



Northeast Region Bulletin

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American Lobster Trap Permit Holders

Change to the Regulations to Establish a Trap Transfer Program
in the American Lobster Fishery

Small Entity Compliance Guide: Trap Transfer Program

Effective Date: [insert date]

We, NOAA's National Marine Fisheries Service, have approved a final rule that creates a Lobster Trap Transfer Program, as recommended by the Atlantic States Marine Fisheries Commission in multiple addenda to Amendment 3 of the Commission's Interstate Fishery Management Plan for American Lobster. The Trap Transfer Program will allow lobster trap permit holders the flexibility to optimize the size of their businesses through the purchase and sale of lobster traps. .

We will begin to accept trap transfer requests on [insert date], and the deadline to submit trap transfer requests for the 2014 fishing year will be [insert date]. Trap transfers will become effective on May 1, 2015.

To ensure trap transfer requests are reviewed in time for the start of the 2015 fishing year (May 1, 2015), it is best to submit your trap transfer request by the priority date of [insert earlier date, 30 days].

Important Information on the Trap Transfer Program

1. Who is allowed to transfer traps?

- a) All Federal lobster trap permit holders with eligible trap allocations for one or more of Areas 2, 3, and the Outer Cape Area may buy and sell traps up to the Area-specific trap cap.
- b) Any Federal lobster permit holder may by a partial trap allocation for Area 2, 3, and/or the Outer Cape Area.
- c) Each permit holder is classified as one of the following: (1) state-only permit holder, (2) federal-only permit holder, or (3) dual (state and federal) permit holder.
- d) Any dual permit holder who wishes to transfer traps (either buy or sell) must have the same state and Federal trap allocation. If the two allocations do not align, the permit holder may choose to fish the higher allocation but may not transfer traps.
- e) Area 1 permit holders who choose to sell Area 2, Area 3 or Outer Cape Area traps will give up their permit's authority for trap fishing in Area 1.
- f) An Area 1 permit holder may purchase Area 2, Area 3, and/or Outer Cape Area traps up to the area-specific trap limit without losing Area 1 access.

For small entity compliance guides, this bulletin complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996. This notice is authorized by the Regional Administrator of the National Marine Fisheries Service, Northeast Region.

2. Which traps are available to buy and/or sell?

- a) If you, the lobster permit holder, have an Area 2, 3, and/or Outer Cape Cod qualification and allocation, you may sell your traps to any permit holder with a Federal lobster trap permit.
- b) If you have an Area 2, 3, 4, 5, 6, and/or the Outer Cape Area designation on your permit, you are allowed to buy traps from permit holders with an Area 2, 3, and/or Outer Cape Area qualification and allocation up to the area-specific trap limit, and will be subject to the most restrictive trap limit of all the areas on the permit.
- c) If you have an Area 1 designation on your permit, along with an Area 2, 3, and/or Outer Cape Cod allocation, you are allowed to sell your Area 2, 3, and/or Outer Cape Cod traps, but your permit will no longer be eligible to fish with traps in Area 1.

3. When can I transfer traps?

- a) You may apply to the Trap Transfer Program at [insert dates for trap transfer program].
- b) If the transfer request is approved, the transfer transaction will take place at the start of the following fishing year (May 1).

4. How many traps can I transfer?

- a) You may sell all or some of your traps, in increments of 10 (i.e., 10, 20, 30, etc. not to exceed your trap allocation).
- b) The buyer may NOT purchase any quantity of traps that would exceed the trap cap for each area designated on the buyer's permit.

5. How do I figure out my allocation after I have sold some or all of my traps?

- a) Once a trap transfer occurs, the seller's trap allocation (in all qualifying areas) is reduced by the number of transferred traps.
- b) Scenario: If you have a permit with an Area 2 and Area 4 designation, with 600 traps in Area 2 and Area 4, and you sell 200 traps to another permit holder, you would end up with 400 traps in Area 2 and Area 4. The buyer would then receive 180 traps due to the 10% conservation tax that is applied to the transferred traps.

6. What documents do I need to submit in order to apply?

- a) Application form (enclosed), with signatures from buyer and seller of traps
- b) Proof of intent to provide payment to seller. Both parties must agree upon a method to secure payment if the trap transfer request is approved.

7. How do I apply?

- a) Complete the enclosed trap transfer form. Submit your application by email to [insert email address], or by mail to:

Lobster Trap Transfer Program
Permit Office
55 Great Republic Drive
Gloucester, MA 01930

8. *What happens after I submit my application?*

- a) All jurisdictions involved (state (s) and/or Federal agency), will review the application and make a decision on whether to approve or disapprove the trap transfer request based on whether the seller has the traps to sell and the buyer has the capability to transfer that number of traps to his or her Federal lobster permit based on the area-specific trap caps.
- b) Decisions on all trap transfer request will generally be made by December 31st of each year and both parties in each transaction will be notified in writing as confirmation of the transaction.

Trap Transfer Rules

Trap Caps by Area

- Trap transfer transactions are restricted by the trap caps in each Area. You may not buy a quantity of traps that would exceed your trap cap in any of the Areas designated on your permit.
 - Area 1 = 800 traps
 - Area 2 = 800 traps
 - Area 3 = 1,945 traps
 - Area 4 = 1,440 traps
 - Area 5 = 1,440 traps
 - Outer Cape Area = 800 traps

State to state transfers:

- If you are a state-only permit holder, you may buy and/or sell traps from/to another permit holder from the same state. You must go through your state agency for this trap transfer request. For example, a MA state only permit holder can buy and/or sell traps to another MA state-only permit holder.
- Trap transfers between two state-only permit holders from different states are **NOT** allowed. For example, a MA state-only permit holder cannot sell or buy traps from a RI state-only permit holder.

State to Federal Transfers:

- If you are a state-only permit holder, you may **NOT** buy or sell traps from or to a Federal-only permit holder
 - You must possess a state permit in order to retain state traps, and you must possess a Federal permit in order to retain Federal traps.

State to Dual Transfers:

- If you are a state-only permit holder, you may sell traps to a dual (state and federal) permit holder **IF** the dual permit holder belongs to the same state as you.
 - The dual permit holder **must** then buy an equal number of federal traps in order balance the state and federal trap allocation.

- If you are a state-only permit holder, you may buy traps from a dual permit holder **IF** the dual permit holder belongs to the same state as you.
 - After the transaction takes place, you would be allowed to fish the purchased state traps, but not the purchased Federal traps since you do not possess a Federal lobster permit. This means the Federal eligibility of the traps would be permanently removed from the fishery.

Federal to Dual Transfers:

- If you are a Federal-only permit holder, you may sell traps to a dual permit holder.
 - The dual permit holder must then buy an equal number of state traps in order balance the state and Federal trap allocation.
- If you are a Federal-only permit holder, you may buy traps from a Dual permit holder.
 - You may fish the purchased Federal traps from the dual permit holder, but you may **NOT** fish the purchased state traps since you do not possess a state lobster license. This means the state traps would be permanently removed from the fishery.

Federal to Federal Transfers:

- If you are a federal-only permit holder, you may buy or sell traps from another Federal-only permit holder.

Dual to Dual Transfers:

- If you are a dual permit holder, you may buy or sell traps to another dual permit holder.
 - If you both belong to the same state, then all traps purchased can be fished by the buyer.
 - If you do not both belong to the same state, then the buyer may **NOT** fish the purchased traps in his home state waters, but may fish the purchased Federal traps. This means the state traps would be permanently removed from the fishery. The buyer would then need to buy an equal number of state only traps from a permit holder from the same state to balance out the transaction.

Area to Area Transfers:

- If you are a multi-area permit holder, and you sell some or all of your traps to another permit holder, all of your Area trap allocations will be reduced by the number of transferred traps, and the buyer can retain fishing rights in all areas for which the purchased traps qualify.
 - For example, if you have 500 Area 2 traps and 800 Outer Cape Area traps, and you want to sell 200 traps, your remaining trap allocation in Area 2 would be 300 (500-200=300) traps and 600 (800-200) traps in the Outer Cape Area.
 - The buyer would then have to specify what area designation for the purchased traps each year when he/she renews their Federal permit.

Conservation Tax

- With each trap transfer transaction, 10% of the purchased amount will be taxed for conservation benefits (i.e., if selling 100 traps, the buyer will receive 90 traps, and 10 traps will be taxed for conservation).

- o Example: You have an individual allocation of 800 traps in Area 2 and 800 traps in Area 4, and you sell 200 of your traps to another permit holder, a 10% conservation tax of 20 traps is applied to the quantity of Area 2 traps that are being transferred. So, the seller is left with 600 (800-200) traps in Area 2 and 4. The buyer then receives 180 (200-20) Area 2 traps. This means that 200 Area 4 traps will be permanently removed from the fishery, since these traps are not transferable.

Full vs. Partial Business Transfer

- A partial transfer, in which some of your trap allocation is sold, would be equally taxed 10% of the transfer amount.
- A full business transfer, which includes the transfer of a permit onto another vessel either by the same owner or a different owner, would not be taxed.

Most Restrictive Rule

- Since the trap cap number is always greater than or equal to the individual allocation number, then the most restrictive rule applies to the individual allocation number.
- This means that a permit holder that has more than one area elected on their permit, must fish the lower allocated trap number in all areas selected on their permit for the current year.
- In example 1 below, a permit holder with an individual allocation of 800 traps in Area 2 and 300 traps in Area 3 would be allowed to fish 300 traps in Areas 2 and 3. This does not mean you can fish 300 traps in Area 2 and 300 traps in Area 3; it means you have 300 traps that you may fish in either Area 2 or Area 3, or both Areas. Refer to table 1 for additional examples.

Table 1

Examples	Individual Area Qualification and Allocation	Most Restrictive Rule means...
Example 1	Area 2 = 800 traps Area 3 = 300 traps	You may fish up to 300 traps in Areas 2 and 3
Example 2	Area 2 = 800 traps Area 3 = 1,200 traps	You may fish up to 800 traps in Areas 2 and 3
Example 3	Area 3 = 1000 traps Area 4 = 1200 traps	You may fish up to 1000 traps in Areas 3 and 4
Example 4	Area 3 = 1600 traps Area 4 = 1000 traps	You may fish up to 1000 traps in Areas 3 and 4

Permit Splitting

- Past rulemaking through Addendum VII states that dual permit holders fishing under one operation shall have a single fishing history associated with their state and federal lobster permit.
- Therefore, if a dual permit holder intends to sell his/her state or Federal permit, the historical qualification and allocation would remain with the Federal permit.
- However, if the dual permit holder would like to voluntarily relinquish his/her Federal permit and fish with their state permit, he/she may choose to have the history remain with the state permit.

Leasing of Traps

- No leasing of traps is allowed. Traps can only be bought or sold.

Migration of Traps Between States is Prohibited

- A permit holder who qualifies for a limited access program within a Lobster Conservation Management Area(1, 2, 3, 4, 5, 6, and/or Outer Cape Cod) is authorized to fish within their state’s jurisdiction, as well as the Federal waters within that state, if that permit holder also possesses a Federal permit.
 - This means that a MA state-only permit holder that qualifies for 800 traps in Area 2 can fish those 800 traps in Area 2 MA state waters (i.e. cannot fish in Area 2 RI state waters).
 - A dual permit holder with a RI state license and a Federal permit who qualifies for 400 traps in Area 2 can fish those 400 traps in the RI state waters of Area 2 as well as the Federal waters of Area 2 (i.e. cannot fish in Area 2 MA state waters).

Special scenarios for dual permit holders (state and Federal permit)

- a) If you are a dual permit holder with more state traps than Federal traps, or more Federal traps than state traps, you must accept the lower number of traps (allocation) in order to participate in the trap transferability program.
- b) **Scenario A:** You have a state and federal permit with Area 2 and the Outer Cape Area designated on your permit. Your state allocation in Area 2 is 600 traps and your federal allocation is 800 traps in Area 2. You also have a state allocation of 800 traps and a Federal allocation of 800 traps in the Outer Cape Area. You must accept the lower state allocation of 600 traps in Area 2, and your state and federal allocation in the Outer Cape Area would remain the same since the state and federal allocation is equal. Therefore, your new allocation would be 600 state traps and 600 federal traps, and you would then be able to participate in the trap transferability program. This example is also expressed in Table 2.

Table 2

Area Qualification	Initial Allocation	Final Allocation
Area 2	State allocation = 600 Federal allocation = 800	State allocation = 600 Federal allocation = 600
Outer Cape Area	State allocation = 800 Federal allocation = 800	State allocation = 800 Federal allocation = 800

- c) For dual permit holders with an Area 6 designation, you will be required to accept the lower allocation of your state and federal trap allocation without regard for your Area 6 allocation.
- d) **Scenario B:** You have a state and federal permit with Area 2 and Area 6 designated on your permit. Your state allocation for Area 6 is 200 traps; your state allocation for Area 2 is 800 traps, and your federal allocation is also 700 traps. In order to participate in the trap transferability program, you must accept the lower of your state and federal allocations by Area. Therefore, your state and federal allocation in Area 6 would remain

the same; your state and federal allocation in Area 2 would be reduced to 700 traps. This example is also expressed in Table 3.

Table 3

Area Qualification	Initial Allocation	Final Allocation
Area 2	State allocation = 800 Federal allocation = 700	State allocation = 700 Federal allocation = 700
Area 6	State allocation = 200 Federal = No allocation since Area 6 is entirely state waters	State allocation = 200 Federal = No allocation since Area 6 is entirely state waters n/a