

**R.I. Marine Fisheries Statutes and Regulations
PART XV - LOBSTERS, OTHER CRUSTACEANS,
AND HORSESHOE CRABS**

15.14.2 LCMA 2 Lobster Trap Effort Control Program:

15.14.2-1 – Purpose: This program is promulgated in order to ~~bring~~ **fully-implement** the State **provisions** of ~~Rhode Island into compliance with~~ Addendum VII, **Addendum XII, Addendum XVIII, Addendum XIX, Addendum XXI and Addendum XXII** to Amendment 3 to the Interstate Fishery Management Plan for American Lobster, as adopted by the ASMFC in November 2005-, **February 2009, May 2012, October 2012, February 2013, and August 2013, respectively.** The purpose of the program **is** to help achieve a healthy and sustainable lobster resource in LCMA 2 by capping effort at 2001- 2003 levels, and establishing a mechanism for future adjustments in effort in response to changes in resource status.

All LTAs will be subject to reductions in accordance with section 15.14.2-5(d). Also, any and all LTAs may be adjusted (increased or reduced) by any future addenda of amendments to the ASMFC's Interstate Fishery Management Plan for American Lobster in response to changes in resource status; accordingly, any and all LTAs obtained via transfer will be subject to reductions over a six-year period, and may be subject to future adjustments pending any future actions taken by the ASMFC.

15.14.2-2 – Definitions: As used in section 15.14.2:

Adjusted LCMA 2 Lobster Trap Allocation (LTA) means an increase or decrease in an individual LCMA 2 LTA resulting from a Department-sanctioned transfer of traps from one individual to another.

~~Area 2—means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.~~

Department **or DEM** means the Rhode Island Department of Environmental Management.

DFW means the DEM Division of Fish and Wildlife.

DLE means the DEM Division of Law Enforcement

Dual federal permit/state license holder – an individual who holds both a federal limited access lobster permit and a State of RI commercial fishing license endorsed for American lobster.

Fishing Performance means properly documented commercial lobster fishing activity – namely pounds landed and traps fished -- in LCMA 2 during the applicable qualifying period.

Initial LCMA 2 LTA means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in LCMA 2 ~~in 2007~~.

LCMA means Lobster Conservation Management Area

LCMA 2 means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

Area LCMA 2 Lobster Trap Allocation (LTA) means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in LCMA 2.

Logbook Report means the RI Catch and Effort Logbook that is provided to all RI commercial fishing license holders who are authorized to fish commercially for lobster, and which must be filed with the Department by any fisher who does not report his/her landings to NOAA Fisheries via VTRs.

LTA means lobster trap allocation, either issued by the Department or NOAA Fisheries

LTA transfer means a change in ownership of a partial or entire Department- or NOAA Fisheries-issued LTA by an individual or Corporation

LTA transferor means the license or permit holder from whom an LTA transfer is made.

LTA transferee means the individual, corporations or fishing vessel to whom/which an LTA transfer is made.

Material Incapacitation means a verifiable event beyond the control of the license/permit holder, such as a medical condition, that adversely affected his/her fishing performance during the three-year period 2001-2003, inclusive. Military service performed during the three-year period 2001-2003 also constitutes material incapacitation. Other than a decision to serve in the military, material incapacitation can not involve a choice by the license/permit holder to pursue other interests; or to a short-term illness or injury that would not have incapacitated a person for the three qualifying years.

NMFS NOAA Fisheries means the National ~~Marine Fisheries Service~~ **Oceanic and Atmospheric Administration Fisheries (formerly referred to as National Marine Fisheries Service)**

Qualifying Period means the entire three-year period from January 1, 2001 through December 31, 2003. For individuals meeting the standards governing material incapacitation, the qualifying period means the entire two-year period from January 1, 1999 through December 31, 2000.

Vessel Trip Report means the **NMFS NOAA Fisheries** report that must be filed with **NMFS NOAA Fisheries** by all federal permit holders except those who fish exclusively commercially for lobster.

15.14.2-12 – LTA Transfers:

(a) The purpose of this section is to enable holders of Department- or NOAA Fisheries-issued LTAs who are state-licensed, federally-permitted, or dual federal permit/state license holders to transfer LTAs, in whole or in part.

(b) Eligibility:

(i) LTA Transferors – Any state-licensed, federally-permitted, or dually federally-permitted/state-licensed holder of a Department- or NOAA Fisheries-issued LTA is eligible to transfer some or all of his/her LTA, subject to the terms and conditions set forth below.

(ii) LTA Transferees – Any RI resident is eligible to obtain one or more transfers of Department issued LTAs, subject to the terms and conditions set forth below. Any RI resident or non-resident is eligible to obtain one or more transfers of NOAA Fisheries-issued LTAs, subject to the terms and conditions set forth below.

(c) Types of Allowable Transfers:

(i) Partial or Full LTA Transfers Without Sale of Business – An LTA transferor may transfer a portion or all of his/her Department- or NOAA Fisheries-issued LTA. In any such case, the LTA transferor may retain his/her license/permit and fishing business.

(ii) Full LTA Transfer With Sale of Business – Pursuant to section 6.7-8 of DEM's Rules and Regulations Governing the Management of Marine Fisheries, a licensed fishermen who has been actively fishing his license/permit and wishes to sell his vessel and gear and retire his license may do so, and in so doing, enable the buyer (transferee) to acquire a new, corresponding license and endorsement. In any such situation, the transaction must include the transfer of all of the seller's (transferor's) Department- or NOAA Fisheries-issued LTA, along with any and all history associated with the license/permit.

(iii) Partial and Full Business Transfers of Multi-LCMA LTA – Recipients of either a partial LTA transfer or full LTA transfer with sale of business from a federal permit that has a multi-LCMA LTA shall retain the multi-LCMA history and may fish in any of the LCMA's that the LTA allows and would be bound by the most restrictive rule when declaring to be fishing in multiple LCMA's.

(d) Trap Allocation Reduction Schedules – The following tables show the lobster trap allocation reduction schedules for LCMA 2 and LCMA 3:

(i) Active Trap Reduction for LCMA 2:

a. Initial Trap Reduction – Effective Year 1 of Trap Reduction Schedule, each and every LCMA 2 LTA shall be reduced by twenty-five percent (25%) from the original LCMA 2 LTA determination and be permanently retired from the LCMA 2 lobster trap fishery for conservation purposes. For state-only license holders, LTA reductions are from the original LCMA 2 LTA determinations and any LCMA 2 LTA obtained subsequent to the initial LCMA 2 LTA determination. For federal permit or dual state license/federal permit holders, LTA reductions are from the LTA accepted by the federal permit or dual state license/federal permit holders after NOAA Fisheries completes their LTA process. Additionally, any other LTA from any other LCMA that was obtained by the federal permit or dual state license/federal permit holder subsequent to the initial LTA determination is also subject to this twenty-five percent (25%) LTA reduction.

b. Annual Trap Reduction Schedule – Effective beginning Year 2 of Trap Reduction Schedule and on June 1st in each of the next four (4) consecutive years, each and every LCMA 2 LTA shall be reduced by five percent (5%) from the preceding year’s LCMA 2 LTA (see LCMA 2 annual LTA reduction schedule below). The annual LTA reductions shall be assessed to both active and banked LCMA 2 LTA’s, with the annual LTA reductions being permanently retired from the LCMA 2 lobster trap fishery for conservation purposes.

LCMA 2 - Lobster Trap Allocation Reduction Schedule:

<u>YEAR</u>	<u>% Reduction</u>
<u>Year 1</u>	<u>25%</u>
<u>Year 2</u>	<u>5%</u>
<u>Year 3</u>	<u>5%</u>
<u>Year 4</u>	<u>5%</u>
<u>Year 5</u>	<u>5%</u>
<u>Year 6</u>	<u>5%</u>

(ii) Active Trap Reduction for LCMA 3:

a. Annual Trap Allocation Reduction Schedule – Effective Year 1 of Trap Reduction Schedule and on June 1st in each of the next four (4) consecutive years, each and every LCMA 3 LTA shall be reduced by five percent (5%) from the preceding year’s LCMA 3 LTA (see LCMA 3 annual LTA reduction schedule below). The annual LTA reductions shall be assessed to both active and banked LCMA 3 LTA’s, with the annual LTA reductions being permanently retired from the LCMA 3 lobster trap fishery for conservation purposes.

LCMA 3 - Lobster Trap Allocation Reduction Schedule:

<u>YEAR</u>	<u>% Reduction</u>
<u>Year 1</u>	<u>5%</u>
<u>Year 2</u>	<u>5%</u>
<u>Year 3</u>	<u>5%</u>

<u>Year 4</u>	<u>5%</u>
<u>Year 5</u>	<u>5%</u>

(e) Terms and Conditions:

(i) LTAs assigned to a dual federal permit/state license holder cannot be treated as separate fishing histories and stacked for the purposes of qualification and allocation. A single fishing entity is considered to have established a single lobster fishing history even if that person is a dual federal permit/state license holder.

(ii) LTAs assigned to a dual federal permit/state license holder cannot be divided and apportioned between the permit/license. A dual federal permit/state license holder's LTA will be considered indivisible. If a dual federal permit/state license holder "splits" his/her permits/license by transferring either the federal permit or state license to another entity, then the entire fishing history, including any LTA is to remain with the federal permit.

(iii) A dual federal permit/state license holder who permanently relinquishes or surrenders his/her federal limited access lobster permit can allow his/her LTA to be transferred to his/her state license.

(iv) Transfers of any LTA must remain within the LCMA from which they originate. An LTA from one LCMA is only valid in the LCMA from which it originally qualified and can not be transferred to another LCMA.

(v) The LTA of the seller (LTA transferor) shall be reduced in all LCMAs in which the seller has been assigned a LTA by the amount of LTA that is transferred, prior to application of the 10% conservation tax.

(vi) Partial transfers of LTA assigned to LCMA 2, whether state-licensed, federally-permitted, or dually federally-permitted/state-licensed, shall involve a minimum of ten (10) LTA units (i.e. lobster traps), and occur in minimum units of ten (10) LTA units thereafter, until the remaining LTA is less than ten (10) lobster traps.

(vii) If a LTA assigned to LCMA 2 falls below ten (10) lobster traps, and the holder wishes to transfer his/her allocation, the entire allocation must be transferred in a single transaction, and the lobster trap allocation transferor shall be prohibited from participation in the LCMA 2 commercial lobster trap fishery until such time as said license holder re-acquires LTA assigned to LCMA 2.

(viii) All transfers of LCMA 2 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of business, shall be subject to a ten percent (10%) conservation tax. The tax shall be applied to each and every transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten (10) lobster traps shall not be subject to the 10% conservation tax.

(ix) Transfers of LTA assigned to LCMA 3 may only be made to individuals/entities with a federal lobster permit.

(x) Partial transfers of LTA assigned to LCMA 3, whether federally permitted or dually federally-permitted/state-licensed, shall involve a minimum of ten (10) LTA units (i.e. lobster traps), and occur in minimum units of ten (10) LTA units thereafter, until the remaining LTA is less than ten (10) lobster traps.

(xi) If LTA assigned to LCMA 3 falls below ten (10) lobster traps, and the holder wishes to transfer the LTA, the entire allocation must be transferred in a single transaction, and the lobster trap allocation transferor shall be prohibited from participation in the LCMA 3 commercial lobster trap fishery until such time as said individual/entity re-acquires LTA assigned to LCMA 3.

(xii) All Transfers of LCMA 3 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of a business, shall be subject to a 10% conservation tax. The tax shall be applied to each and every LTA transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten lobster traps shall be prohibited.

(xiii) The maximum allowable LTA assigned to LCMA 2 shall be eight hundred (800) traps. An LCMA 2 LTA transferee may engage in any number of transfers, provided that the total number of traps held at any one time does not exceed eight hundred (800).

(xiv) Single Ownership Trap Cap or Individual Permit Cap for LCMA 2 - 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 (Trap Bank) 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.

(xv) Sunset Provision for the Single Ownership Cap - 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.

(xvi) Aggregate Ownership Cap or Owner Accumulation Limits – 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.

(xvii) The maximum allowable LTA assigned to LCMA 3 shall be two thousand (2,000) traps. An LCMA 3 LTA transferee may engage in any number of transfers, provided that the total number of traps held at any one time does not exceed two thousand (2,000).

Active Trap Cap for LCMA 3:

<u>Year</u>	<u>Trap Cap</u>
<u>Year 0</u>	<u>2,000</u>
<u>Year 1</u>	<u>1,900</u>
<u>Year 2</u>	<u>1,805</u>
<u>Year 3</u>	<u>1,715</u>
<u>Year 4</u>	<u>1,629</u>
<u>Year 5</u>	<u>1,548</u>

(xviii) Single Ownership Cap or Individual Permit Cap for LCMA 3 - The Single Ownership Cap allows for the purchase and accumulation of traps over and above the Active Trap Cap limit. This will allow a permit holder to obtain trap allocation from other permit holder in excess of the individual trap cap limit. This additional allocation may not be fished until activated by the permit holder's governing agency.

The single ownership cap allows the purchase and accumulation of traps over and above the Active Trap Cap Limit. This schedule assumes that NOAA Fisheries will implement a 2,000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years.

Individual Permit Cap Table for LCMA 3:

<u>Year</u>	<u>Number of Traps</u>
<u>Year 0</u>	<u>2,333</u>
<u>Year 1</u>	<u>2,216</u>
<u>Year 2</u>	<u>2,105</u>
<u>Year 3</u>	<u>2,000</u>
<u>Year 4</u>	<u>1,900</u>
<u>Year 5</u>	<u>1,800</u>

(xix) Aggregate Ownership Cap or Ownership Accumulation Limits (Full Exemption). No single company or individual may own traps greater than five times the Single Ownership Cap if they have not already accumulated them prior to the NMFS publishing a present-day control date. However, should an individual owner qualify to be in excess of the Aggregate Ownership Cap before the control date is published, that owner will retain their existing trap ownership and that owner may only increase trap ownership up to the Single Ownership / Individual Permit Cap. Any ownership with an accumulation of fewer traps than the Aggregate Cap at the time the control date is published may not exceed the Aggregate Ownership Cap, as detailed in the table below.

<u>Year</u>	<u>Active Trap Cap</u>	<u>Individual Permit Cap</u>	<u>Aggregate Permit Cap (5x Individual Permit Cap)</u>
<u>Year 0</u>	<u>2,000</u>	<u>2,333</u>	<u>11,665</u>
<u>Year 1</u>	<u>1,900</u>	<u>2,216</u>	<u>11,080</u>
<u>Year 2</u>	<u>1,805</u>	<u>2,105</u>	<u>10,525</u>
<u>Year 3</u>	<u>1,715</u>	<u>2,000</u>	<u>10,000</u>
<u>Year 4</u>	<u>1,629</u>	<u>1,900</u>	<u>9,500</u>
<u>Year 5</u>	<u>1,548</u>	<u>1,800</u>	<u>9,000</u>

(xx) Any LTA transferee who obtains a LCMA 2 LTA assigned to a RI state commercial fishing license only (i.e. no federal permit) must currently have a Principle Effort License with a lobster endorsement or a state multipurpose endorsement, which shall be necessary in order to commercially harvest lobsters from RI state waters with lobster traps.

(xxi) All LTA transferees must purchase lobster trap tags from the approved lobster trap tag vendor in order to deploy and fish the transferred lobster trap allocation.

(xxii) No holder of any LTA may lease his/her allocation, or any portion thereof.

(xxiii) All holders of LTAs assigned to a RI state commercial fishing license only (i.e. no federal permit) must annually renew their RI state commercial fishing license, or that portion of their RI state commercial fishing license that authorizes them to commercially harvest lobsters from RI state waters with lobster traps, in order to remain eligible to transfer any portion of their LTA.

(f) Applications:

(i) All transfers of LTAs must be authorized and approved by the Department via an application process.

(ii) Applications for LTA transfers are to be made to the DFW, on forms provided by DFW. All applications must be filled out completely, signed by both the transferor and transferee, and notarized prior to submission to the DFW.

(iii) Requests for lobster trap allocation transfer application forms shall be made to: RI Division of Fish and Wildlife, Marine Fisheries Section, 3 Fort Wetherill Rd., Jamestown, RI 02835. Phone: (401) 423-1931, or 423-1934.

(iv) Applications for transfers may be submitted from June 1 through November 30 for the following fishing year.

(v) Transfers shall become effective the year following the approval of the application by the Department.

(vi) The LTA transferor and transferee are not bound by any rules or regulations of the Department relating to any payment or compensation between LTA transferor and transferee associated with any LTA transfer. Holders of LCMA 2 LTAs assigned to RI state waters may sell, give, or otherwise convey some or all of their allocation without limitation, provided that they comply with all terms and conditions set forth herein.

(g) License and LTA Tracking – The Department shall maintain records to track all Department- or NOAA Fisheries-issued LTAs and LTA transfers for resident state license holders and resident federal permit holders.