

Atlantic States Marine Fisheries Commission

**ADDENDUM XXI TO AMENDMENT 3 TO THE AMERICAN
LOBSTER FISHERY MANAGEMENT PLAN**

***SOUTHERN NEW ENGLAND REDUCTIONS IN FISHING CAPACITY FOR
LOBSTER CONSERVATION MANAGEMENT AREA 2 AND 3
TRANSFERABILITY MEASURES***



ASMFC Vision Statement:

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.

Approved August 2013

1.0 Introduction

The Atlantic States Marine Fisheries Commission (ASMFC) has coordinated interstate management of American lobster (*Homarus americanus*) from 0-3 miles offshore since 1997. American lobster is currently managed under Amendment 3 and Addenda I-XVII to the Fishery Management Plan (FMP). Management authority in the exclusive economic zone (EEZ) from 3-200 miles from shore lies with NOAA Fisheries. The management unit includes all coastal migratory stocks between Maine and North Carolina. Within the management unit there are three lobster stocks and seven management areas. The Southern New England (SNE) stock (subject of this Addendum) includes all or part of six of the seven lobster conservation management areas (LCMAs) (Appendix 1). There are nine states (Massachusetts to North Carolina) that regulate American lobster in state waters of the SNE stock, as well as regulate the landings of lobster in state ports.

While this Addendum is designed to address the single discrete SNE stock unit, past American Lobster Management Board (Board) actions were based on the management foundation established in Amendment 3 (1997), which established the current seven lobster management areas that are not aligned with the three lobster stock boundaries. LCMA-specific input controls (limited entry, trap limits, and biological measures) have been the primary management tools used by the Board to manage lobster fisheries under the FMP. Managers working to recover the SNE stock face significant challenges since they must confront the complexity of administering and integrating six different management regimes crafted primarily (and largely independently) by the Lobster Conservation Management Teams (LCMTs). To be effective, management actions must not only address the biological goals identified by the Board, but also acknowledge and attempt to mitigate the socio-economic impacts that may vary by LCMA, while ensuring that multiple regulatory jurisdictions have the capability to effectively implement the various management tools available in this fishery.

The Board initiated this Addendum to scale the SNE fishery to the size of the resource with an initial goal of reducing qualified trap allocation by at least 25 % over a five to ten year period of time. The Board motions read: *Move to ... As a second phase initiate Draft Addendum XIX to scale the SNE fishery to the size of the SNE resource. Options in the document will include recommendations from the LCMTs, TC and PDT. These options would include, but are not limited to, a minimum reduction in traps fished by 25% and move to proceed with Draft Addendum XVIII on LCMA 2 and 3 effort control programs to meet the terms of the second phase in the previously approved motion.*

The Board directed the Plan Development Team (PDT) to scale the size of the SNE fishery to the size of the resource in the SNE stock. The PDT drafted an addendum that addressed this issue with trap reductions and changes to the transferability programs. The Board split the addendum, with the trap reductions addressed through Addendum XVIII (approved 2012) and this Addendum addressing changes in the transferability program for Areas 2 and 3. Previously, the most recent transferability rules were established in Addenda XII and XIV. This Addendum modifies some of the rules contained in Addenda XII and XIV, as well as establishes additional guidelines. Further modifications to the single and aggregate ownership caps for Area 3 will be considered under Draft Addendum XXII.

2.0 Background

2.1 Statement of the Problem

Resource Issues

The SNE lobster stock is at a low level of abundance and is experiencing persistent recruitment failure caused by a combination of environmental drivers and continued fishing mortality (ASMFC, 2009). It is this recruitment failure that is preventing the SNE stock from rebuilding. This finding is supported by the 2009 Stock Assessment Peer Review Panel and the 2010 Center for Independent Experts review of Technical Committee (TC) findings and conclusions articulated in the April 2010 report to the Board: “Recruitment Failure in Southern New England Lobster Stock.

Current abundance indices are at or near time series (1984 to 2009) lows (ASMFC 2009) and this condition has persisted since the early 2000s. In May 2009, the Board set interim threshold and target values well below those recommended by the TC in recognition that stock productivity has declined in the past decade. The stock is overfished but overfishing is not occurring. Members of the Board and TC believe that environmental and ecosystem changes have reduced the resource’s ability to rebuild to historical levels.

Management Issues

The Board initiated this addendum to scale the SNE fishery to the diminished size of the SNE resource. This addendum changes the transferability program for LCMA 2 and 3. These changes are designed to allow for flexibility in the movement of traps as the consolidation program for LCMAs 2 and 3 to address latent effort (unfished allocation) are implemented.

The limited entry programs for each LCMA had unique qualifying criteria and eligibility periods resulting in widely disparate levels of latent effort among the areas. Consequently, measures to remove latent effort from the fishery will need to be developed for each LCMA based on the current amount of latency and the unique qualifying criteria and eligibility periods used by each management jurisdiction. For trap limits to be effective in reducing harvest and rebuilding the stock, latent effort must first be addressed to prevent this effort from coming back into the fishery as the stock grows and catch rates increase. Without action being taken to remove latent effort from the fishery any effort to consolidate LCMA 2 and 3 will be undermined. It is anticipated that long-term reductions in traps fished will occur as a result of this addendum.

2.0 Background

The Board has approved past addenda governing the LMCA 2 and 3 trap fishery that allocated traps to each permit holder based on past performance (LCMA 2 allocated traps in 2007 for state permit holders and LMCA 3 in 1999, Table 1). Once NOAA Fisheries allocates traps to LCMA 2, both LCMAs will have a finite number of traps that can be fished based on the total allocation of individuals qualified to fish in the areas. While difficult to calculate and confirm for all areas and jurisdictions, it is estimated that the effort control plans allocated more traps than were being fished at the time the allocation schemes were adopted. The effort control plan for Area 2 was adopted in the middle of the decade long decline in the fishery. Because the fishery was already seeing substantial attrition, the initial allocations in LCMA 2 and 3 created a pool of latent trap allocation that could be fished in the future. The number of fishermen and traps fished was

substantially higher in the late 1990's and continues to decline through the present day. Nevertheless, the proportion of trap allocation that is unfished is significant and continues to grow (Table 2).

Table 1. Initial Trap Allocation approval for each LCMA

LCMA	ASMFC Approval	State Approval	NOAA Fisheries Approval
Area 2	2006	MA - 2006 RI - 2007 CT- 2006	Pending
Outer Cape Cod	2003	MA - 2003	Pending
Area 3	1999	N/A	2003
Area 4	1999	N/A	2003
Area 5	1999	N/A	2003

Table 2. Traps allocated and max traps fished for 2008-2010 for LCMA 2 and 3

LCMA	2008 Traps Allocated	2008 Max Traps Fished	2009 Traps Allocated	2009 Max Traps Fished	2010 Traps Allocated	2010 Max Traps Fished
LCMA 2	178,376	107,003	175,117	107,886	177,120	104,603
LCMA 3	109,477	87,188	111,109	80,561	111,386	75,808

Data for LCMA 2 is limited to MA, RI, and CT fishermen. The data on the maximum number of traps fished is from state harvester reports. Data for LCMA 3 includes MA, RI, CT, NY, NJ, DE, MD, and VA. Max traps fished for MA and RI is from harvester reports for all other states data is from the total trap tags purchased.

The trap allocation programs for LCMA 2 and 3 also contained provisions which allowed transfers of trap allocation among eligible permit holders to mitigate some the negative effects of trap allocation schemes. These programs are called ITT's: Individual Transferable Trap programs. However, despite the desire for trap allocation transfers, they have yet to be fully enacted, primarily because NOAA Fisheries and Rhode Island DEM have met administrative challenges trying to implement these programs.

Through Addendum XII, it was understood by the Board and NOAA Fisheries that before transfers would be allowed or resumed two things must occur: (1) NOAA Fisheries must adopt complementary rules to allocate traps for federal permit holders in LCMA 2 and Outer Cape Cod (OCC) and (2) a joint state/federal database must be created to track trap allocations and transfers among the permit holders for these three areas. NOAA Fisheries is currently in rulemaking to consider federal rules that would allow trap allocation transfers among LCMA 2, 3, and OCC permit holders, as well as establish complementary LCMA 2 and OCC trap allocations for federal permit holders in these areas. It is expected that the trap allocation transfers could happen for the 2014 fishing season. When the program commences, industry members anticipate a rash of transfers that could in fact raise the effort level (traps fished) in the

fisheries – despite the 10% conservation tax to be placed on transfers in LCMA 2, 3, and OCC. If the net result is increased effort, then conservation goals would be compromised, at least temporarily. The joint state/federal database is scheduled to be completed in 2013.

Addendum XVIII effort control plans in LCMA 2 and 3 is designed to remove latent effort from both areas. Prior to Addendum XVIII control plans in the areas resulted in some amount of effort reduction at the permit holder level and at the aggregate fleet level. Many permit holders in LMCA 2 received an allocation of traps that was less than the level of traps they fished prior to allocation. The LCMA 2 plan relied on a combination of traps fished and poundage to allocate traps. Some permit holders with relatively low landings received a trap allocation that was lower than their reported traps fished. Until the allocation transfer program is created these permit holders are frozen at their allocation level without any means to increase their allocation. Meanwhile many LCMA 3 permit holders have seen their trap allocation reduced by a series of addenda (Addenda I, IV, XVIII), that imposed differential trap cuts on Area 3 fishermen based on the size of the original allocation. Fishermen with lower allocations were cut 10%, while others with very high allocations were being cut up to 40%. As a general rule, most Area 3 fishermen had their historic allocations cut by approximately 30%. Under Addendum XVIII, LCMA 2 will reduce it traps by 50% and LCMA 3 by 25% both over a five year period.

Despite the scaling down achieved through the effort control plans, many in the industry fear the soon-to-be-approved transferability program could result in a flurry of transfers that will spike fishing effort. Therefore, the effort reductions in this addendum were put forth to the Board by LCMT 2 and 3 to mitigate some of the anticipated unintended consequences of trap allocation transferability programs that are expected to come “on-line” in the months ahead. These measures establish long-term effort reductions (allocated traps) in the LCMAs that feature excessive permits and trap allocations, especially in SNE where the stock is declining. The proposal creates a framework that allows for LCMA-specific long-term reductions in trap allocations with constraints on how quickly a permit holder can build up their trap allocation after a transfer occurs. These cuts in trap allocation are designed to eliminate latent trap allocations and reduce the number of traps actually fished. Industry members who envision improvements in the economics of the fishery are willing to undertake these trap reductions as long as the relief valve of trap allocation transfer is available to maintain a profitable fishery for the remaining participants.

SNE fishermen recognize that the decline in lobster abundance and the potential for future offshore industrial development could constrain the fishable areas and reduce future landings to unforeseen low levels. In the absence of government funds to remove permits or trap allocation from the available pool, industry developed a proposal that is essentially a self-funded buy-out. Consolidation is likely to occur as permit holders respond to the annual trap allocation cuts by obtaining trap allocation from those permit holders who downsize their operations or leave the fishery.

3.0 Management Measures

NOAA Fisheries is currently in rulemaking to consider federal rules that would allow trap allocation transfers among LCMA 2, 3, and OCC permit holders, as well as establish complementary LCMA 2 and OCC trap allocations for federal permit holders in these areas. It is expected that the trap allocation transfers could happen for the 2014 fishing season, under the current transfer program established in addenda (IV, V, VII, IX, XII, and XIV).

3.1 LCMA 2 Management Measures

The following measures apply to LCMA 2 only. The Commission will recommend to NOAA Fisheries to implement these regulations for the federal waters portion of LCMA 2.

3.1.1 Transfers of a Multi-LCMA Trap Allocation (Partial or Full business) - All Areas can be fished *(This measure replaces section 4.3.3.3 of Addendum XII.)*

Addenda VII and XII allow entities to transfer full or partial allocations of qualified traps from one owner to another in accordance with specific criteria in each State and /or in accordance with federal law. NOAA Fisheries currently does not allow for the transfer of partial allocations, but is in rule making to consider this regulation. NOAA Fisheries does allow for a full business sale.

Under this addendum, the recipient of a trap allocation from a permit that has a multi-LCMA trap allocation will retain the multi-LMCA history. For each fishing year, the recipient could fish in any of the LCMAs that the trap history allows, with the fishermen declaring which of the area(s) will be fished when applying for trap tags. Once declared, the chosen areas cannot be changed in that year. The recipient would be bound by the most restrictive rule for all areas that the allocation qualifies for as designated by the permit when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

3.1.2 Single Ownership Trap Cap or Individual Permit Cap (previously called trap banking)

The single ownership cap allows the purchase and accumulation of traps over and above the *active trap cap* (currently 800 traps for LCMA 2). The single ownership cap is 1600 traps for an individual or corporation at a given time. Traps in excess of the active trap cap may not be fished until activated by the permitting state or agency. A transfer tax will not be assessed on traps activated from the permit holder's individual permit cap to an active trap. Newly purchased traps, along with traps already owned by a permit holder may combine to equal the number of traps necessary to go through active reductions, in order to end up at the final trap level of 800 traps.

Example: A state permitted LCMA 2 fisherman has the maximum trap allocation of 800 traps. He buys 100 traps from a state permitted LCMA 2 fisherman. 10 of those traps will be retired for conservation purposes. The Buyer now owns 890 traps. He may only fish 800 of the 890 traps. The other 90 traps are retained and can be activated as his active traps are reduced. If the permit holders traps are reduced by 10% his total individual permit cap is 801. He has 800 active traps (traps that can acutely be fished) and 1 trap that cannot be actively fished.

3.1.3 Sunset Provision for the Single Ownership Cap

As allowed under Section 3.1.2, the single ownership cap allows the purchase and accumulation of traps over and above the active trap cap (currently 800 traps for LCMA 2). This is to allow for businesses that are cut in the upcoming annual trap reductions to efficiently rebuild their business. The single ownership cap will expire two (2) years after the last trap reduction as specified in Addendum XVIII. At that time, LCMA 2 will revert back to the historical 800 active trap cap allocation only.

3.1.4 Aggregate Ownership Cap or Ownership Accumulation Limits

These measures replace section 4.2.1.4 of Addendum VII

The ASMFC adopted Addendum VII which limited the number of permits any single entity/company can own to two (2) with an exception for a group of permit holders. Ownership is defined as having any interest in a lobster permit/business. All stock holders must be disclosed when renewing landing permits or trap tag allocations. The aggregate ownership cap (or ownership accumulation limits) concept is built on the same principle as a permit bank, which insulates a fishery from changes in geographic and cultural aspects of the fishery. The goal is to reduce the possibility of one entity exerting significant control over the markets and keep as many individuals and as much cultural and geographic distribution within the fishery as possible.

Under this addendum, an entity may not own more than 1600 traps (800 active and 800 banked traps). However, those individuals who had more than two (2) permits in December 2003 may retain the number they had at that time, but may not own or share ownership of any additional permits.

3.2 LCMA 3 Management Measures

The following measures apply to LCMA 3 only. The Commission will recommend to NOAA Fisheries to implement these regulations for LCMA 3, which is entirely within Federal waters. Additional management measures previously considered in Addendum XXI, but are now under consideration in Draft Addendum XXII, include a cap on the aggregate number of federal permit and traps an entity/ company may own.

3.2.1 Transfers of a Multi-LCMA Trap Allocation (Partial or Full business) - All Areas can be fished

Addenda VII and XII allow entities to transfer full or partial allocations of qualified traps from one owner to another in accordance with specific criteria in each State and /or in accordance with federal law. NOAA Fisheries currently does not allow for the transfer of partial allocations, but is in rule making to consider this regulation. NOAA Fisheries does allow for a full business sale.

Under this addendum, the recipient of a trap allocation from a permit that has a multi-LCMA trap allocation will retain the multi-LCMA history. For each fishing year, the recipient could fish in any of the LCMA's that the trap history allows, with the fishermen declaring which of the area(s) will be fished when applying for trap tags. Once declared, the chosen areas cannot be changed in that year. The recipient would be bound by the most restrictive rule for all areas that

the allocation qualifies for as designated by the permit when fishing multi-LMCAs. The history of the trap will be retained in the trap database.

3.2.3 Active Trap Cap (Maximum number of traps allowed to be fished)

The Active Trap Cap refers to the maximum number of traps that any LCMA 3 lobster permit hold may actively fish. No single vessel with an LCMA 3 permit may fish more than the maximum number of active traps. Restraints on ownership are being implemented for LCMA 3 in order to inhibit the excessive consolidation of industry.

Under this addendum, the active trap cap at the commencement of transferability will be 2,000 traps. The active trap cap will be reduced by 5% per year for five years for LCMA 3 as in the table below, in conjunction with the trap reductions approved in Addendum XVIII. If NOAA Fisheries adopts a lower trap cap for LCMA 3 or different trap cut, the schedule will be adjusted accordingly.

Table 3. Active Trap Cap for Area 3

Year	Area 3
Year 0	2000
Year 1	1900
Year 2	1805
Year 3	1715
Year 4	1629
Year 5	1548

4.0 Annual Review and Adjustment Process

As part of the annual plan review process the Board will review the performance of this program to ensure that it is meeting the goals of the program. The review will consider the number of traps transferred, the rate of transfer, degree of consolidation taking place, etc in each area.

States will be required to submit to ASMFC the following information for the most recent fishing year on July 1

- Number of allocated traps for LMCA 2 and 3
- Number of traps transferred for LCMA 2 and 3
- The rate of transfer for LCMA 2 and 3
- Maximum number of traps fished for LMCA 2 and 3
- The degree of consolidation for LCMA 2 and 3

4.1 Compliance

If the existing lobster management program is revised by approval of this draft addendum, the American Lobster Management Board will designate dates by which states will be required to implement the addendum. The compliance schedule will take the following format:

November 1, 2013: All states must implement Addendum XXI through their approved management programs. States may begin implementing management programs prior to this deadline if approved by the Management Board.

5.0 Recommendation for Federal Waters

The SNE lobster resource has been reduced to very low levels. The Atlantic States Marine Fisheries Commission believes that additional fishery restrictions are necessary to prevent further depletion of the resource.

The Atlantic States Marine Fisheries Commission believes that the measures contained in Amendment 3 and Addenda I-XXI are necessary to limit the expansion of effort into the lobster fishery and to rebuild lobster stocks to recommended levels. ASMFC recommends that the federal government promulgate all necessary regulations to implement the measures contained in Sections 3 and 4 of this document.

6.0 References

ASMFC, 2009. Stock Assessment Report No. 09-01.

ASMFC 2010, SNE Exploitation Reduction No. 10-120.