy. Could you touch on what you see for financial compensation for the industry moving forward, if this were to go into effect?

DR. HARE: Yes, I don't want to sort of get ahead of myself. The industry financial compensation, there are conversations around that aspect at high levels. The other piece you touched on it as well is, sort of as the technology continues to develop, and more units are produced and sold. The anticipation is that the cost will go down. At this point we're still in an exploratory stage, trying to figure it out. In the future, the hope and intent are that it will cost less to deploy.

CHAIR McNAMEE: Okay, thanks for the discussion. At this point, I know there are other hands raised online. I will offer that both of the previous two presentations indicated how you could offer comments online, and into the process. I'll just sort of direct folks to that opportunity at this point. I did have one more hand from the Board, Steve Train. Go ahead, Steve.

MR. TRAIN: I don't think I've talked this much here in one day in years. I'm not against the concept that is presented here. It appears to do a lot of good, as far as the entanglement risk. What I'm against right now is the hopes that this is going to save us any time soon, because in practice this is currently extremely impractical.

The cost aside, David Borden once again hit the nail on the head. If a trawler doesn't know where my

gear is, it's going to trawl it up. They tell us that we'll have something on the boat that will tell us where these things are, because they'll be marked and they will be transmitting. But if every other gear type doesn't have that, it's not going to matter.

We are going to have ghost gear on the Gulf of Maine like you have never seen, with this type of thing. If it's a small dragger that doesn't have the capabilities of a scallop of one of the 90 footers. He'll be lucky to get his own gear back, let alone get our gear back. Those boats don't have that kind of power.

We're talking about stuff that is going to cost multiple industries hundreds of thousands, if not millions of dollars in gear conflict. The gear conflict between lobster boats. I don't know how these things are going to work on our boats. I don't know what the range is going to be. I don't know if when you go over the thing it's going to see it, or if it's going to tell you from four miles away.

But when you're fishing 40 and 50 trap trawls, if it doesn't show up on the screen and you start setting yours, you may be setting over here in 50, 80, 100 fathom or more of water. These boats aren't designed to get two 50 trap trawls aboard at the same time, especially when half of them are hanging down. This may work, but don't get your hopes up that it's going to be something we can do in the next two to five years to save this industry from the whale issue.

CHAIR McNAMEE: Thanks, Steve, any reaction to that, Jon?

DR. HARE: No, thank you very much, Steve. I know Henry Milliken and Eric Matzen are on, they are actively working on the ropeless, and sort of hearing from you where the bottlenecks are, as it were, just is very useful for us. Because I do agree, I think we all agree the gear conflict is at this point in time the hardest part of the technological problem that we're trying to address.

CHAIR McNAMEE: Okay, thanks for that discussion. Okay, Jon, thank you very much, good presentation. Thanks for fielding those questions. Before we move on to the next item, just looking around to the Board. We have two topics here with opportunities for public comment. Is there any desire from the Board to develop comments from the Commission to submit?

I'm not suggesting we try and wrangle that language together here at the table, but if we get a sense of whether there is a desire to do that, we can work after the meeting to kind of pull that together. Looking around, is there anyone who wants to comment on whether there is an interest? Pat.

MR. KELIHER: Yes, I'm assuming, Mr. Chairman, that most every state is going to submit some kind of comments. I know we're going to have lengthy comments. We appreciate some of the direction that the Agency is going here. But maybe a small workgroup of states that are going to compile comments. We could get together on a quick phone call, share our comments, and then craft something more general from the Commission.

CHAIR McNAMEE: Great, thanks, Pat. Go ahead, Toni.

MS. KERNS: Just to make sure that we're recognizing. The Speed Rule will need those comments faster, and it does impact all states. We can also reach out to some of the southern states that are not here right now, and see if they have any additional information, outside of just the Lobster Board.

CHAIR McNAMEE: Great, so it seems like there is interest, and we will figure out a mechanism to kind of pull those comments together after the meeting. Thanks to both Caroline and Jon for the presentations, those were great. All right, let's move on. Jeff, we are going to bump you from the agenda. I know you're broken up about that. I do apologize. We'll get you next time, we promise.

**UPDATE ON FEDERAL RULEMAKING TO  
IMPLEMENT EFFORT CONTROL MEASURES  
AND HARVESTER REPORTING (ADDENDA XXI,  
XXII, AND XVI PROVISIONS)**

CHAIR McNAMEE: We're going to skip the update on Jonah crab for this meeting, and go right to Alli Murphy, who is going to give us an update on another piece of federal rulemaking that is out for comment right now. Alli, whenever you're ready, take it away.

MS. MURPHY: We published a proposed rule a few weeks ago now, proposing measures that complement Addenda XXI, XXII, and XXVI. I'm going to use the next couple slides to kind of go into the details on what we proposed. Through this presentation, as well as the memo that Caitlin sent around, I'm also going to highlight some of the differences with what we proposed, and what was in those Addenda.

I figured I would start with perhaps the more easy one, which is harvester reporting. We're going to require, or we've proposed to require that all federal lobster permit holders submit electronic vessel trip reports, using the same form and timing that all of our other GARFO permit holders are being held to. In addition to that, at the request of Addendum XXVI and the subsequent Data Working Group, we were requested to collect several additional data elements. We're proposing 5 new data elements listed in that table.

In going through the process of developing the proposed rule and the Paperwork Reduction analysis, we identified three of those items that were recommended as duplicative, with information we already collect on the VTR. We have not proposed to collect those items. We welcome comment on this proposal.

We also welcome comment on the Paperwork Reduction analysis and burden estimates associated with this measure. One final thing to note here is that we propose to begin collecting this information no earlier than January 1st. I

had hoped to get this rule out a little bit faster than it actually did.

As we move into the final rule, we'll need to be thinking about workable implementation dates, you know balancing sufficient time for industry to get the technology and the appropriate Apps to comply with the reporting requirements, as well as balance that with need for the data. If there are comments on when to implement these measures, we would welcome those comments as well.

For Area 2, I'm going to try to be a little bit more purposeful in my wording, than perhaps I was in the explanatory section of the proposed rule. I know that caused some confusion. I've gotten some phone calls, where folks had some questions. We are proposing to cap Area 2 entities at a limit of 800 traps per entity.

Those who were over that 800-trap cap as of the time of the proposed rule, we are proposing to allow them to retain their current trap allocations, but not acquire any additional traps afterwards. We're also proposing to implement that on May 1, 2024, consistent with the 2-year sunset provision that had been in Addendum XXI.

The real big difference here is that we are not proposing, well two things, we're not proposing to place limits on the number of permits that could be owned, and then the second difference is, we are not proposing the single ownership cap or banking, what I will parochially call bank it, trap banking. We viewed the banking provisions as a mitigation measure for the trap reductions.

Others were taking place between 2016 and 2021, and with trap reductions over, we saw the banking provisions as no longer necessary. One last thing I'll point out is, you know this measure or these proposed measures really put a pin in the fishery as it is today. It captures the fishery in its status quo state, so no major impacts were anticipated from this.

For Area 3 we have two interacting measures. I have tables on the next slide that kind of help show

this a little bit better. But I wanted to walk through this, and give you a similar explanation as I did for Area 2. First, we're proposing to lower the maximum trap cap per vessel that can be the maximum number of traps that can be fished, from 1945 traps to 1548 traps over three years. This is a slight difference from the Addendum that recommended that reduction schedule over five years. Secondly, we're proposing an aggregate ownership cap. This relates to the maximum trap cap, but the ultimate cap after three years will be 7,740 traps per entity. Again, like with Area 2, those who are over that at final aggregate ownership cap, we're proposing to allow them to retain their traps, but not acquire additional traps.

Then next slide, I'll just summarize a few more things. The top table is what we proposed for measures for Area 3, and then the bottom table is a summary of what was recommended in the two Addenda. Again, I pointed out that this was recommended to take place over five years. You will note that the maximum aggregate permit cap is different between the two.

This is, I think, because the Addenda included banking provisions, and then allowed permit holders or entities to have five times the number of traps as the individual permit cap. We're trying to stay consistent with that thought by the Commission, and so we're proposing that entities can retain five times the maximum trap cap, because we're not proposing banking.

You'll see in the top table over three years the aggregate ownership cap will go down, consistent with the maximum trap cap reductions. I have a link in this presentation for how to comment. We welcome comments from the Commission, our state partners, the regulated and interested public.

That link will bring you right to this top page, and that little blue comment box brings you to another web page, where you can submit comments. I'm happy to take any questions on

this rulemaking. Oh, I should also point out that the deadline for submitting comments is next week, August 10th. Thank you, Mr. Chair.

CHAIR McNAMEE: Thanks for that, Alli. We have another opportunity for comment, potentially from the Commission if we wish. This one is pretty tight for the turnaround. Just given the time that we're at here, I'm looking over toward Toni or Bob, to see if this is another, if we can sort of follow the same procedure we followed with the last items. If there is something we can kind of get together offline. I'm just wondering if there is a mechanism. I don't think we're going to have time to gather comments here today.

MS. KERNS: I know we won't have time to gather comments here today. Caitlin, did you get any comments? Caitlin did ask for comments earlier in the week on this document, and we did not receive any. One, we received one. David Borden, I know that you had told me you were wanting to send us some comments, but I don't know if we got those in yet or not.

It will be hard for us to get a group together, because finding the time for that group will be difficult. We will try. But it might be that we need you to send Caitlin your comments no later than Friday, and then we can turn them around and put a letter together, and have the Lobster Board Chair and the Commission Chair and Vice-Chair review that letter.

If that is something that is acceptable to the Board. If there is anybody else that wants to see those comments at the same time as Jason, we can do that for those individuals. But having a lot of cooks in the kitchen editing the letter with this tight timeframe, will be difficult.

CHAIR McNAMEE: Thanks for that, Toni, okay. That seems like a good path forward, unless anyone disagrees around the table. David, yes, go ahead, David.

MR. BORDEN: I know you're trying to move this along. A couple of points. I've already talked to Alli,

and she actually clarified some of the issues that I was concerned about. Before I forget it, I would like to complement both Alli and I think Chip had involvement with this. This is a proposal that the Commission made ten years ago to NOAA, and there has been a whole series of delays on this.

But finally, these two individuals have done their due diligence, and gotten it to us. The problem is that in the intervening period, the factual situation has really radically changed. When this was proposed, we only had one individual in the entire Area 3 group who was over the ownership cap. At this point we're in a situation where the Area 3 industry, 56 percent of the industry is owned by four companies.

These regulations, although really well intended and well designed by the industry when we first put them together, have really been superseded by the delays. These delays have allowed changes in the industry. I'm leading up to a question of Alli, I realize the timing issue. I think NOAA has to move forward really rapidly. That is one of the reasons they have such a short comment period.

Do we have the option, Alli, of for instance, approving this, but asking for a delay or an extension on the Area 2 and Area 3 component of it? In other words, in my own case, I have no objections to what NOAA has approved with the bulk of the changes that they've included. But I don't fully understand all of the nuances of those Area 2, Area 3 regulations. I would also point out quickly that there has been almost no industry feedback on this.

You couldn't pick a worse time to put out a proposed rule, because the offshore boats are fishing 10 days a week, 2 days onshore, and they are literally racing around loading boats, getting ready to go back out, and the inshore boats are doing the same thing, different schedule. Is it possible, Alli, for us to endorse the concept in what you proposed, but ask for an extension of the comment timeline on the

Area 2 and Area 3 component? If it is, I can make a suggestion, Mr. Chairman.

CHAIR McNAMEE: Response, Alli?

MS. MURPHY: Chip, if I get myself into trouble here, I'll look to you to bail me out from within the room. You know I think that, Mr. Borden, if that is a comment that you or the Commission wish to make, I think that is a perfectly reasonable comment, and we would consider that in the development of our Final Rule.

MR. BORDEN: Okay, so that is very helpful. I would suggest, Jason, to simplify the staff task, that we basically recommend approval of the proposed rule as it was written by NOAA, with the exception of the two parts on the Area 2, Area 3 regulations. In regard to those two sections, simply ask that they extend the comment period until the next meeting of the Commission, to allow us time to solicit input from the industry, and put together comments. I'm not making that as a motion, in the interest of time, but if you need a motion, I would be happy to do that.

CHAIR McNAMEE: We have a suggestion from David, does anybody have any comments around the table here about that? Dan.

MR. McKIERNAN: I would support David's suggestion for such a motion.

CHAIR McNAMEE: Toni.

MS. KERNS: You have Mike Pentony from NOAA Fisheries on the webinar with his hand up. I think we should hear from him.

CHAIR McNAMEE: We're going past 12:50 everyone. Go ahead, Mike, whenever you're ready.

MR. MICHAEL PENTONY: I'm just trying to get clarification on the intent, because I'm not clear on it. I think if there is going to be a motion or a request, it would be really good to be crystal clear on this. I think there are a couple of things that I heard. One was, approve the proposed rule as

proposed, but extend the comment period on part of it.

Those are kind of contradictory. We could approve the rule, but delay implementation. We do that on occasion. You could request us to extend the comment period on the proposed rule before we make a decision to approve and implement it, or theoretically at least, we could, if this is your request. We could split the rule, and approve and implement one piece of it, and either disapprove or potentially.

I don't even know the mechanism by which we could do this. But it's something we could look at if this is your desire. Delay implementation or defer implementation or decision on the other part of the rule. Just because I want to be really clear what you're asking, so that we know how to respond and react. Thank you.

CHAIR McNAMEE: Toni, go ahead.

MS. KERNS: From my understanding in conversations with David, and you can correct me if I'm wrong. What we're looking for is to split the rule, because we understand the need for speed on the data collection portion, because we want that to happen for January 1. The Area 2, 3 cap measures are what we're trying to get additional time to provide a more thorough comment on.

CHAIR McNAMEE: Yes, that also makes sense to me. David, I think that is where you were trying to go there.

MR. BORDEN: Yes, that is exactly, Mr. Chairman, what Toni just said and what the Regional Administrator just said, is what my intent is, split the rule. We in essence approve it, let it go forward, but they split out those two parts, and take additional public comments on it, extend the comment deadline, which will give us the ability to get better comments from the industry, and talk to the industry about this. Thanks, Mike, for making that suggestion.

CHAIR McNAMEE: Yes, thanks for that, good discussions. Mike, does that make sense what was just kind of wrapped up there.

MR. PENTONY: Yes, thank you very much.

CHAIR McNAMEE: Okay, I think we have a plan. We have a plan, are there any objections to moving forward in that manner? Looking around the table for hands. Not seeing any. Any hands online? Go ahead, Alli.

MS. MURPHY: Thank you, Mr. Chair, I just abstained from any comments coming to NOAA Fisheries. Thanks.

CHAIR McNAMEE: All right, so we have two more items to go here. Thanks everybody for that, thank you, Alli, I appreciated that. Just trying to move us along here.

#### **REVIEW AND POPULATE ADVISORY PANEL MEMBERSHIP**

CHAIR McNAMEE: Moving on we've got an Advisory Panel topic here, and I'm hoping Tina is online. Tina, whenever you are ready, go ahead.

MS. TINA L. BERGER: I offer for the Board's consideration or approval three nominees to the American Lobster AP, and those are Chris Welch, commercial trapper from Maine, Todd Alger, a recreational diver from Massachusetts, and Eric Lorentzen, a commercial trapper from Massachusetts as well. You were provided their nomination forms in your main meeting materials.

CHAIR McNAMEE: Thank you, Tina, does anybody want to make that motion? Go ahead, Dan.

MR. McKIERNAN: **Yes, I'll make that motion.**

CHAIR McNAMEE: Motion made by Dan McKiernan, seconded by Pat Keliher. Anyone object to the motion, please raise your hand? Any hands online? **Okay, with no objections, the motion stands approved.** Thanks for that.



**ELECTION OF VICE-CHAIR**

Then the final item of business here is to elect a Vice-Chair. Does anybody wish to make a nomination? Dan McKiernan, go ahead.

**MR. MCKIERNAN: Yes, I would like to nominate Maine Commissioner Pat Keliher as the Vice-Chair of the American Lobster Board.**

CHAIR McNAMEE: Okay, nomination made by Dan McKiernan, seconded by Emerson Hasbrouck. Any objections, and you can't object, Pat. **Any objections to that nomination? Looking for hands around the table, any hands online. No objection, so that nomination stands approved, and congratulations, Pat.** I'm looking forward to you taking over this role.

**ADJOURNMENT**

CHAIR McNAMEE: That concludes the agenda, with the exception of Other Business. Is there any other business, I hope not, to come before the Board. Seeing no hands, we stand adjourned. Thanks everybody for hanging in.

(Whereupon the meeting adjourned at 12:55 p.m. on Tuesday, August 2, 2022)