

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

**The Westin  
Annapolis, Maryland  
Hybrid Meeting**

**October 21, 2024**

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1. **Approval of agenda** by consent (Page 1).
2. **Approval of Proceedings of August 2024** by consent (Page 1).
3. **Move to adopt Option B and approve Addendum XXXI, as modified today, to be effective immediately** (Page 12). Motion by Dan McKiernan, second by Doug Grout. Motion passes with one objection. Roll Call: In favor – ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA; Opposed: NOAA (Page 13).
4. **Move to approve the Lobster and Jonah Crab FMP Reviews for the 2023 fishing year, state compliance reports, and *de minimis* status for DE, MD, and VA** (Page 16). Motion by Mike Luisi, second by Steve Train. Motion passes without opposition (Page 16).
5. **Move to adjourn** by consent (Page 20).

**ATTENDANCE**

**Board Members**

Pat Keliher, ME, (AA)  
Rep. Allison Hepler, ME (LA)  
Steve Train, ME (GA)  
Renee Zobel, NH, proxy for Cheri Patterson (AA)  
Dennis Abbott, NH, proxy for Sen. Watters (LA)  
Doug Grout, NH (GA)  
Dan McKiernan, MA (AA)  
Rep. Jennifer Armini, MA (LA)  
Ray Kane, MA (GA)  
Jason McNamee, RI (AA)  
David Borden, RI (GA)  
Matt Gates, CT, proxy for J. Davis (AA)  
Rep. Joseph Gresko (CT) (LA)  
Bill Hyatt, CT (GA)

John Maniscalco, NY, proxy for Marty Gary (AA)  
Jim Gilmore, NY, proxy for Sen. Thiele (LA)  
S. Curatolo-Wagemann, proxy for E. Hasbrouck (GA)  
Joe Cimino, NJ (AA)  
Adam Nowalsky, NJ, proxy for Sen. Gopal (LA)  
Jeff Kaelin, NJ (GA)  
John Clark, DE (AA)  
Roy Miller, DE (GA)  
Michael Luisi, MD, proxy for L. Fegley (AA)  
Jamie Green, VA (AA)  
San. Danny Diggs, MD (LA)  
James Minor, VA (GA)  
Allison Murphy, NMFS

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

**Ex-Officio Members**

Tracy Pugh, Technical Committee Rep.

Rob Beal, Law Enforcement Committee Rep.

**Staff**

Bob Beal  
Toni Kerns  
Tina Berger  
Madeline Musante

Caitlin Starks  
Jeff Kipp  
Tracy Bauer  
James Boyle

Katie Drew  
Jainita Patel  
Chelsea Tuohy  
Emilie Franke

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Capital Ballroom via hybrid meeting, in-person, and webinar; Monday, October 21, 2024, and was called to order at 9:45 a.m. by Chair Patrick C. Keliher.

### **CALL TO ORDER**

CHAIR PATRICK C. KELIHER: Good morning, everybody. Welcome to the American Lobster Board. Let me just get into my agenda really quick. Where did it go? Calling the meeting to order.

### **APPROVAL OF AGENDA**

CHAIR KELIHER: Before we get into any other details, we have the Approval of the Agenda. Does anybody have any other items to add to the agenda?

Seeing none; approval of the proceedings from the August, 2024 meeting, are there any corrections or additions to that set of minutes? Seeing none; we will assume that they are approved by consensus. Before we go to the public comments, I do want to make note of some new Board members that are here.

I would like to welcome Representative Jennifer Armini from Massachusetts. Jennifer, welcome. Senator Danny Diggs, from Virginia, welcome, Senator, and Governor's Appointee J.J. Minor from Virginia, welcome. Make sure you folks get a chance to say hello to our new members of the Commission.

### **PUBLIC COMMENTS**

CHAIR KELIHER: Before we get into the meat of the details, is there anybody who would like to speak to items not on the agenda? Ginny Olsen. Could you just introduce yourself and who you represent?

MS. VIRGINIA OLSEN: My name is Virginia Olsen, I'm a lobster fisherman from Maine, and I work with the Maine Lobster Union. I wanted to bring to the Commission; we have an 800-trap cap on our vessels. Each vessel can only have as many as 800

traps from that vessel. As the fishery has more uncertainty, we have fewer younger people coming into the fishery.

It is harder to get a stern man, and I would like the Commission to look at increasing that 800 cap to 1600, so it would be two licensed fishermen that are current active in the fishery, so they had active current landings. It wouldn't add anything to the fishery, but it would give a tool in the toolbox for safety, so you could have two captains fishing from one vessel, and they could be each other's stern.

CHAIR KELIHER: Great, thank you, Ginny. I appreciate those comments. It is certainly an issue, as far as being able to find help that we've been hearing a lot about, so I appreciate you bringing that to the table. There have also been conversations regarding whale rules around stacking, so this may be something that the Board will want to consider, as far as a tool, to try to address some of the effort issues around that as well, so I appreciate your comments. Does anybody have any additional thoughts or comments on that particular issue? Steve Train.

MR. STEPHEN R. TRAIN: I don't want to drag this out too long, but Ginny, I don't know if you know this, but we've been having that issue also, so my brother and I paired up. We're fishing two boats, maintaining two boats and fishing two gangs of gear. It's a lot of work. The one boat would be much easier, but the problem I have with it on the face of it, it's managing for profitability, which we don't do.

I think that the reason we can't find crew is because we have a resource issue or a problem, then we can work forward or if it's a whale issue. But managing for profitability, I would love to do it, but I can't step forward selfishly and say, jeez, I wish I could just go on one boat. I'm all in, as long as it's not just so I can make more money and spend less money.

MS. OLSEN: I really see it as a safety option in our tool box to say, you know, if I know you are currently fishing, I'm currently fishing, but we don't have anybody to fish with us. Then it's safer for me

to go as your stern and you to go as mine, even if it is on separate vessels. I just think that maintaining the separate vessels in that scenario becomes more difficult.

CHAIR KELIHER: Thank you, Ginny, I appreciate you bringing that forward to the Board. Is there anybody else, any other members of the public that would like to bring anything forward, for an item that is not on the agenda? Seeing none; let's get right into the agenda then.

### **PROGRESS UPDATE ON THE BENCHMARK STOCK ASSESSMENT FOR AMERICAN LOBSTER**

CHAIR KELIHER: First, we have a Progress Update on the Benchmark Stock Assessment. Tracey, I think is going to cover that.

MS. TRACY PUGH: Hi folks, Tracy Pugh, and I am the Stock Assessment Chair. I'm going to give you a very brief update on where we are right now with the assessment process. We have had a couple of workshops. The workshops are sort of the bulk of when we get together and actually do a lot of the discussions on what work we're going to actually be accomplishing.

The first of these was a data workshop. This took place in February of '24, and this was the workshop where we invited external researchers to come in and present to us information on what they are seeing in their studies and their results. This is how we get information from folks who work outside of the TC or assessment.

At that workshop, the stock assessment team and TC members also presented data updates from their various states, and anything internal that they would have going on that would be like scientific studies. The second workshop took place just in July, at the end of July this year. In this workshop we focused on progress on the modeling work. These included updates to the data that are going into the base case model, and some progress in some major improvements to the coding, that is essentially the language that the model is written in.

We made some major progress in updating that. We also talked about some updates on the growth work that is ongoing, and with that we're looking into incorporating new data sources to understand growth better, and we're looking into examining a new growth model and making improvements to the existing growth matrices. We also spent a fair amount of time examining environmental data series and working towards incorporating these data series into the 2025 assessment that as you obviously know, there is a lot of change going on in the environment. We are really looking a lot into all of our options for what data are available and what can we do with them to better understand how the changes are affecting the lobster stock.

We also spent some time examining options for VAST modeling, which is sort of a spatial temporal model, and using that to improve our understanding of the spatial dynamics, and again change over time in the resource. After those, essentially where we're at right now, is we're having ongoing calls and webinars.

Our schedule right now is we're talking at least biweekly, if not more frequently, to make sure that everything is on track, that we're all talking to each other, and that we are checking all of our boxes off. Our upcoming scheduled meetings are later this month on the 29th we have a half-day webinar schedule, where we're going to specifically focus on our model free indicators.

Sometime in December we're going to schedule at least a half day webinar, that is essentially our pre-workshop call to prep for what is coming up in February. Sometime in January we are going to schedule a call to get some updates from a group with the University of Maine, who are doing work on socioeconomic indicators.

Then in February, we have tentative dates from the 11th to the 13th for our second assessment workshop, and this is where we will hopefully have a fully operational model, and start talking about all the sensitivity analyses we're going to do, and start

really looking into sort of the fine scale details of what we need to do to move forward.

Our timeline, so like I said, the two previous workshops are shown in gray there. Our upcoming workshop is February, and then we are planning for the peer review to happen sometime in August, and then with a presentation to this Board around this time next year. Does anybody have any questions about the stock assessment?

CHAIR KELIHER: Thank you, Tracy. Got any questions for Tracy? Jason McNamee.

DR. JASON McNAMEE: Thanks, Tracy, for the quick update there. Just a quick, like I'm just looking for a quick answer. I noticed you talked about use of VAST, and then socioeconomic indicators. Are either one or both of those, are you guys thinking about actually incorporating them into the assessment, as like in a mechanical way, or are they just kind of like side studies that will help inform, but separate from the assessment?

MS. PUGH: Yes, so the plan with VAST is to use that. Neither of these are going to go directly into the model itself, they are going to be sort of like either the model-free indicators that we use sort of in conjunction with the model, that isn't dependent on all of the nitty gritty in the assumptions that go to the model itself.

The model-free indicators are usually a little bit more, I don't have a better way of saying this, naked data. The socioeconomic indicators, our plan is to try to use those as one of these model-free indicators, depending on what they are able to give back to us. With the VAST model, what we want to do with that is again, use it outside of the assessment model itself, to use that to better understand sort of how the lobster resource may have changed in space over time. We might look at things like different size ranges of lobsters, moved offshore and back inshore, so the things like that to try to better understand how this changing environment is understanding the resources distribution and whether or not there are specific

size classes that might be more impacted than others.

CHAIR KELIHER: Dan McKiernan.

MR. DANIEL McKIERNAN: Tracy, back in June we had the joy of traveling to New Brunswick, and hear from the Canadian DFO folks, who were looking at some of the parameter trends that look kind of similar to what we're seeing in the Gulf of Maine. My question is not, are you going to incorporate Canadian data, but will there be follow up conversations with the Canadians, maybe as sort of a corroboration of your findings, relative to the Gulf of Maine/Georges Bank stock?

MS. PUGH: Yes, so we've been trying to plan what we've been calling kind of loosely, a U.S./Canada Science Day. We're having some scheduling challenges with that. We originally were going to do it around the timing of the U.S./Canada Town Meeting, but that week is getting very full for the folks who would need to be involved.

We're talking primarily with Adam Cook at DFO, so that we can try to do a little bit more, at least communication across the border, so that they are aware what our data look like and we're aware of what their data look like on a little bit more of a regular basis. But there is no plan right now to do any sort of formal incorporation of any data across the border into our U.S. Stock Assessment.

MR. McKIERNAN: Yes, I understand that, but I would definitely urge you to have those meetings, because I felt really positive about the exchange that was going on there, and I think they did as well, and were interested in pursuing that. Yes, that's fair, thanks.

CHAIR KELIHER: I think that's a really good point that you're bringing up, and it is part of our overall priority plans that we'll be seeing later in the week. I wonder if it would be worthwhile for a formal letter requesting engagement with Canada, especially within the Gulf of Maine footprint, because I completely agree. The conversation that I thought we had in Canada was a very good one, and

I thought there was some synergy with the scientists that were there. Maybe there is just a way to formalize that.

MR. MCKIERNAN: Are you waiting for a motion?

CHAIR KELIHER: I'm not sure we would necessarily need a motion, other than if there is agreement we can just, I'll look to Toni, but just.

MS. TONI KERNS: The letter is to encourage collaboration in the assessment? I just want to make sure I have it correct.

CHAIR KELIHER: I'm not even thinking of it from the assessment process, but just cross-border cooperation when it comes to lobster science related to the Gulf of Maine.

MS. KERNS: We can do that; we'll just have you bring that up during Policy Board.

CHAIR KELIHER: Yes, is there any objection to that from the Board? Seeing none; okay, great, thank you. Any other questions for Tracy on this issue? Seeing none; next item on the agenda is to Consider Annual Data Updates for the American Lobster Indices. Tracy.

#### **CONSIDER ANNUAL DATA UPDATES FOR THE AMERICAN LOBSTER INDICES**

MS. PUGH: This is the data update process, so you have a full memo in your materials, I think for this. I'm just going to focus on kind of the highlights of this. Again, just a quick reminder, we do assess the Gulf of Maine and Georges Bank as a combined stock, because the TC thinks it's really important to make sure that we're paying attention and kind of sub-stock dynamics that go on.

The data update process actually separates the Gulf of Maine and Georges Bank to two separate sets of indicators, so that we can kind of keep an eye on these sub-stock dynamics. The purpose of this, this came from the 2020 Stock Assessment, and the idea being that it would provide data to the Board to

monitor changes in abundance indicators in between the assessments.

It's a little bit of making sure that we're feeding you data on a more than annual basis, as opposed to having to wait for the stock assessment to look at some of these abundance indicators. The indices that we used for this are focused sort of on indices that we think are going to inform us to the changes that are coming up.

We look at the Lobster Young of Year Index, this is a dive-based survey conducted by the states, and the idea here is that this gives us a signal of abundance for newly settled juveniles. We looked at trawl survey data, specifically the recruit abundance, and so this is lobsters from 71 to 80 millimeters in size, and this is the size group that essentially is going to molt into the legal-size range within about a year.

These data are coming from the state trawl surveys and the Northeast Fisheries Science Center Trawl Survey, which I might slip and call the Federal Survey, same thing. The idea here is that again, these are about lobsters who are going to molt into the legal-size range within the next year. We also looked at trawl survey encounter rate, again from the states and the Science Center Survey.

This gives us an idea on sort of describing how widely distributed lobsters are. We kind of keep an eye on that, in terms of has the lobster population really expanded or is it contracting a little bit? Then we looked at the ventless trap surveys that are conducted by the various state agencies, and this gives us an abundance index for lobsters that are larger than 53 millimeters, and we look at that on sex specific.

Two of these are in red, and the reason they're in red is to remind me to remind you that for the Georges Bank stock the only data of these indices that we have available is from the Federal Survey, and also for to survey, we do not have a 2023 update for the Science Center Survey. The spring survey there were some vessel issues that prevented the survey from fully taking place, and then in the fall the TC and the Stock Assessment



have been looking into some potential analytical changes to those data, and we want those changes to go through the peer review process. It's going to be part of the stock assessment, so we decided for work load purposes, and because we were going to be making updates that didn't make sense to update them with sort of the old way of doing things.

The Georges Bank data are updated through 2022. When we looked at the status determination for these, again this is a trend-based analysis, so we are looking for changes over time with this. Status is determined based on the most recent five-year average, and then we compare that to the time series. The current status for most of these is going to be the five-year average, 2019-2023.

We're comparing the current status to the status from the 2020 Assessment. The idea here is to look at change since the stock assessment. Essentially, what you can see is the black essentially indicates negative, it means it's below the 25th percentile of the time series. If it is in gray it is considered neutral between the 25th and the 75th percentile, and if it's white it's considered positive, it's above the 75th percentile.

Just a real quick summary of these results. As a reminder, the Gulf of Maine/Georges Bank Stock was at record highs at the 2020 Stock Assessment. The Gulf of Maine indicators for recruits and for adults have declined since the assessment. YOY indicators are starting to show some signs of improvement.

The Georges Bank indicators, like I said, have not been updated with '23 data. But we look at it through 2022 for now, and we are seeing some slight improvement since the stock assessment in the Georges Bank indicators. For Southern New England the stock was at record lows at the end of the 2020 Assessment, and unfortunately has continued to be in unfavorable conditions, with most of the indicators at or near time series lows.

I'm going to step through these slides sort of one-by-one here. Just to give you a quick orientation of

what is on the slides. The first on the right-hand side you are going to see the actual indices in graphic form. They are sort of spatially organized, so for this particular one its part of the statistical area, and starts in Downeast Maine, so 511, 512 and then 513 East and 513 West, and the bottom one being 514, which is Massachusetts.

The next component of this is the table, so you have this full table in your meeting materials, I just took out the bits I really want you to focus on for this presentation. What you can see here is there are some blue boxes, so this is what I'm going to be talking about sort of comparison, so the top blue box is the status as of the 2020 Stock Assessment, and that would be the 2014 through 2018 mean.

The bottom we watch represents the updated status, so that is the 2019 through 2023 mean. Then the last bit is the summary of what is going on here. For this slide, this is the young of year indices for Gulf of Maine. Oh, I forgot to tell you, sorry. On the graph that is on the right, the red is the new data that has been added since the stock assessment, so all those red data points are 2019 through 2023 in the graphs. Like I said earlier, the YOY indices we're actually seeing some improvement since the stock assessment. The five-year means for these have all increased since the assessment, and they are all now in neutral status in the gray status. We have seen increases to the last two years in all of the Maine indices since experiencing a recent low in 2021.

Just a reminder here, these young of year indices are for very little lobsters, so it is going to take some time for these lobsters to grow, where we're going to pick them up with the other recruit indices that we look at. We're seeing signs of improvement, but it's going to take some patience as these lobsters grow into the other indices.

For the recruit abundance, again this is the trawl survey. The top graphs are from the Science Center, the middle graphs are the Maine/New Hampshire Survey, and the bottom one is Massachusetts 514, and the left is spring and the right is fall. What you see here is that we have seen these declines in the

recruit size ranges, so that is that 71-80 millimeters that are going to molt into legal size within the year.

These are declined since the peaks that we observed during the stock assessment. Three of the means have changed from positive to neutral. These are all inshore. Again, just a quick reminder that the Science Center data have not been updated through '23, so it's just through 2022 that you see on the Science Center.

For the trawl survey encounter rates, essentially what we're seeing here again is some declines, specifically in the inshore encounter rates since the stock assessment. All of the inshore means are now neutral, and just a note, the Maine/New Hampshire Trawl Survey you can see is the middle graph there is much more stable, and pretty high. That has been sort of constant throughout the time series. We're still seeing more than 90 percent of the tows in the Maine/New Hampshire Survey are seeing lobsters.

For the ventless trap survey indices, the top one is Statistical Area 511, and then we have 512, 513 and 514 is on the bottom. Females are on the left; males are on the right here. Again, we have seen declines in these indices since the stock assessment. Four of the eight means have declined into a negative status, and the 2023 values, we did see a slight uptick relative to 2022 in all but Area 511, but these values are still really quite low compared to the time series values here.

All right, switching over to Georges Bank. This is the recruit abundance. Again reminder, this is just the Federal Trawl Survey data, so it is just showing through 2022. In this area we have seen some slight improvement since the stock assessment, one of the five-year means had changed from the neutral to the positive status. We just wanted to point out that the '21 and '22 values were both relatively high in this time series.

For the encounter rates, these conditions were really pretty similar to what we saw in the stock assessment. The means for these have both remained positive. All right, switching over to Southern New England. These are the young of year

indices for Southern New England, the top graph is Massachusetts, the middle graph is Rhode Island, and then the bottom graph is actually a larval survey conducted in Eastern Long Island Sound at the Millstone Power Plant. It is a little bit different than the dive-based surveys that the two states do. We have seen negative conditions across the stock, with some decline since the assessment. All of the five-year means are now negative, and we note that for the Massachusetts Survey we are now at nine years where we've seen no young of year lobsters in the Massachusetts Survey.

The Connecticut Survey, the one on the bottom here, and the text is in purple here to call this out. In 2022, the group that does this survey made some changes to their survey and sampling design. What happens is they are not sampling as often as they used to. It looks like there is an uptick in this time series, but we think that this is actually an artifact of that change in their survey methods.

Those values, 2022 and 2023 actually represent only 1 and 2 observed larvae respectively, and these are the lowest values ever in their full time series, when you just look at the counts of the larvae. The Stock Assessment Team is going to be looking closely at this index, and seeing what we can do in terms of sort of accounting for that change in survey, and then whether or not we want to carry forward with this index in the future.

For recruit abundance the trawl surveys, the top one here is the Science Center Survey. The next one is Massachusetts, then we have Rhode Island and then the Connecticut Survey on the bottom. Spring is on the left; fall is on the right. Again, we have seen declines in these surveys since the stock assessment.

All of these five-year means are now negative, and we noted that there were no recruit lobsters observed in 2022 or 2023 for three of the six inshore surveys here. For the survey encounter rates, same order here. The federal survey is on the top, Massachusetts, Rhode Island and then Connecticut, and we have seen declines in this index as well since the stock assessment. All of

these five-year means are now negative, and again no lobsters of any size were observed in '22 or '23 for two of the six inshore surveys. We are starting to see some zeroes coming through in the Southern New England Surveys inshore.

The ventless trap survey indices, just a quick note that these surveys have not been going on as long as the trawl survey. The survey started in 2006, just as a reminder, it doesn't represent the full time series you are used to seeing with our trawl survey data. We have seen declines in the ventless trap survey index since the stock assessment. Three of the five-year means have changed from being neutral to a negative status, and the annual values for '22 and '23, really for the first time all of the annual values were negative. If you look sort of at the details of that graphic, the annual details were all in the black now. With that doom and gloom I can take any questions on the Data Update.

CHAIR KELIHER: Thank you for that report, Tracy. Any additional questions for Tracy from the Board? Doug Grout.

MR. DOUGLAS E. GROUT: I just had a question. I know this wasn't part of the update that you just gave, but in Amendment 27 we had some trigger values that were triggered just last year, and I was curious if the Technical Committee and Stock Assessment Committee had calculated those for the most recent three-year moving average, and if we're still below the trigger.

MS. PUGH: Yes, I have that in some of the next slides. If we want to see if there are any other questions about Data Update is that okay? Okay, we'll come to that in a second. Does anybody else have any?

MR. DAVID V. D. BORDEN: Just a quick question. Have the technical folks looked at the natural mortality issue? I mean we've got a number of populations, particularly in Southern New England looking at these indexes that are all falling like a stone. Have the technical people looked at, for instance the contribution that having a black sea bass stock that is two or three times the target.

What kind of impacts that is having on the juvenile population.

MS. PUGH: Yes, so that will be sort of an in-depth part of the stock assessment process, so we have not looked at that with this data update process. It doesn't come into the data updates that we provide. But it is definitely something we pay a lot of attention to with the stock assessment process, so you'll be seeing some updated information on natural mortality as part of the stock assessment.

MR. BORDEN: Great, thank you.

CHAIR KELIHER: John Clark.

MR. JOHN CLARK: Thank you for the update. Just curious way down here at the southern end of the range, where we're not even a rounding arrow when it comes to the catch. We've been doing a pot survey, mostly targeting structure-oriented fish, but we're still getting a fair number of lobsters every year.

It has been fairly consistent, and we even caught some in the traps in Delaware Bay. Just curious, I mean it seems that based on their life history, how are they managing to maintain a population, or do they complete their life cycle offshore? Are they still having an inshore component?

MS. PUGH: Is that in New Jersey? Delaware.

MR. CLARK: This is even south of Delaware, yes, Delaware.

MS. PUGH: I know that we've got a couple of datasets coming in for the stock assessment process, coming from some of the southern states. I think New Jersey has, is it New Jersey that has the Pot Index? Some of those additional pieces of data are things that we're going to look at with the Stock Assessment process. We don't have anything for you now with the Data Update, but I can say that we will be looking at any additional data anyone can feed us from other surveys for the southern areas.

MR. CLARK: Thanks, yes, I'm just curious, just because I know we've been seeing this fairly constant catch for several years now. I remember asking several years ago, and it seemed that the thought was that they had to be coming down from further north, but it doesn't seem like there are lobster further north to be coming down to Delaware.

MS. PUGH: Yes, I mean the adult lobsters certainly move around, so it's possible. Whether or not that is actually what is going on, you know we would need some sort of larger-scale tagging study to see the origin of those lobsters. You know it's possible that there are little offshore components of the population that are sort of focused around really ideal habitats that are hanging on.

CHAIR KELIHER: Any other questions? Steve Train.

MR. TRAIN: I've got two questions; the first one is for John. John, do you have numbers on where those lobsters were? I'd be curious. Tracy, thank you very much for your presentation. The question that Doug asked I was going to ask, and I'm not asking it. But we have a lot of people waiting on that answer. There are people that want us to pull a trigger that we've delayed, and there are people that don't want us to do anything, and I'm hearing from both sides. What you say in the next 20 minutes could seriously affect this meeting.

CHAIR KELIHER: Why don't we go right into that part of the presentation.

MS. PUGH: This is the trigger index. We received essentially a fair amount of requests and attention, and decided that yes, we are going to recalculate this and give you an update on this. Just a reminder, this trigger index is a component of Addendum XXVII, and the idea here was to provide managers with a mechanism on which to fix a specific management action in response to changing stock conditions.

The definition of the index and the threshold to initiate action were all part of Addendum XXVII. The idea here was that this index would represent

changes in condition for the Gulf of Maine/Georges Bank stock since the 2020 Assessment, and specifically looking at recruit abundance. This index is calculated based on the combination of the inshore surveys.

These are the Ventless Trap Survey, the Spring and Fall Trawl Surveys, all conducted by the state agencies. The Science Center Survey is not a component of the trigger index. Each of these values shown in the index represents a running three-year average of the underlying data indices. Essentially, the most recent value that we're going to have an update for here is the 2021 through 2023 average.

We're using this average because it makes the index less sensitive to interannual variations. Addendum XXVII has passed, and it is the understanding of the TC that the trigger index no longer actually has any policy action attached to it, because the addendum has already passed. You guys have been hearing for the Addendum XXXI to delay implementation is on today's agenda, so essentially what I'm doing here is presenting an update in response to these multiple requests that we have received.

The upper left box in the graphic here is the trigger index, the other boxes here represent the data that go into the index. On the upper right is the fall survey, the bottom left is the spring trawl survey, and the ventless trap survey is bottom right. The upper left with the red box around it is the trigger index. As you can see with the updated value, the trigger index has further declined. With the addition of the new data, we are now at a 44 percent decline since the reference period. Again, that reference period represents conditions at the end of the 2020 stock assessment. This is what the index looks like. I can take any questions on this.

CHAIR KELIHER: Steve Train.

MR. TRAIN: I'll try to make this quick. We saw what looked like favorable data recently, but the index was further declined. Is that because the whole year shifted so we got further away from a good year, and even though we just had a better year

than the last couple? I mean, how did that happen? We thought it might get better, right?

MS. PUGH: The '23 value for some of the indices was a little bit of a pick up from 2022, but again, this is a three-year running average, because we don't want to chase interannual variation. Chasing the good years would be the same as chasing the bad years, we definitely don't want to chase the bad years.

We're using this three-year average to sort of smooth through this interannual variation that you guys all see in your catch, we would see in the surveys, it's sort of a normal thing. I think the most positive sign that we saw in the data indices is data that does not go into this index, and that is the young of year indicators.

The young of year indicators, we have had a couple of years of improvements in those young of year indicators, but again, those lobsters are baby lobsters. It is going to take them a number of years to grow into these size ranges. This trigger index is very focused around the 71 to 80-millimeter lobsters, the lobster that are going to molt into legal size within the next year.

CHAIR KELIHER: Doug, did you have any follow up questions you wanted to ask about that and you just were dying to see the data? Okay. Any additional questions for Tracy? Dave Borden.

MR. BORDEN: Tracy, the Young of the Year Index is going up, what are the technical folks using for a time delay between the time they see the index go up until those young of the year should manifest themselves in the indices. Is it eight years, seven years? What are you using?

MS. PUGH: We don't quantitatively tie these things together. Our expectations, based on what we think we understand about lobster growth is probably like seven, eight years to see them into this recruit size range, and that is ballpark. Some years are going to be better for growth than others. You know it is hard to give a specific answer to that.

I know that's very unsatisfying. It's also very unsatisfying for us.

CHAIR KELIHER: Any additional questions for Tracy? If not, there is no action with that item, so I think we'll move on to Agenda Item Number 6, which is to consider Addendum XXXI on postponing implementation of Addendum XXVII.

**CONSIDER ADDENDUM XXXI ON POSTPONING IMPLEMENTATION OF ADDENDUM XXVII MEASURES FOR FINAL APPROVAL**

CHAIR KELIHER: For this we've got a couple presentations from Caitlin on reviewing of public comment summary and also the review of the Advisory Panel Report. I think what I would like to do Caitlin, is have you do both of those, and then we'll open it up for the Board for any questions before we entertain any motions. Caitlin.

MS. CAITLIN STARKS: I'm going to start off this presentation with some background information, the Addendum timeline, and then Addendum objective. Then I'll go over the proposed management options and the public comment summary, jump into the AP Report, and then we'll get into the Board's next steps.

Addendum XXXI relates back to the approval of Addendum XXVII, which again established a series of management measures to protect the Gulf of Maine/Georges Bank spawning stock biomass, and under Addendum XXVII changes to management measures for the LCMAs that make up the Gulf of Maine stock area are triggered by an observed decline in the Recruit Abundance Index to an established threshold from that reference period.

That was a 35 percent decline. Addendum XXVII was approved in May, 2023, and then in October 2023 the Board reviewed that trigger index and determined that it had fallen below the 35 percent threshold that was established in the Addendum. Because that trigger had been met so quickly, the Board delayed implementation of Addendum XXVII to January 1, 2025.

As it stands, this is the current implementation schedule for the provisions of Addendum XXVII. Based on the trigger index the increases in the minimum gauge size for LCMA 1 would occur in 2025, and 2027, and the LCMA 1 escape vent size would increase in 2028, and the maximum gauge size for LCMA 3 and Outer Cape Cod would decrease in 2029.

Addendum XXVII also has a provision that the maximum gauge size for the Outer Cape Cod area would be standardized to 6 and 3/4 of an inch for both federal and state-only permit holders, and that piece was not dependent on the trigger index, and was meant to go into effect when the Addendum becomes effective.

After Addendum XXVII, in August of this year, the Board approved Addendum XXX to clarify the Commission's recommendations that the increased minimum gauge size in LCMA 1 from Addendum XXVII would also apply to the foreign imports of American lobster. This is consistent with the intent of the Mitchell Provision of the Magnuson-Stevens Act, which is to limit live lobster imports into the U.S. to be no smaller than the smallest lobster that the U.S. industry can legally land.

In the public comments received on Addendum XXX, there were a lot of concerns about how that LCMA 1 gauge increase would impact U.S. processors, by limiting their supply of smaller lobsters from Canada in the early spring. The Board members were also in the process of organizing discussions with Canada about the gauge change.

In light of all that, in August the Board initiated Draft Addendum XXXI to consider further postponing some of the Addendum XXVII measures by an additional six months. The goal of the Draft Addendum is to reduce negative impacts to the U.S. and Canadian lobster industries in early 2025, and also allow Canada more time to consider implementing complementary management measures. This is our timeline of Addendum XXXI's development, and so since this issue is time sensitive, the timeline is more accelerated than usual. The Board initiated the Addendum in August,

and a draft was developed and approved for public comment over e-mail in August as well. Our public comment period was held during September and early October, ending on October 6, and here today the Board will consider final approval of Draft Addendum XXXI. Now I'll go into the proposed management options in the Addendum for public comment.

### **REVIEW OPTIONS AND PUBLIC COMMENT SUMMARY**

There are only two options in this Addendum; A, status quo, and B, postpone the implementation of some of the measures from Addendum XXVII to July 1, 2025. The status quo option would mean that the measures of Addendum XXVII would go into effect on January 1, 2025, and this table shows the timeline for the changes to the management measures if that was selected. The changes are shown in red text, and again, the first change would be the increase to the minimum gauge size in LCMA 1, to 3 and 5/16 of an inch on January 1, 2025.

Also on January 1, 2025, that Outer Cape area's maximum size for all permit holders would be standardized to 6 and 3/4 of an inch, and then the remaining changes to the measures would proceed as established in Addendum XXVII, where the next gauge increase in LCMA 1 would occur two years later in 2027. The change in the escape vent size for LMA 1 would occur in 2028, and the maximum gauge size decrease for Area 3 and Outer Cape Cod would occur in 2029.

Under Option B, all of the measures changes would be pushed back by six months. The same timeline would occur, but the changes would start on July 1st rather than January 1st, 2025. I want to note that there is one provision of Addendum XXVII that would not be affected under Option B, and that is the provision that says no extra trap tags for LCMAs 1 and 3 will be automatically issued to permit holders, until trap losses occur and are documented.

That would still go into effect January 1, 2025 under either option. I'll go over the public comments. We

received public comment on Draft Addendum XXXI from September until October 6, and during that period we had one webinar public hearing, 26 people attended that hearing, and a poll was also done during the webinar on what option was preferred.

Nineteen of the attendees responded to the poll, and of those, 15 supported Option B, 2 supported status quo, Option A, and 2 had no opinion. Five people also gave verbal comments about the proposed options. For written comments we received 81 total and 5 of those were from organizations and 76 from individuals. These tables show the breakout of the comments and the support for each proposed option, as well as some additional comment themes. Four total comments were in support of the status quo option, and 48 were in support of Option B to postpone the measures. Then a lot of additional comments did not provide a preferred option for Addendum XXXI, and most of those were expressing opposition to the LCMA 1 gauge change altogether.

Four additional comments were not addressing the Addendum or the gauge change, and those comments are all provided in the summary, but I won't go into details since they don't relate to this Addendum. In support of status quo, the comments mentioned that increasing this measure is a good conservation idea. They mentioned that previous increases to the gauge size did not hurt the industry. One said science rather than emotion should dictate the actions necessary to protect the healthy lobster population, and also raised that the Gulf of Maine warming and low recruitment rates indicate that action should be taken.

Rationale for the support for Option B were generally focused on the minimum gauge size should change for Canada and the U.S. at the same time, otherwise the gauge change won't be effective. They also mentioned that more time is needed to figure out the marketing and enforcement aspect of this issue, and to give fishermen a chance to plan for how this change will affect their businesses. They also mentioned that a delay would allow more data to be collected.

## REVIEW ADVISORY PANEL REPORT

I'll go into the Advisory Panel Report. Grant Moore, our AP Chair was unable to attend today, so I'll do this on his behalf. The AP met on September 27th, and reviewed the Draft Addendum XXXI options, and all nine of the advisors on the call supported Option B, to postpone the Addendum XXVII measures.

The reasons they discussed were the concerns about the negative impacts of the LCMA 1 gauge increase to the industry if smaller lobsters are still able to come into the U.S. from Canada. They also want to see an economic impact analysis and they also mentioned that they have been observing significantly increased numbers of sublegal lobsters this year, ranging in sizes, as well as more females with eggs.

Two advisors said they do not think a gauge increase is needed. Lastly, the advisors talked about the development process of Addendum XXVII, and that the LCMTs should have been involved in the development of the management measures that were out for public comment for the Gulf of Maine LCMA. With that the Board actions to be considered today are to select a management program from the proposed options and then consider final approval of Addendum XXXI.

CHAIR KELIHER: Dennis Abbott.

MR. DENNIS ABBOTT: Brief question, how many advisors participated in the meeting that you had on September 23rd?

MS. STARKS: Nine.

MR. ABBOTT: Nine, thank you.

CHAIR KELIHER: Do we have any questions for Caitlin on the presentation or on any of the public comments or Advisory Panel report? Seeing none; do we have a motion? Dan McKiernan.

MR. McKIERNAN: **Move to adopt Option B and approve Addendum XXXI as modified today to be effective immediately.**

CHAIR KELIHER: Great, do we have a second? Doug Grout. Dan, any additional rationale?

MR. McKIERNAN: Well, I'm truly hopeful that the industry across the two international boundaries see this as a good faith effort on our collective part to allow Canada to increase their minimum size over the next year, and minimize the burden that is going to be created to double gauge lobsters, especially if those lobsters are destined for processors in the United States.

I mentioned earlier about the Gulf of Maine, sort of cross exchange that happened last June. I was hopeful leaving that meeting, I was very hopeful leaving the meeting that you put together, Pat, convening the Fishermen's Associations leadership, to try to get consensus to move forward on this.

I know it's a difficult situation for all harvesters who are going to, you know once this is enacted experience, a 9 to 11 percent expected decline in landings, but I think by the time these two-gauge increases take place, they'll see a net gain in weight. I hope we can stabilize this stock for the future.

CHAIR KELIHER: Great, thank you, Dan. Doug, did you have anything you want to add?

MR. GROUT: Not specific to the motion, just a question for you and Dan and maybe Cheri. What I remember from our last meeting was that there was one of the lobster fisheries associations that is associated with the Gulf of Maine, which was supposed to meet in September or early October. Do either of you have any feedback from them yet on what transpired during those meetings?

CHAIR KELIHER: I don't have anything specific from DFO on the results of those meetings. It is their lobster management areas meet annually to talk about different things. I do know from talking with an individual from one of those areas that they did have a conversation around this issue.

Supposedly the conversations are going to continue. We're hoping through the meeting that is pulled together by the Lobster Institute this year that this is part of the agenda, a big part of the agenda, frankly, and that those conversations will continue at the Town Hall meeting. Steve Train, question?

MR. TRAIN: Comment. I know that we've been working on this a long time, and I was a proponent of using this method that we asked for when this started, and I had great hope that the information we got today would show us that we're already going the other direction. I'm definitely going to support this, a 44 percent decline, I mean how can you not follow the science with a number like that that resource and industry that is this important?

CHAIR KELIHER: Any additional comments on the motion? I'm going to read the motion into the record. Move, I'm sorry, way down in the corner. Allison.

MS. ALLISON MURPHY: I have spoken against all previous implementation delays of Addendum XXVII measures before, selective history, but with Dr. Pugh's presentation of the updated trigger index, noting that things have gotten worse, I think this indicates the necessity and urgency for the Addendum XXVII measures to go into place as quickly as possible. **I intend to vote no on this motion.** Thank you.

CHAIR KELIHER: Great, thank you, Allison. David Borden.

MR. BORDEN: Quick question again, Mr. Chairman, this is to the maker of the motion. On the word immediate, Dan, what is your view as to a timeline that the states will have to actually take regulatory action?

MR. McKIERNAN: I think the answer to that is going to be a collection of answers. I can tell you from Massachusetts, we're going to be meeting with our Marine Fisheries Advisory Commission next week, and I'm going to ask the Commission to revoke the measures that they've already approved for



Massachusetts, and to institute this delay. I expect I will have these rules on the book by the end of the calendar year. I think that is important for the gauge manufacturers and the fishermen to know they have plenty of time in advance.

Because one of the reasons we delayed this in the first place had to do with concern that there wouldn't be sufficient time to outfit the entire harvesting sector, which includes, you know obviously lobstermen, recreational fishermen, you know draggers that are allowed to take those in some situations, all to have new gauges, because there aren't a lot of gauge manufacturers. Anyway, the gauge manufacturers need that clear signal. I'll let Pat and Cheri report on their plans, or Renee, sorry.

CHAIR KELIHER: I think from my standpoint, the effective immediately is that the states need to start going through the rule process immediately. The effective immediately with that July 1, 2025 date is effective immediately. States need to now achieve that date through rulemaking. David.

MR. BORDEN: Now could we get a similar response from New Hampshire?

CHAIR KELIHER: Sure, Renee.

MS. RENEE ZOBEL: Yes, we intend to implement similarly, so yes.

CHAIR KELIHER: And Maine will.

MR. BORDEN: Just a follow up, Mr. Chairman. I think it is probably desirable to do it the way Dan is intending this, to start the regulatory process almost immediately, and my view is it should be in place several months before the deadline, so that it takes any uncertainty out of the deliberation. Thank you.

#### **CONSIDER FINAL APPROVAL OF ADDENDUM XXXI**

CHAIR KELIHER: Yes, the intent of the state of Maine will be to start implementing the rulemaking process, so we'll begin the rulemaking process in

November, which is about a 100-day process. Any other questions or comments? Seeing none; let me read into the record. **Move to adopt Option B and approve Addendum XXXI as modified today to be effective immediately.** Motion by Dan McKiernan, seconded by Doug Grout. Is there any additional opposition? Toni, do you want clarity here? Do you want me to call for a vote? We know we have one. Is there any opposition to this motion?

MS. KERNS: NOAA Fisheries.

CHAIR KELIHER: **Everybody else, any null votes? Everybody else is in favor.** Great, thank you very much.

#### **CONSIDER FISHERY MANAGEMENT PLAN REVIEWS AND STATE COMPLIANCE REPORTS FOR AMERICAN LOBSTER AND JONAH CRAB FOR THE 2023 FISHING YEAR**

CHAIR KELIHER: Moving on with the agenda. Consider Fishery Management Plan Reviews and State Compliance Reports for American Lobster and Jonah Crab. Caitlin.

MS. STARKS: I was thinking I could start with lobster and then go straight into Jonah crab, if that is all right with everyone. But as a reminder for lobster, the stock status is still based on the 2020 Stock Assessment, and the Gulf of Maine/Georges Bank stock was not overfished and overfishing not occurring with an estimated abundance near its highest levels at the end of the time series, which was 2018.

For Southern New England, the stock status was severely depleted, but not experiencing overfishing. Commercial landings for lobster increased about four-fold from the eighties until the time series high in 2016, which was near 160 million pounds. Since then, landings have trended downward.

The 2023 coastwide commercial landings were close to 120 million pounds, which is only about 400,000 pounds less than 2022, and the largest contributors to the 2023 fishery were Maine, shown

by the light orange line, and Massachusetts, shown by the blue line, with 80 percent and 13 percent of the total landings respectively. The ex-vessel value for all lobster landings is shown by the black dash line, and the 2023 value was approximately 630 million dollars, which is about 21 percent higher than the 2022 value of 518 million.

These are the recent management actions affecting state requirements. Addendum XXVI has the requirement for harvest data to be reported at the ten-minute square level, and that went into effect January 1st, 2021, and the states were also required to implement 100 percent harvester reporting by 2023. Addendum XXIX established the vessel tracking requirements, which went into effect December 15 of 2023, and Addendum XXVII, again approved in 2023, established the management trigger mechanism for implementing the gauge and vent sizes.

The Plan Review Team noted just a few minor issues in the review of the state compliance reports. First, Rhode Island, Connecticut and New Jersey were not able to meet the minimum port or sea sampling requirement of ten trips. Rhode Island did complete nine trips, and Connecticut and New Jersey did not complete any trips. This has been an ongoing issue for several years now, due to both a limited amount of funding and staff, and/or reduced fishing effort that is available to sample in Southern New England.

On that topic the Stock Assessment Subcommittee is going to be looking into sampling these for Southern New England, as part of the ongoing assessment. Massachusetts was not able to submit all of the required compliance data by the deadline, but otherwise all the states appear to be in compliance with the requirements of the FMP. For de minimis requests, Delaware, Maryland, and Virginia have requested de minimis status, and all three states qualify, because the most recent two-year average of commercial landings in each state is under 40,000 pounds. Next, I'll go over the Jonah crab FMP review, and for Jonah crab the stock status is based on the recent benchmark assessment that was completed in 2023.

There are four stock areas, which were assessed separately, including the inshore Gulf of Maine, offshore Gulf of Maine, inshore Southern New England, and offshore Southern New England. The figure on the right shows landings by stock area. As you can see, the offshore Southern New England area is where the bulk of the fishery is occurring, followed by the inshore Gulf of Maine. The Stock Assessment concluded that the two Gulf of Maine areas and the offshore Southern New England area have not been depleted since historical lows observed in the 1980s and 1990s. However, we don't have reliable abundance indicators for the inshore Southern New England stock, so a status determination could not be made.

In 2023 the landings along the Atlantic coast for Jonah crab totaled approximately 14 million pounds, which is about a 12 percent decrease from the 2022 value. The ex-vessel value for Jonah crab landings in 2023 was about 14.1 million, which is also a decrease of about 12 percent from 2022. Massachusetts remains the largest contributor to the fishery in 2023, with 38 percent of the total landings, followed by Maine with 25 percent and Rhode Island with 18 percent.

This is the summary of the current management program for Jonah crab. Though the FMP was approved in 2015, which established the permit requirements, minimum size, prohibition on the retention of egg bearing females, and recreational possession limit. Addendum I established the bycatch limit for non-trap gear and non-lobster trap gear. Addendum II established the coastwide claw harvest provisions and bycatch definition. Addendum III improved the harvester reporting and data collection requirements.

Then lastly, Addendum IV implemented the tracking requirements for federal permit holders. For de minimis, Delaware, Maryland and Virginia also requested continued de minimis status for Jonah crabs, and again they meet the requirement that their average commercial landings are less than 1 percent of the average coastwide commercial catch for the last three years. The PRT recommends

approving these de minimis requests, which would exempt those states from fishery independent and dependent sampling requirements.

The PRT only noted two minor compliance issues, again, Massachusetts has not been able to provide their report by the August 1st deadline for the last five years, and the second issue is the same that I described before with the sea and port sampling. With that the Board action for consideration is the approval of the lobster and Jonah crab FMP reviews for the 2023 fishing year, the state compliance reports and the de minimis request for Delaware, Maryland, and Virginia.

CHAIR KELIHER: Any questions for Caitlin? Dan McKiernan, are you going to fall on your sword about late reports? (Raucous laughter)

MR. McKIERNAN: You know, Pat, I think one of the reasons we struggle, and maybe Tracy, you can help me with this, is the fact that, well first of all we have a very fastidious team that doesn't release any data unless its perfect. But I think it's because we work really hard to parse the landings to the different LMAs, which I think makes it a little bit more challenging for us, in terms of like we have Area 1, Area 3, Area 2, Outer Cape. Am I right, Tracy?

MS. PUGH: I don't know if this is going to bail him out. Yes, so the challenge in Massachusetts is that the lobster we have landings coming from all four management areas, and for Jonah crab obviously, we're bringing in landings from all four stocks. We have a lot of federal permit holders, we have permit holders who report directly to just the state, and we have permit holders who report just to the Feds, and all of these data sources need to be married and QC'd.

In order for the Stats Team to do that and to get it not only to the management area level, but also to the statistical area level, it takes them a considerable amount of time and effort to get all of the federal data in, and married to the data that comes just through the state process. It's a challenge for our Stats Team to sort of get everything online, and to make sense.

CHAIR KELIHER: Thanks, Tracy.

MR. McKIERNAN: Thanks for bailing me out there. I did have a question though. I was the Board Chair when the Jonah crab plan went into effect, and I recall Terry Stockwell insisting that there be a thousand crab allowance for mobile gear, and he was representing the Northern Council at the time. Do we have any idea now, five or six years in or whatever the number of years is, whether there is any level? What is the level of non-trap landings, especially for those vessels that receive this exemption?

MR. KELIHER: Yes, I'm not aware of any breakout from the draggers on that. I don't know if we can look to the Council possibly, for some of that data at some point. Toni.

MS. KERNS: We'll look into seeing if we can parse that out and get back to you at the next board meeting. How about that, Dan?

MR. McKIERNAN: Sure, and maybe my fastidious statistical team can look at that as well.

MS. KERNS: Maybe they can help us out.

MR. McKIERNAN: Anyway, just a question, thank you.

CHAIR KELIHER: I'm thinking maybe a tee shirt for your Fastidious Team, just the fastidious labels though. Any other questions? Not seeing any other questions, this here is an action item. Would anybody like to make a motion? Mike Luisi.

MR. MICHAEL LUISI: I'll be happy to make the motion. **Move to approve the lobster and Jonah crab FMP Reviews for the 2023 fishing year, state compliance reports, and de minimis status for Delaware, Maryland, and Virginia.**

CHAIR KELIHER: Thank you, Mike, seconded by Steve Train. Any additional comments? I don't think any are needed. I'll read into the record, **move to approve the lobster and Jonah crab FMP Reviews for the 2023 fishing year, state compliance reports,**

**and de minimis status for Delaware, Maryland and Virginia.** Motion by Mr. Luisi, seconded by Mr. Train. Is there any opposition to this motion?  
**Motion passes without opposition.**

#### **DISCUSSION OF VESSEL TRACKING REQUIREMENTS OF ADDENDUM XXIX**

CHAIR KELIHER: Moving on to the last agenda item, which is Discussion of Vessel Tracking Requirements for Addendum XXIX. Caitlin.

MS. KERNS: We're talking while we get the slides up.

CHAIR KELIHER: Talk amongst yourselves. Toni wants me to tell you guys a joke, but I don't think any of my jokes would be appropriate for a webinar.

MR. TRAIN: No, I've heard them, they wouldn't.

CHAIR KELIHER: I think we're back on track.

MS. STARKS: Back to your regularly scheduled programming. I'm just going to just give a quick presentation on the Vessel Tracking Workgroup report that was given last August about tracking devices and requirements. Just as a reminder, in April the Board tasked that Vessel Tracking Workgroup to investigate modifications to the 24/7 vessel tracking requirement under Addendum XXIX, which would still ensure monitoring of fishing activity, while acknowledging that fishermen also use their boats for personal or non-fishing reasons.

The task included getting some input from the Law Enforcement Committee and reviewing the existing processes for when VMS devices can be turned off. This was in response to the industry's concerns about privacy related to Addendum XXIX and the requirement for the tracking device to be on at all times.

The Workgroup reported back to the Board in August, with some possible modifications, and those included geofencing as well as a tracker "snooze" function, and the Workgroup provided the

pros and cons of these, as well as whether the approved tracking devices are capable of these approaches, and they also provided information on the relevant rules for VMS, and data concerns and law enforcement concerns.

Regarding the law enforcement concerns. In general, the LEC has recommended that vessel operators should not be allowed or able to turn the devices on or off themselves, because if this were the case it would be extremely difficult to enforce the requirements, because law enforcement wouldn't be able to determine if the device was purposefully turned off or whether it failed, and they've also had discussion about defining fishing versus non-fishing trip.

Because if the Board were to pursue changes to the requirements that would allow vessels to operate without the tracker on during non-fishing trips, then it would be really critical to have clear rules for distinguishing non-fishing trips from fishing trips, using things like the presence of bait or gear or lobster on the vessel. Responding to the Board's task, the LEC did meet on October 1st to discuss the definition of fishing, as it relates to vessel tracking in the federal lobster fishery. Some takeaways from that meeting were that the state and federal regulations are not exactly the same when it comes to defining fishing, but they are generally similar to what is in the Magnuson-Stevens act, which is that fishing is defined as the catching, taking or harvesting of fish, the intent of catching, taking, or harvesting of fish, and any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish, and any operations at sea, in or support of or in preparation for any of those above activities.

The LEC talked about how the scope of this fishing definition could be narrowed to specifically address the lobster and Jonah crab fishery, to address the question of how law enforcement would be able to show that a vessel is engaged in fishing activities. They highlighted some evidentiary elements that could be used, such as the presence of bait, gear, or targeted species onboard the vessel.

The working condition of the vessel, and the working condition of captain or crew. It was also stressed that in order to gauge whether a vessel is complying with the tracking rules, the devices would need to have some sort of visual indicator, to show whether they are on or off. Another topic was who would have the burden of proving whether a vessel was fishing or not, whether that would be the fisher or law enforcement.

The LEC also noted that it could be helpful for them to have the devices have some capability or communication ability to allow the fishers to hail in or out of the fishery. I believe based on the last meeting, the Board's intent was that the states would go home and think more about the potential for changing the tracking requirements, and then return to that discussion today.

CHAIR KELIHER: Are there any questions on the Law Enforcement Committee report? Major Beal here, who is our Rep to the Law Enforcement Committee, and the Major for Maine DMRs Bureau of Marine Patrol. Any questions on that? Steve Train.

MR. TRAIN: I'll try to maybe oversimplify this. We're not allowed to harvest lobsters in Maine after four on a Saturday and on Sundays from June 1st until but not including September 1st. Bob, you can tell if I'm hauling on Sunday, right?

MAJOR ROBERT L. BEAL: Yes.

MR. TRAIN: You can tell if I'm not hauling on Sunday. How would that change any other day of the week?

MAJOR BEAL: I can't say that they would. I think with any of this, the requirement from the Law Enforcement community is that this information would have to be ground-truthed at the field level, so I think that we would apply our enforcement work in the same manner, whether it be talking about this federal tracking or you're referring to a state closure.

MR. TRAIN: I guess the point I am trying to simplify is, there is a lot of data up there on what we can do

and what we can't do, but we're already doing it, just not with the tracking on. Some people do have the tracking on. If you can define when we're fishing and when we're not, what makes this so difficult to not require to be tracked, no matter what day of the week it is?

CHAIR KELIHER: I think the question is directed at Law Enforcement, but we'll.

MS. KERNS: I thought Steve was asking about what data are you getting that you're not? We're getting different data from the trackers than we are from.

CHAIR KELIHER: I was taking it as; can you enforce it?

MR. TRAIN: It was an enforcement. Why can't we shut them off if we're not fishing? It is no different than a Saturday afternoon or a Sunday.

MAJOR BEAL: No, Steve, I don't disagree with that. I think it becomes more challenging when, you know you're completely dependent on presence, and the presence of enforcement amongst the states is, from what I hear at the Committee level, vastly different. I could speak to our level of presence in Maine and say, yes, that is quite practical, and I think it is considerably less in other states.

CHAIR KELIHER: Thank you, Steve, thank you, Major. Any other questions? Oh, I'm sorry, Dennis, you had your hand up earlier.

MR. ABBOTT: I've had issues with this from the very beginning, and sort of in tune with Steve Train on this. I understand the utility of this, and the reason for it and so on and so forth. But I also have a strong feeling that it's an invasion of privacy. I don't think that it's a solvable problem by us of how we could turn them on or off that satisfies anyone.

But I don't know that eventually this couldn't end up in a court of law, to determine whether you should have the ability of tracking, using Steve Train as an example of what he's doing on a Saturday or Sunday. It is none of anybody's business what an

individual does when he's not fishing, as far as we're concerned.

One of the Law Enforcement reasons in how you could determine whether somebody should have a tracker. I don't know the exact words, but whether they have gear onboard. I don't think Steve Train's boat is stripped of all gear when he uses his boat recreationally. He's not removing his winch or his cables or all the other things associated with lobstering.

He could be, by your definition, or whatever you put up there that he could be defined as being fishing, because he has lobster gear aboard. It's a difficult problem, and I don't think it's truly solvable. But it leaves me with great reservations about how it leaves lobstermen like Steve Train and others, who have reservations about people tracking them when they are not fishing.

CHAIR KELIHER: Thank you, Dennis, appreciate those comments. I think the challenge here that the Major got at is, the issues between the abilities between states. You know, how much presence on the water, right? I mean our ability to determine whether somebody is on the water and are fishing and engaged in fishing, is because of several factors.

Not because he's got a couple old traps onboard, does he have bait onboard, does he have his crew onboard? Does he have product onboard? Are we watching them actually hauling and retrieving and setting back gear. It's then up to the discretion of the officer of how he's going to deal with that case. Then one of the other points that you brought up, as Steve brought up with whether this will be dealt with in a court of law. This is in federal court right now, and there is going to be oral arguments in November on this case, or on these types of issues associated with this.

I think we had some homework, and I would like to hear from other members of the Board about whether they think there was some direction that we want to go in. But at the very least, I think we should keep this agenda item open for a future meeting, to see just in case we do have potential

actions at the court that will force us to make these changes. But you had follow-up, Dennis?

MR. ABBOTT: Sort of unrelated, but a month or so ago I asked Caitlin if I could just see, knowing trackers was on the agenda today, if I could see how this information is being used, what it looks like in broad terms. I'm not concerned about any particular fisherman's activity, so on and so forth.

But it just would, from my personal understanding is, all this data is being collected. What does it look like and so on and so forth. I'm told that no, we can't see it, it's confidential and whatever. It occurs to me that here we are, we sit at this table, we make rules and regulations, and then when we ask to look at the information, we can't look at it because of privacy concerns and laws that inhibit us from seeing it. Just anyway, we'll leave it there.

CHAIR KELIHER: I would just say, beyond the broader rule of three, we can see this data at some point, right? That is not going to stop us from that standpoint. Toni.

MS. KERNS: There are ways we can show you the information, but it's going to be in a broad sense. The question that we got from Dennis, we took it as you wanted to see individual tracks, and we are very, we are following those rules, we want to make sure the fishermen understand that their data are being protected, and that we're not going to violate those rules.

Tracking data is a little bit trickier than just fishery data. The Rule 3 doesn't completely apply, because if you have 6 tracks on a chart, you are going to know in some cases where those vessels are coming from. We're working with all of the state data partners to make sure that whenever we're sharing data on this that we're not sharing confidential data. But we can show some information, it's just not going to be very specific.

CHAIR KELIHER: Thank you, Toni. Dan McKiernan.

MR. MCKIERNAN: Yes, just to follow up. In Massachusetts, we are on the road to requiring this

of one of our mobile gear fleets, the surf clam vessels. Given the success that I think we've had with the lobster fleet, it made a lot of sense to me, we're going to have all of, I hope the rulemaking, 12 or so active vessels that fish for surf clams have the trackers on the vessel.

What we did is we asked one of the early adopters to agree to let me show the other members of the fleet what a trip looks like, and he said sure, and he was good with it. This was a fishery that typically has hired captains. This particular vessel owner really likes the trackers, because he wants to know where the boat is. Anyway, that has been our experience. I also would like to share a little anecdote. We have, as Tracy just mentioned, we have lots of LMAs in Massachusetts, and we have an area out east of Cape, which is the border of Area 3 and Area 2, and there was a complaint about a particular Area 2 fisherman who might have been fishing over the line in Outer Cape.

We were all ready to look at that tracker data and we went into examine the tracks, and we found that this person was very close to the line, probably enough to issue a citation. But the person who made the complaint's tracker was off for three months, because the boat had been hauled out and didn't get turned back on.

My point is, that if we allow vessel captains to toggle this thing on and off all the time, it's going to create a system where we're probably going to have to track down numerous instances where they didn't turn the tracker back on, and it's going to create a much-weakened dataset, and it's going to require us to basically be chasing people down, if that's the way it works.

This tracker that we all chose was extraordinarily inexpensive, but it had this very simple feature of, it stays on all the time. I'm pleased to hear that Dennis, consistent with Steve Train's concerns, people aren't showing the data they are keeping it confidential. I think that is part of the system I think that needs to be trusted is that the folks who are at ACCSP and within the state law enforcement aren't

sharing that data, so it is truly held confidential. Those are my thoughts on this issue.

CHAIR KELIHER: Anybody else on this topic? I don't think we have a clear direction on where we're going to go right now. But as I said, there was an active court case in federal court in Maine. There will be oral arguments that are going to be held. This could be an ongoing discussion.

What I would like to do with the support of the Board is just leave this agenda item open for the time being, and then come back to it, depending on what we see that comes down from the courts. Is that fair enough? Okay, thank you very much. That is the last agenda item. It is an hour ahead of schedule. But Dave Borden would like to fill the hour.

MR. BORDEN: Thank you, Mr. Chairman, I would like to use up the entire hour with one question.

CHAIR KELIHER: You're out of order, David. Go ahead, David.

MR. BORDEN: I have a question for Major Beal. Just looking ahead, the enforcement agencies up and down the coast are going to be challenged with implementing a different size at a particular date, when quite a few of them are going to have undersized fries in their facilities. Has the Enforcement Committee talked about developing a uniform policy of how the states would handle that, and if not, I would suggest they do. I think that would be really useful, since it's going to be an enforcement policy and not necessarily a regulation. I think it's the perfect opportunity for enforcement folks to work together and come up with one program, so that is my suggestion. That completes my one-hour question.

MAJOR BEAL: Yes, I'll just mention it hasn't been discussed at the Committee, but in Maine there is a six-month grace period for that inventory to flush out through the wholesale and retail dealers.

**ADJOURNMENT**

CHAIR KELIHER: Anybody else have anything else to come before the Lobster Board? Seeing none; I think a motion to adjourn an hour early would be in order. There are motions and seconds everywhere, thank you very much, everybody, appreciate it.

(Whereupon the meeting adjourned at 11:05 p.m. on October 21, 2024)