



MAINE

Lobstermen's Association, Inc.

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Atlantic States Marine Fisheries Commission
Robert Beal, Executive Director
1050 N Highland St, Suite 200 A-N
Arlington, VA 22201

Transmitted Via email to Caitlin Starks

April 19, 2024

Dear Director Beal and American Lobster Board:

The Maine Lobstermen's Association (MLA) respectfully requests that the American Lobster Board reconsider the "24/7" provision of the electronic tracker requirement for federal lobster vessels in Addendum XXIX.

During the public comment period, members of the lobster industry raised concern that the requirement to track lobster vessels when they are not fishing went too far and was an unnecessary invasion of lobstermen's privacy that does nothing to further the goal of the management action. The MLA raised this concern in its January 31, 2022 comment letter opposing electronic trackers on lobster vessels, noting our members' concern that the unit must be in operation and collecting data even when the vessel is not fishing or actively steaming to or from federal lobster fishing waters. This issue was discussed, but left unresolved, by the American Lobster Board during its deliberations on Addendum XXIX at its February and March 2022 meetings.

During the March 2022 meeting Commissioner Stephen Train prompted an extended discussion on the need to include the "24/7" provision in the Addendum. He asked if it would be "possible to have this device only activate at the three-mile line, or only activate when the hydraulics are engaged and we're hauling?" He also noted that "law enforcement stated that it's important to know when the vessel is hauling and when it's not."

In response, ASMFC staff and technical advisors informed the board that it would be difficult to remove the "24/7" provision because 1) the draft Addendum "did not go out to public comment with that concept, [so] at this point in time it would be difficult to change" and 2) the devices were not developed and tested to track vessels only when fishing so "the cellular tracker doesn't even have a power on/power off switch."

This was a frustrating result for the lobster industry, particularly given that a rationale for why “the device must remain on board the vessel and powered at all times when the vessel is in the water” was not included in ASMFC’s “FAQs on Electronic Vessel Tracking for American Lobster and Jonah Crab” (April 1, 2022) in response to questions raised during the public hearings on American Lobster Addendum XXIX.

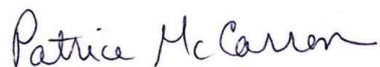
Addendum XXIX’s rationale for requiring trackers is to provide data to inform issues that “pose an acute need for high-resolution data on where and when fishery effort in the federal fleet occurs.” The Addendum identifies four categories of challenges which require this type of fine scale temporal-spatial data -- 1) the lobster stock assessment, 2) fishery interactions with right whales and protected resources, 3) marine spatial planning, and 4) offshore enforcement. The Addendum states this data is needed to “significantly improve the information available to fishery managers and stock assessment scientists.”

We are entering a new era in management where the lobster industry is trying to find a way to provide managers with the data needed for responsible marine resource management without invading fishermen’s privacy or other protected interests. Addendum XXIX mandates an expansive tracker requirement at a time when the trend in legal thinking disfavors fishery management measures reaching beyond activities clearly under an agency’s purview. Nowhere in the Addendum XXIX record does ASMFC provide a justification that tracking federal lobster vessels when they are not fishing is needed to achieve the goals of the management action.

The MLA cannot support policy that impinges upon individual privacy when there are solutions available to address this concern. To resolve the industry’s concern, the MLA requests that ASMFC initiate an action to remove the “24/7” provision from the federal electronic tracker program.

Thank you.

Sincerely,



Patrice McCarron
Acting Chief Operating Officer



Mary Anne Mason
Legal Counsel



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Robert Beal, Executive Director
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Transmitted Via email to Caitlin Starks

April 23, 2024

Dear Director Beal and American Lobster Board:

The Maine Lobstermen's Association (MLA) respectfully requests that the American Lobster Board delay the implementation of the schedule of Lobster Management Area 1 gauge increases which begin January 2025. We also urge the Commission to update the trigger index with 2023 data as the terminal year for discussion at its summer meeting. The MLA shares ASMFC's goal to maintain a resilient lobster fishery, but we do not believe that a gauge increase is necessary at this time. MLA previously shared these concerns in our April 23, 2023, comment letter opposing an increase to the LMA 1 gauge.

We raise this issue again for several reasons.

1. We continue to believe both the reference period of 2016-2018 and the percent trigger decline to be overly precautionary.

According to Addendum XXVII, the purpose of raising the minimum gauge size is to increase biological resiliency through the protection of spawning stock biomass (SSB). The Plan Development Team (PDT) noted that a trigger level of 45% decline in indices from the reference period "still provides an opportunity for action before reaching the abundance limit" which is consistent with the addendum's goal (American Lobster Plan Development Team Memo, September 10, 2021).

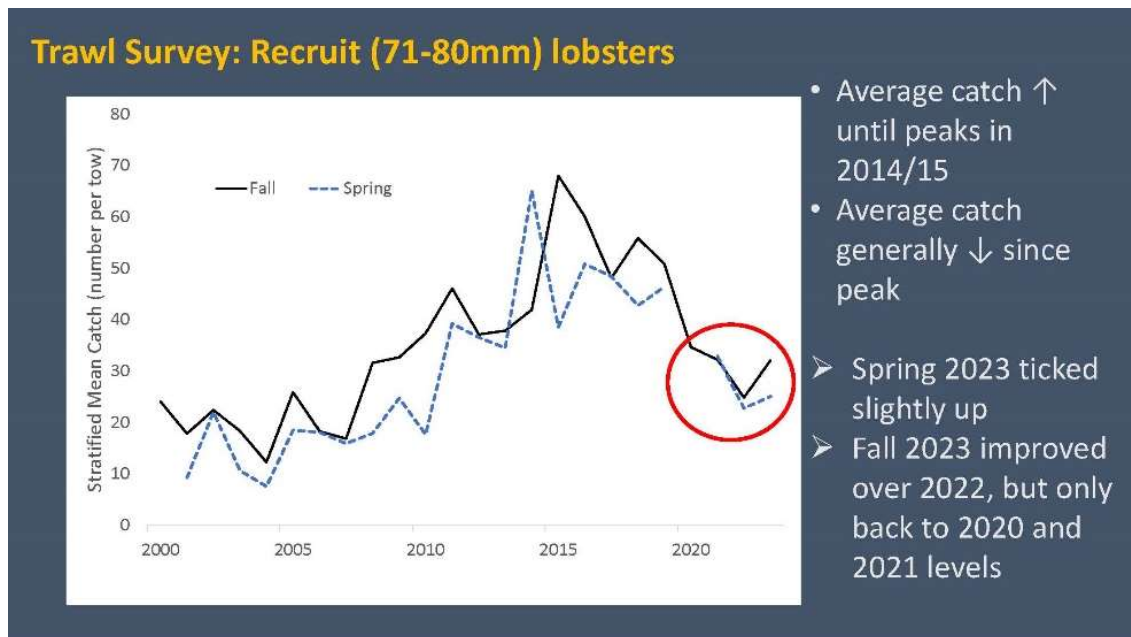
Furthermore, the reference period averaging the index values from 2016-2018 is arbitrarily high and overly precautionary because it includes the lobster fishery's record year for landings.

2. The three-year average for the trigger was not successful in smoothing out extremes and unexpectedly triggered the schedule of gauge increases with the addition of only one year of data.

The purpose of using a three-year average to compare to the reference period was to smooth out extremes that might occur from year to year to prevent unwarranted and potentially counterproductive management action. In this instance, the trigger index unexpectedly leapt from 21%, with 2021 as the terminal year, to 39.1% with 2022 as the terminal year. Rather than smoothing out the effects of years, the trigger index sent a potentially misleading signal for premature management action. MLA therefore believes a longer time period should be used for the average to compare to the reference period in order to base management action on a more realistic measure of trends in SSB resiliency.

3. The results of Maine’s 2023 lobster surveys are promising. Based on the fact that the addition of one year of data (2022) triggered the gauge increase (moving from 23% to 39%), it is possible that the addition of one year of data (2023) may reverse this decline.

Maine’s Department of Marine Resources (DMR) presented its 2023 survey data at the Maine Fishermen’s Forum in March 2024 which show significant improvements in nearly all surveys including the Stage V Larval Survey, Young of the Year Settlement Survey (which surpassed the 2011 survey average in all areas), and the Spring and Fall Trawl Surveys. The Ventless Trap Survey had mixed results with a flattening in Area 513, increase in Area 512, and decline in 511.¹ These results make it very plausible that when 2023 data are included as the terminal year, the trigger index could recover to at or below 35%.



Source: Maine Fishermen’s Forum, DMR slide 31

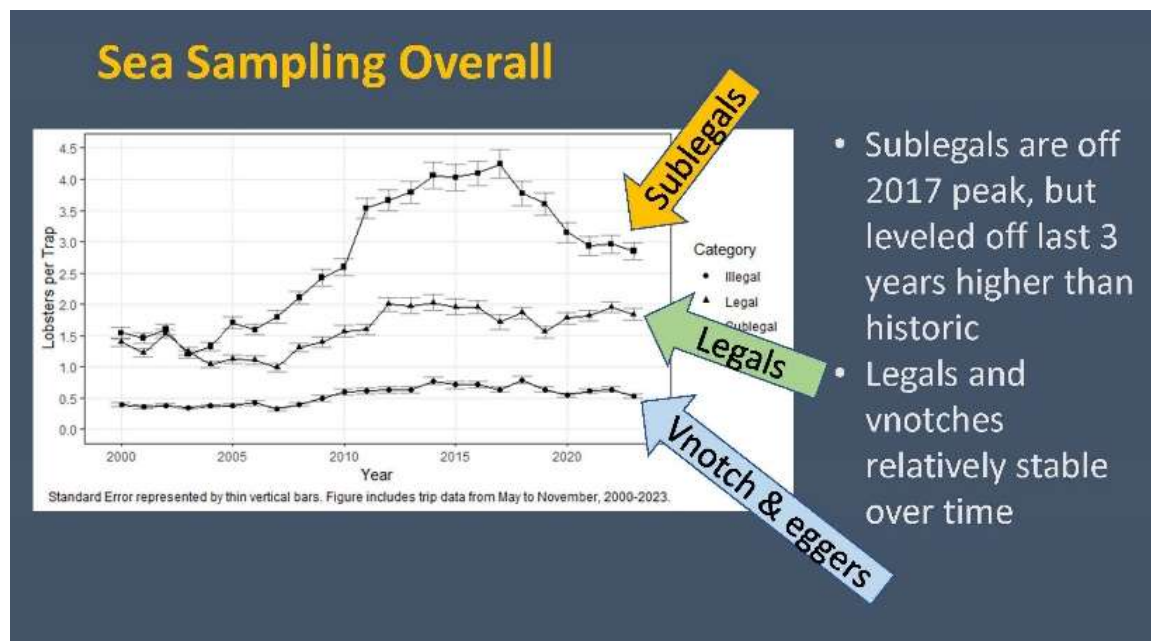
¹ mainefishermensforum.org/wp-content/uploads/DMR_LobsterWhaleScienceUpdate2024.pdf

4. Lobstermen continue to report observing high numbers of undersized and eggers in their traps. Survey data show the number of eggers and v-notch lobsters remain stable at historic highs.

The observations of Maine lobstermen support a positive outlook for the fishery. As noted in MLA’s comment letter, many lobstermen continue to report seeing large numbers of eggers and undersize lobsters while fishing. Based on these observations and their expert knowledge of the fishery, they are skeptical that the magnitude of the decline based on the trigger index is accurate.

Furthermore, the trend in sublegal and legal lobsters does not appear to correspond to the number of eggers, leading many lobstermen to question whether increasing SSB will in fact stabilize catch in the future. Many lobstermen believe that environmental factors, rather than SSB, may be impacting settlement and juvenile lobster abundance, as happened with Northern shrimp.

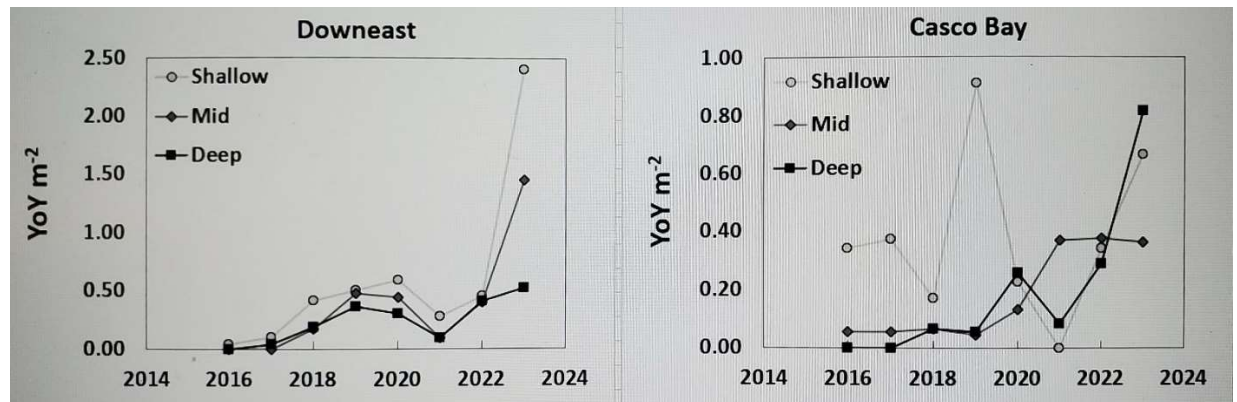
The Lobster PDT reported, “It should be noted that the effects of increasing SSB on recruitment are difficult to predict and are likely heavily influenced by other factors... the negative influence of environmental factors (e.g. declining larval food resources) on recruitment processes may have a stronger impact on recruitment success than the number of spawners, thus it is not certain that increases to SSB resulting from gauge changes will result in subsequent increases to recruitment” (September 10, 2021 PDT Memo).



Source: Maine Fishermen’s Forum, DMR slide 34

5. Lobstermen are concerned that lobster distribution has shifted, and surveys are not accurately sampling settlement and juvenile lobsters.

Lobstermen have hypothesized that lobsters are settling in deep water habitats not historically surveyed. A project funded by Maine lobster dealers, in collaboration with the University of Maine, has been surveying deep water lobster settlement for eight years. In 2023, the deepest water sites in Casco Bay had the highest settlement with strong deep water settlement at Downeast sites.



Source: Courtesy of Dr. Andrew Good, University of Maine (Via Curt Brown)

6. Addendum XXVII was silent on trade issues arising when the U.S. minimum gauge becomes larger than Canada’s minimum gauge. The addendum provided no guidance on how the Mitchell Provision would be implemented creating the need for Addendum XXX. By contrast, Addendum XXVII does address the impacts of standardizing measures across LMAs on interstate commerce (See “Interstate Shipment of Lobsters” in Section 2.7.1).

MLA’s April 23, 2023, comment letter states, “Potential trade issues arising from the Magnuson Act prohibition on the import and sale of lobsters smaller than the U.S. minimum were raised when the previous draft of Addendum 27 was released, yet this issue is not addressed in the updated addendum. MLA understands anecdotally that ASMFC has determined the proposed increases to the LMA 1 minimum gauge will not impede lobster imports from Canada, however, this information is not (but should be) included in the addendum.”

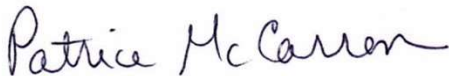
7. Maine lobstermen and Maine lobster dealers now have opposite claims of harm based on how the Mitchell Provision is implemented. There is no guidance to resolve these disparate concerns to objectively assess impacts on the industry.

Addendum XXVII has created a new problem regarding the import of undersize lobster from Canada, leaving Maine’s lobstermen and dealer/processors at odds over how it should be implemented. This unresolved issue is significant given the inter-dependance of the U.S. and Canadian lobster fisheries to meet demand.

The MLA is adamantly opposed to the import of Canadian lobster under the U.S. minimum size because it would have a significant negative impact on the boat price for Maine lobster. Furthermore, Downeast lobstermen will be forced to throw back lobsters that could then be caught and landed by Canadian lobstermen fishing in shared waters only to be sold back to the U.S. By contrast, Maine dealers and processors have raised a different set of concerns regarding access to supply and other market concerns.

The MLA is confident that a gauge increase is not needed now. A delay would allow ASMFC the time it needs to resolve issues with the three year averages for both the reference period and trigger index, gain another year of survey data to determine whether or not the indices are still in decline, work with the industry to understand the full range and impact of concerns regarding the import of undersize lobster from Canada, and to continue to work with Canada to resolve trade impacts if the U.S. minimum gauge is increased. The MLA strongly urges the Commission to delay the implementation of the gauge increase scheduled for January 2025 and update the trigger index with 2023 data as the terminal year for discussion at its summer meeting.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Patrice McCarron".

Patrice McCarron
Acting Chief Operating Officer



HOUSE OF REPRESENTATIVES

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Tiffany.Strout@legislature.maine.gov

Dear Commissioner Keliher,

We the undersigned are writing to you today to request assistance from yourself, Representative Hepler and Mr. Train as members of the Atlantic States Marine Fisheries Commission (ASMFC) with pausing the implementation of a change in the undersized measure of a lobster harvested, to be implemented by the ASMFC in January of 2025. With the understanding the lobster industry needs to have sustainability policies in place to help ensure the continuation of the heritage industry, concern has been brought forward by the industry of this change in the under measure hoping to have an effect on sustainability but is certain to have a huge effect on the commercial fishermen.

As the industry has both grown and become more profitable, those in the industry have worked tirelessly to monitor the industry and put forward policies such as v-notching egg bearing females so they will not be able to be caught in the future and would continue as proven breeders producing lobsters for the future.

A couple of major concerns with a change in the undersize measure are, the decrease in the landings estimated to be 20% in zone A and the unfairness of the competition with the fishermen in Canada. When zone A lobstermen return under sized lobsters, those moving lobsters are going to crawl in the Canadian traps and be caught and kept for sale. The unintended consequences of changing the undersized measure are a decrease of landings for Maine lobstermen and an increase in landings for the Canadian lobstermen still resulting in the same number of lobsters harvested.

We understand an amendment has been proposed that would not allow live lobsters to be imported into the United States that did not meet the measurement requirements imposed on Maine fishermen. Our concern is, if this amendment only relates to live lobsters, but not processed meat, there would be no way to measure the shell of the lobster that was harvested and would there for not deter the catch of the new undersized measured lobsters in Canada as they could be caught, processed, and shipped into the United States.

In addition, the lobstermen have been under extreme stress and financial hardships implementing gear for all the whale regulations, increased cost in bait, increased cost in fuel and recently extreme storms that have destroyed both boats and wharfs. At this time, implementing a change in the undersize measure, when the science is showing leveling off or a slight increase in juvenile lobsters being recorded seems like yet another unnecessary regulation.

Allowing the lobstermen to work continue to work while there is a pause in the whale regulations will provide more data for better scientific review. The lobstermen are the biggest stewards of the ocean and the fishing industry, not just lobstering. As a representative of the industry, the information you can provide to ASMFC could be a deciding factor.

Thank you for your time and consideration of this recommendation. We are looking forward to hearing your thoughts and working with you towards a pause in the new undersized measure regulation.

Sincerely,

A handwritten signature in cursive script that reads 'Tiffany Strout'.

Tiffany Strout
State Representative

District 11 Addison, Beals, Columbia, Columbia Falls, Harrington, Jonesboro, Jonesport, Machias, Milbridge, Roque Bluffs, Whitneyville, Centerville Township, and North Washington (Part)

And the following signatories:



Cameron Reny
State Senator, District 13



Scott Landry
State Representative, District 75



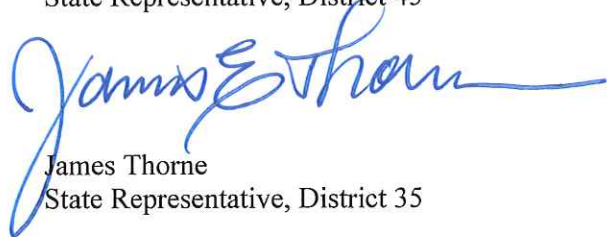
Anne Beebe-Center
State Senator, District 12



Abden Simmons
State Representative, District 45



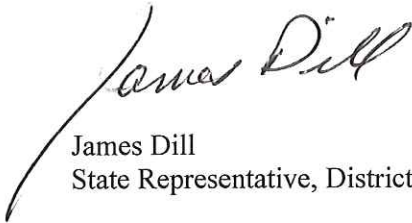
Marianne Moore
State Senator, District 6



James Thorne
State Representative, District 35



Kenneth "Bucket" Davis
State Senator, District 10



James Dill
State Representative, District 26



Victoria Doudera
State Representative, District 41



Holly Eaton
State Representative, District 15



Irene Gifford
State Representative, District 28

Atlantic States Marine Fisheries Commission
Lobster Conservation Management Team (LCMT) Area 2
Meeting – April 9, 2024

LCMT Member Present: L. Dellinger (Chair), A. Eagles, B. Thibeault, G. Mataronas, J. Drake.

LCMT Member Absence: M. Bolin, R. Smith, T. Field, W. McElroy, M. Marchetti, T. Tomkiewicz, D. Magee

Summary

The LCMT met on April 9, 2024 at 4PM using a hybrid platform. The basis of the meeting was to discuss the NOAA Fisheries’ rulemaking on LCMA 2 ownership caps and trap cap reductions, which responds to the Commission’s Addenda XXI and XXII (2013). The goal of the meeting was to provide comments from the LCMT Area 2 members to the ASMFC Lobster Management Board regarding the rule making, given its implementation is ten years after the initial Addendas’ establishment.

The LCMT first commented on the sunset clause of May 1, 2022, noting that the date should be revised or removed altogether. They noted that the Area 2 fishery has changed a lot over the last ten years and with that, there should be an effort to enhance or create flexibility for permit holders where possible. Similar sentiment and justification were provided regarding the trap limit for those holding two permits, with the LCMT noting that they should be able build a second permit up to 800 traps and not be held at the trap limit established with the May 2022 control date. The LCMT also noted that the ability to bank up to 800 traps is imperative for possible future management scenarios where traps could be reduced as in previous years. The LCMT also discussed whether it would make more sense to have management focus on the number of permits or number of traps. This was largely placed in the context that in order to build up to a second permit of 800 traps, a federal permit holder may have to buy multiple or several permits that have low trap allocations. This resulted in the question as to whether a permit cap should exist. In an instance of a federal permit holder buying several permits to build a second permit up to 800 traps, there was question as to whether the permits resulting in zero traps would then be dissolved or simply shelved with zero traps on them. One harvester noted that in many instances over the last several years, federal lobster permits have been sold as part of other transactions that have resulted in the permits leaving the Area 2 fishery altogether, thus concern about increasing above the current level of effort in the future with more flexible trap or permit caps is unlikely.

Those fishing state waters also recommended that for any changes taking place on this topic, they should apply to both state license and federal permit holders. The LCMT discussed the term ‘entity’ and asked that any future ASMFC addenda or NOAA rules clearly define the term and make sure there is consistency between Commission and NOAA rule language.

Atlantic States Marine Fisheries Commission

Lobster Plan Development Team

Call Summary

Monday, April 1, 2024

2:00 – 4:00 PM

Attendance:

Lobster Plan Development Team Members: Caitlin Starks (ASMFC), Alli Murphy (NOAA), Corinne Truesdale (RI DEM), Josh Carloni (NHFG), Story Reed (MA DMF)

Additional Attendees: Todd Boothroyd

The Lobster Plan Development Team (PDT) met on April 1, 2024 to discuss the following task from the American Lobster Board (Board):

Move to have the Plan Development Team review the conservation measures originally set in Addenda XXI and XXII and make recommendations for alternate measures to achieve those reductions inclusive of the Lobster Conservation Management Team [LCMT] recommendations by the ASMFC Spring Meeting.

Staff reviewed the background of the task and the Addenda, and then the PDT discussed information needed to develop recommendations. The PDT agreed that more recent data are needed to better understand the current state of the fishery in Southern New England (SNE). Specifically, the PDT agreed to gather data to update the tables in Addendum XXI, including traps allocated and maximum traps fished by Lobster Conservation Management Area (LCMA) by year. This should show how effort has changed in these areas over time since the Addenda were approved in 2013. The PDT noted that the data we have now are better than what was available at that time since the states have been recording number of trap tags purchased and the number reported by harvesters.

Alli Murphy agreed to reach out to NOAA statistics staff to request similar data as the states. In addition to the allocated and maximum traps fished discussed above, this would also include the number of federal Area 2 and 3 permits issued and maximum allocations for those permits. The PDT also discussed analyzing maximum traps fished to understand how many entities have traps above the final active trap caps for each LCMA.

The PDT agreed that the development of the Jonah crab fishery since the approval of Addenda XXI and XXII is an important issue that needs to be accounted for in this discussion. Changes to lobster trap limits would affect the Jonah crab fishery as well. Data from the recent Jonah crab assessment can be used to describe the trends in directed Jonah crab effort and landings versus directed lobster effort and landings in Area 2 and Area 3 over time. Another point raised is that there is anecdotal evidence that Area 3 vessels that used to fish in the SNE stock area have

moved north and may now be fishing more in the Gulf of Maine/Georges Bank (GOM/GBK) stock area. If the goal of the Addenda was to scale the size of the SNE fishery to the resource, then effort shifting from the SNE stock to the GOM/GBK stock will be important to consider as the PDT evaluates alternative measures to trap reductions to achieve that goal. Data being gathered for the ongoing lobster stock assessment may be available to look into changes in landings and effort by stock area over time.

The PDT noted that without looking at these data and better understanding how the current fishery compares to the measures that were intended to be implemented by this point, it cannot make recommendations on how to achieve the goal of Addenda XXI and XXII with alternative measures. The PDT members agreed to gather the data discussed as quickly as possible and meet again before the Board meeting in May. The PDT also noted that it cannot consider the LCMT input until the meetings are held; meetings of the Area 2 and 3 LCMTs have not yet been scheduled.

Atlantic States Marine Fisheries Commission

Lobster Plan Development Team

Call Summary

Thursday, April 18, 2024

2:00 – 4:00 PM

Attendance:

Lobster Plan Development Team Members: Caitlin Starks (ASMFC), Alli Murphy (NOAA), Corinne Truesdale (RI DEM), Story Reed (MA DMF)

Additional Attendees: Hank Soule

The Lobster Plan Development Team (PDT) met on April 18, 2024 to continue working on the Lobster Board task to review the conservation measures originally set in Addenda XXI and XXII and make recommendations for alternate measures. The PDT members presented the data they gathered on trap allocations and maximum traps fished for LCMA 2 and LCMA 3. Story presented total LCMA 2 traps allocated for MA, for state only permits, federal permits, and both combined from 2010 through 2024. There has been a decline in the MA total allocations for LCMA 2 during this period, and the number of active permits landing in MA for both LCMA 2 and LCMA 3 has also declined. Corinne presented RI data for vessels that report via eTRIPS; she did not have access to VTR data. This excludes a large portion of the RI lobster fishery for LCMA 3. For LCMA 2, between 2008 and 2023, there have been declines in total allocations and max traps fished, though 2012 through 2014 were missing from the dataset. Alli presented LCMA 2 and 3 federal data on allocations and maximum traps fished, excluding MA-permit holders from 2013 through 2023. These data show that, while allocations have decreased with trap reductions, the maximum number of traps fished has remained fairly stable numbers for LCMA 2 (since 2015 when access was limited based on historic participation). In LCMA 3 maximum traps fished decreased from 2013 through 2015, then increased from 2016 through 2021, and has since decreased. Looking at the data for the number of traps issued to each permit, it seems that in LCMA 3 traps have been transferred from smaller allocations to maintain larger allocations.

With these available data, the PDT observed:

- A 42% reduction in LCMA 2 allocation between 2010 and 2023, though not all jurisdictions had data available for this timeframe
- A 38% reduction in LCMA 2 max traps fished between 2013 and 2022
- A 28% reduction in LCMA 3 allocation between 2013 and 2023
- A 4.3% reduction in LCMA 3 max traps fished between 2013 and 2022, but relatively steady numbers over the time period

The PDT identified data gaps that need to be filled, including federal LCMA 3 allocation data back to 2008 and inclusive of MA, and missing LCMA 2 allocation data from 2011-2015. To better understand changes in the Southern New England (SNE) fishery, such as whether effort in LCMA 3 has shifted from SNE to the Gulf of Maine/Georges bank stock, the PDT also needs to separate the LCMA 3 data by stock area. It is unlikely these data will be available to the PDT before the Board meeting.

With additional data, the PDT will aim to answer the following questions to better characterize the current fishery context in relation to the goals of Addenda XXI and XII:

1. Has the size of the fishery been scaled to the size of the resource?
 - a. How is this measured?
 - b. How much has maximum number of traps fished decreased?
2. Has latent effort been addressed (e.g., eliminated, reduced)?
 - a. How have the ratios of maximum traps fished to allocations changed?
 - b. How many permits currently have more than the individual permit cap (800 traps)?
3. Have there been long term reductions in traps fished?
4. Is it possible under current regulations for fishing effort in the SNE fishery to increase from current levels?
 - a. By how much?
5. What types of measures could replace the Addenda XXI and XXII measures to reduce fishing effort by the same amount?
6. How has Jonah crab directed effort changed in SNE?

The PDT noted that more guidance from the Board is needed on the specific conservation goals the PDT should recommend alternative measures to achieve. Addendum XXI and XXII contain language that identifies a number of objectives for these Addenda. Overall, they describe the main goal as “scale the SNE fishery to the diminished size of the SNE resource.” Language in the problem statements and background sections identifies these objectives aligned with the overarching goal:

- Eliminate latent effort so that trap limits are effective
- Long-term reductions in traps fished
- Prevent increases in fishing effort
- Mitigate some of the anticipated unintended consequences of trap allocation transferability program (increase in fishing effort)

The PDT thinks the last bullet above is no longer relevant, because the trap transferability program was already implemented in the absence of the Addenda XXI and XXII measures for federal permit holders. Of the other three, the PDT would like input from the Board on which objectives should be the focus of the PDT’s recommendations for alternative measures.

The PDT recognizes that the Board had intended for this task to be completed before the Spring Commission meeting. However, because the PDT was unable to consider the input of both

Lobster Conservation Management Teams (LCMT) as directed, this is not possible. Thus, the PDT requests more time to compile additional data on the fishery and consider LCMT input before completing this task.