



Massachusetts Division of Marine Fisheries

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Policies, Procedures, and Guidelines

Issue: Lobster Permit & Trap Transfer Policies for 2010 (and beyond) consistent with ASMFC Interstate Lobster Plan Addendum XII

Background:

Permit –specific trap limits were adopted as part of the effort control plans that were adopted through Addenda III and VII of the interstate Lobster Fishery Management Plan enacted by the Atlantic States Marine Fisheries Commission (ASMFC), to govern the commercial lobster fisheries in Lobster Conservation Management Areas (LCMA) of Outer Cape Cod and Southern New England (LCMA 2), respectively.¹ These programs were designed to issue trap allocations to individuals based on their fishing history, resulting in the elimination of latent effort in the fishery, with a long-term goal of trap reduction.

Allocation transfers between permit holders were expected to satisfy the need for some fishermen to build up traps if their allocations were below what they needed to fish at their desired scale. To reduce traps in the long-term, trap transfer “taxes” were applied to any trap allocation transfer transaction between fishermen and this included transfers of permits (whole businesses) as well as just a portion of their trap allocation.

The Commonwealth has enacted these programs through regulations with both aspects codified: permit-specific trap allocations and trap allocation transfer rules to allow opportunities for transfers between permit holders. See 322 CMR 6.13 and 7.03. Moreover, DMF enacted these programs in their entirety well ahead of other states and NMFS. DMF approved the Outer Cape Cod effort control beginning in 2004 and the southern new England fishery plan for LCMA Area 2 was enacted in 2007.

As of November 2009, NMFS had yet to adopt complementary measures for federal permit holders. NMFS is developing a comprehensive rule to achieve complementary measures for the federal permit holders. The state of Rhode Island did not approve Area 2 trap allocation rules until 2008 and as of November 2009 expected to have allocation rules in place for 2010. The hope among states’ officials is that NMFS can accomplish final rules that achieve similar permit-specific trap allocations for each state’s federal permit holders with outcomes that are identical (on an individual basis) to the allocations currently held by each state’s federal permit holders.

DMF has regulated trap allocations among all Massachusetts lobster permit holders fishing traps in Area 2 and Outer Cape Cod under the authority of the Coastal Lobster permits and the Offshore Lobster permit. Permit holders are prohibited from fishing more traps than allocated under the DMF effort control plans or obtaining more tags that allowed under these plans.

¹ The Outer Cape Cod effort control plan was approved as part of Addendum III and a modified version of the Outer Cape Cod effort control plan was codified as Addendum XIII in May 2008. The southern New England effort control plan was approved as part of Addendum VII in November 2005.

Details of Addendum XII:

To address the complexities of multi-jurisdictional trap fishing and trap allocation as well as the need for consistency among states and NMFS. The Executive Summary of the Addendum stated:

Amendment 3 to the Interstate Fishery Management Plan (FMP) for American Lobster established limited entry controls on fishing effort in all Lobster Conservation Management Areas (LCMAs), except LCMA 1. These effort control plans have qualified permit holders to fish in each LCMA based on LCMA-specific rules regarding each permit's fishing history fishing within the LCMAs. Moreover, three of the plans have established transferability programs in which permit holders can transfer trap allocations among themselves. This Addendum addresses issues that arise when fishing privileges are transferred, either when whole businesses are transferred, when dual state/federal permits are split, or when individual trap allocations are transferred as part of a trap allocation transferability program. These challenges were identified by the agencies (state and federal) that administer permits and trap tag authorizations. Issues included are a centralized database to monitor permit and trap allocation transfers and minimizing impacts of transferable trap allocations on lobstermen and permit holders authorized to fish in LCMA 1, the only LCMA without a history-based effort control plan. The measures in this document are intended to consistently apply principles and guidelines necessary to govern the transfers of permits and trap allocations across all applicable lobster LCMAs.

Among the key principles of the Addendum:

- Permit holders endorsed for multiple LCMAs are limited to the most restrictive trap cap or trap allocation when ordering trap tags or fishing.
- A lobster permit and its history can not be separated. When a permit holder transfers a permit the fishing history is also transferred.
- A single fishing entity is considered to have established a single lobster fishing history even if that person is a dual permit holder fishing under a state and federal fishing permit.
- Lobster history accumulated under dual state/federal permits can not be divided and apportioned between the permits.
- If a dual permit holder splits his state and federal permits, the history is considered to have gone entirely with one permit or the other permit, but not have portions with both.
- Under this addendum (XII) future transfers will be constrained by permit types held by the parties to minimize the migration of traps between state and federal waters.

Addendum XII identified the need for a multi-jurisdictional database that states and NMFS would use to enter and track allocations. Development of this database has been given high priority by ASMFC and has been funded for development by ACCSP. It is expected that in the future, transfers would be further restricted. For example, they may only be allowed between like permit types (state, dual or federal only).

In summary, the following shall apply until further notice:

1. **Dual (state and federal) permit holders who transfer the federal permit may lose their state allocation.** If a state commercial lobster permit holder who also holds a federal permit (dual permit holder or federal-only) and has been granted a permit-specific trap allocation by DMF through the effort control plans transfers the federal permit to another person or another vessel, the permit holder who transfers the federal permit shall no longer be eligible for the trap allocation. Exception: if permit holder is a dual permit holder and surrenders the federal lobster permit to NMFS, the allocation may be fished by the state permit in state-waters only.
2. **Trap Allocation Transfers allowed only among state-only permit holders.** Transfers of trap allocation may be done but only between state-only permit holders until we determine through ASMFC that the database is developed or ASMFC takes the position that states allow trap allocation transfers among federal permit holders.
3. **“Conservation Tax” shall continue for state-only permit holders transferring trap allocation and for dual permit holders who are transferring whole businesses.**