

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

**Loews Annapolis Hotel
Annapolis, MD
October 29, 2007**

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INDEX OF MOTIONS

Motion to move ahead with the development of Addendum XII to address the trap transfer program in Lobster Conservation Management Area 2, the Outer Cape, and Area 3. Motion by John Nelson; second by G. Ritchie White (Page 7). Motion voted on as follows: Motion for initiating an addendum to address trap transferability. Motion carried (Page 7).

Move to accept the Lobster FMP Review. Motion by George Lapointe; second by Pat Augustine (Page 15). Motion carried (Page 15).

Move to have the board initiate a replacement addendum, Addendum XIII, that would capture the Outer Cape Cod Effort Control Plan consistent with the rules that are in existence now in the Commonwealth of Massachusetts for the Outer Cape Cod Fishery, and it would also address the trap cuts that would be required for 2008. Motion by Dan McKiernan; second by Mark Gibson (Page 22). Motion carried (Page 22).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Everett Petronio, RI (GA)
Pat White, ME (GA)	Dr. Lance Stewart, CT (GA)
Rep. Dennis Damon, ME, (LA)	James Gilmore, NY (AA)
John Nelson, NH (AA)	Pat Augustine, NY (GA)
G. Ritchie White, NH (GA)	Brian Culhane, NY, proxy for Sen. Johnson (LA)
Rep. Dennis Abbott, NH, (LA)	Peter Himchak, NJ DFW, proxy for D. Chanda (AC)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Roy Miller, DE, proxy for Emory (AA)
William Adler, MA (GA)	Bernard Pankowski, DE, proxy for Sen. Venables
Vito Calomo, MA, proxy for Rep. Verga (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Mark Gibson, RI (AA)	Bruno Vasta, MD (GA)
Gil Pope, RI, proxy for Rep. Naughton, (LA)	Howard King, MD (AA)
Eric Smith, CT (AA)	Harry Mears, NMFS

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

Ex-Officio Members

David Spencer	Joe Fessenden
Penny Howell	

Staff

Vince O'Shea	Toni Kerns
Robert Beal	Brad Spear

Guests

Molly Jacobs, Ofc. of Rep. Tom Allen, ME	Paul Howard, NEFMC
Kyle Overturf, CT DEP	Chip Lynch, NOAA
Bob Ross, NMFS	Janice Plante, Commercial Fisheries News
Arnold Leo	John German, LISL
Bonnie Spinazzola, AOLA	Terry Stockwell, ME DMR
Robert Sadler, NMFS	Jeff Marston, NH F&G
Mike Cahall, ACCSP	Doug Grout, NH F&G
Julie Defilippi, ACCSP	Tim Brown, USCG
Geoff White, ACCSP	Roy Campanale, Jr.
Matt Cieri, ME DMR	

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Ballroom of the Loews Annapolis Hotel, Annapolis, Maryland, October 29, 2007, and was called to order at 8:30 o'clock a.m. by Chairman John I. Nelson, Jr.

CALL TO ORDER

CHAIRMAN JOHN I. NELSON, JR.: Welcome, everybody to the Lobster Management Board. I am the chair for the time being, John Nelson.

APPROVAL OF AGENDA

You have your agenda before you. Are there any changes to the agenda? We have one item under other business. Massachusetts would like to discuss putting one of their plans into an addendum, and we will look to have them discuss that under other business. Anything else to be put on the agenda?

MR. HARRY MEARS: Thank you, Mr. Chairman. I would like to present an update on recent federal rulemaking at some point near the end. Thank you.

CHAIRMAN NELSON: Okay, we'll put that also under other business, Harry. Anything else? All right, seeing none, we will approve the agenda as modified.

APPROVAL OF PROCEEDINGS

CHAIRMAN NELSON: We have the proceedings from August 13th. Were there any modifications to those? Okay, Bill has moved them to be accepted and seconded by Dennis. Without objection, then they are approved. Thank you very much.

PUBLIC COMMENT

CHAIRMAN NELSON: All right, at this time we have public comment. This is for items that are not on the agenda. All right, seeing none, also keep in mind that we will take public comment during our discussion of various items. I am also happy to note that Connecticut does not have anything on the agenda.

REVIEW OF TRANSFERABILITY COMMITTEE RECOMMENDATIONS

CHAIRMAN NELSON: All right, having said that, let's move on to Item 4, which is the review of Transferability Committee recommendations.

That's been going for some time, and the committee has done a great job of highlighting the issues that are out there. Toni has got a presentation, which is fairly detailed, but we'll try to break it up here and there to make sure everyone is paying attention to it. But, it is an involved situation, and I think the committee has highlighted a number of the issues and problems that are associated with transferability with the different management areas that we have created.

After we get done with here presentation and any questions and answers, what I'd be looking for is – we're not going to try to solve the issues today, but merely trying to review and make sure that there's nothing glaring that is missing or so offensive that we really shouldn't go forward with it. But then we want to have a motion to move this into the development of an addendum so that we can have it go out for public comment.

So, having said that, the various committee members are at the table. At various points, when Toni takes a break from her presentation, ask the questions or whatever else for clarifications, if any of the other committee members would like to pipe up at that time and add some additional information, feel free to do so. I'll try to remember to recognize the committee members first to get that additional information. All right, everyone ready? Toni, why don't you move ahead?

MS. TONI KERNS: Thank you, Mr. Chairman. Today I'm going to go through the issues associated with this white paper. It is the committee's hope that the board understand what it is that got us to this point and the issues that are related to the ITT programs associated with transferability.

This white paper identifies the issues that are associated with history-based fishing rights programs and transfer programs. It accommodates ITT programs with the flexibility for the fishery as well as meeting the conservation goals of the management plan. There are a couple of terms that I think it's important that everyone understand before we get into the meat of the white paper.

First of all, ITT program is an individual transferable trap program. It allows permit holders to transfer traps amongst users, but it does not allow for the leasing of traps, so you can buy and sell traps between but not lease. I think we all understand what a permit holder is, someone that has the ability to fish for lobster, but what is important to recognize here is that states will license an individual while the

National Marine Fisheries Service will permit a vessel, and that's a clear distinction.

The next term is "dual permit holder"; somebody that has two fishing permits, one from the state to fish in state waters and one from the National Marine Fisheries Service to fish in offshore waters. We also have a dual permit holder that has a single fishing history. A person that has a single fishing history is never fishing their permit from more than one vessel at a time.

You can have somebody that's a dual permit holder and has two vessels, and he fishes from those two vessels and is creating two distinct fishing histories from those two vessels. But you could also have an individual with two permits, but he's only fishing off of one vessel using those permits at the same time, so he just has a single fishing history.

Lastly, is a transfer trap tax. It's an area-specific percentage of each transferred allocation required to be surrendered for the purposes of conservation benefits. Does anybody have questions on those key terms before we move forward? All right, excellent.

So why are we looking at these issues currently? We fairly recently put in place effort control plans in Areas 2 and the Outer Cape Cod, and then we put in place transfer programs that are associated with Areas 2, 3 and Outer Cape Cod. Area 2's transfer program has not been detailed out specifically. It's just been initiated through an addendum, but the Area 3 and Outer Cape Cod transfer programs have had regulations associated with them through various addenda that the commission has put forward.

But we haven't had progress in getting these transfer programs into place where we're actually conducting transfers. Fishermen are seeking relief from the effort control programs. They need to be able to transfer traps in order to move forward with business decisions. Also, the effort control plans for Area 2 specifically affect those with state permits and dual permits, as well as those with federal permits. This is the first time we've had an effort control program where multi-permitted individuals are being affected. And, because the states have finalized their allocations, but the National Marine Fisheries Service is still in the rule-making process, those individuals are being treated differently at this time.

The commission first started looking at transferability back in 2002, when we conducted a workshop. At that workshop we went through a series of papers of fisheries that already had transfer programs that

shows where allocation number of traps where the privilege could be sold or transferred among permit holders, that transfer programs can enhance the economic efficiency while controlling fishing mortality, as well as provide relief values for any regulatory scheme where trap limits are permit-specific and they are low and constraining to the fishery.

At those workshops, it was shown that some ideal program scenarios are associated with fisheries as the spiny lobster fishery, the flipper lobster and the stone crab fishery, and some of those reasons why they are ideal is because there is a single management agency that oversees all aspects of the program, the administration, the allocation and transfers.

What is different with our lobster fishery is that we do not have a single management agency. We have multiple states plus the National Marine Fisheries Service that have fishermen with permits, so we would not be able to create these ideal scenarios. They also have a finite number of traps in the system where changes to trap numbers would correlate with changes in fishing mortality. These programs also minimize latent effort.

So, the committee would like to, as best as we can, create a program that is under these ideal conditions with what we have to work with. More background information, we have the history-based effort control plans in every single management area except for Area 1. Each of those programs have permit-specific trap limits and is either administrated by the National Marine Fisheries Service, the states, or both agencies.

The first effort control programs that we put in place were Area 4, 5 and 6 in 1999 through Addendum I, as well as initiating the Area 3 program. In 2002 we initiated the Nearshore/Outer Cape Cod Conservation Program, and this program was replaced in 2003 with a more conservative scheme for effective traps fished. In 2003 and 2004 the Area 3 Effort Control Program was enhanced by adding transferability rules, as well as adding additional trap reductions to each of the fisheries. In 2005 the effort control program for Area 2 was established where we used effective traps fished.

It's important to realize that for each of the areas effort control programs, we had a qualifying time period, but for each area that qualifying time period was different. For Area 2 it was a three-year period, from 2001 to 2003. Outer Cape Cod was 1999 to 2001. Areas 3, 4 and 5 were from 1991 to 1999. Area 6 was 1995 to 1998.

Some of those effort control programs used different criteria to qualify. Some had poundage limits. Because we had multiple time spans for these qualification periods for the effort control plans, it was possible that an individual that qualified for more than one area actually was allocated more traps than he was ever fishing at one time because of the way the time periods crossed.

So, if an individual never fished more than 800 traps at any given time, he could have qualified for 800 traps in Area 2, 800 traps in Area 3 and 800 traps in Area 4, which would have given a total allocation of 2,400 traps.

Each of these effort control plans have slightly different qualifications. The Areas 4, 5 and 6 and Area 3 were all based on a maximum number of traps fished just during the qualification period. Of all the effort control plans that the commission has, these were the least constraining on the fishery.

Then after the Area 3 plan was revamped a little bit and added into the qualification period that they had to have fished at least 25,000 pounds during the qualification period, as well as further trap reductions and adding the transferability regime, this became the second most constraining effort control plan across the board, comparing to all the transferability programs that we had. Then, lastly, was the Area 2 Effort Control Plan, and this was the most constraining on the fishermen of all of the plans. We had variability in how conservative each of the effort control plans were.

So some of the challenges that the transferability committee is facing is having duplicative and redundant allocations, meaning the potential to qualify for more traps than a fisherman actually fished at a given time; that the allocation standards are not consistent, meaning that some plans are more conservative and other plans are more liberal.

The permitting and reporting standards are not compatible across states, as well as across state and federal boundaries, as well as the states and the National Marine Fisheries Service are in different stages of the rule-making process for allocations. Because we are in different stages of the rule-making process, then those fishermen with state-only permits are being treated differently than those with dual permits, as well as those with federal permits only.

For example, here we have a dual permit holder with a single area allocation. The fisherman is from Outer Cape Cod. He receives an allocation of 525 traps

from Massachusetts to fish in Outer Cape Cod based on his landings and traps fished during the qualification period. Massachusetts has told him that he cannot fish more than his allocation; otherwise, his permit would be revoked.

The National Marine Fisheries Service has not completed rulemaking, and so therefore they are going to give that individual up to 800 traps, but tell him that the state regulations may be more restrictive, and they must abide by the more restrictive trap limit. So, what happens here is that the state's rules are going to constrain the number of traps that fisherman can fish.

Until the National Marine Fisheries Service enacts or completes rulemaking, the state is going to be the more restrictive jurisdiction controlling those trap numbers. Does anybody have any questions at this moment on anything?

Okay, this shows, then, that we are on different schedules between the states and between the National Marine Fisheries Service on our rulemaking process. Area 2 and the Outer Cape Cod were the first effort control plans that had a substantial number of state-water fishermen and state-only permit holders, as well as dual permit holders.

All of the other effort control plans to this date have either had only state-water fishermen, such as the Area 6 effort control plan, or they only had federal permit holders such as the Area 3 effort control plan. Therefore, only one agency was allocating traps during that time, so we didn't have to have any collaboration between states or between agencies when allocating out the traps.

So, if you are an Area 4 and Area 5 fisherman, then you were allocated all of your traps from the National Marine Fisheries Service, and the state recognized the National Marine Fisheries Service allocation. For Area 2 and Outer Cape Cod, most of the fishermen in that area have state-only permits and dual permits.

Those with state-only permits have been allocated out their traps by the state, and that is complete, but those with dual permits have received allocations from the states but those allocations are not finalized until the National Marine Fisheries Service completes their rulemaking and allocates their traps. Questions?

CHAIRMAN NELSON: Dan, you had a question or additions?

MR. DANIEL J. McKIERNAN: Yes, just a quick comment. From the view of the Commonwealth of

Massachusetts, we've allocated the traps to the dual permit holders, and we're constraining their activities regarding the fishing and ordering or trap tags for all of our permit holders. So, for Area 2 and Outer Cape, all those permit holders are being regulated and constrained by the Massachusetts regulations under the Outer Cape and Area 2 plans.

So, even though NMFS hasn't gone to rulemaking yet, we've completed rulemaking, and we're controlling those numbers. Toni said that the dual permit holders, those numbers haven't been finalized NMFS, and that may be true, but from the state's perspective those permit holders are being regulated by us, by the state.

CHAIRMAN NELSON: Okay, thank you, Dan. Any other updates? Go ahead, Mark.

MR. MARK GIBSON: I just wanted to say, to follow Dan, ditto for Rhode Island. We did essentially the same thing.

CHAIRMAN NELSON: Okay, anyone else? Okay, Toni.

MS. KERNS: Now, I'm going to get into the heart of the issues that are outline in your white paper. The first issue is preventing permit-splitting, also known as the pregnant boat syndrome. If you have a dual permit holder with a single fishing history and that individual sells his vessel with his federal permit attached and he retains his state permit, the question is does he have any history left on his state permit?

If the individual keeps history on his state permit, there is the potential to double the number of traps in the water, because you have this individual who had qualified under a dual permit with a single history for 800 traps. He is currently fishing 800 traps. He sells his federal permit and vessel, that history is always going to follow the federal permit. The history can never be broken from your federal permit, so it is going to go. The individual who buys will be able to fish 800 traps in Area 2 federal waters.

That individual says that he still has history on his state permit and therefore he is going to continue to fish 800 traps in state waters. Therefore, we've doubled the amount of traps that are in the water.

So, the solution that committee had proposed was to always have your history follow your federal permit; so when that individual sells the vessel and his federal permit, he has zero traps left to fish in state waters. That does not mean the individual could not,

once transferability is in place, buy up traps from those willing to sell state-only traps for Area 2. He still has his permit, but he just doesn't have any allocation currently.

We cannot distinguish between state waters fish traps and federal waters fish traps, and that is one of the reasons why the committee is recommending that your history always follows your federal permit because the history has been intertwined and our reporting requirements have not been fine enough in the past for us to be able to distinguish between state and federal water traps.

The next issue is looking at regulatory consistency. We have different qualifications and allocations by agencies. There are different qualifying time periods. We have different regulations between the states. We also have different regulations between states and the National Marine Fisheries Service. That proves to have issues when you're allocating traps, as well as when you think down the road to transferability.

It's imperative that we have consistent allocations; otherwise, it's going to affect those with dual permits. For those that are getting allocation from the National Marine Fisheries Service as well as the states, we could possibly end up having different allocations for that same person that's using the same fishing history. These issues currently remain unresolved, and it's one of the reasons that the National Marine Fisheries Service has not completed their rulemaking.

For example, if the state says, with the data that they have, an individual should receive 800 traps for Area 2, and down the road when the National Marine Fisheries Service completes the rulemaking and allocations and they say actually that individual should have 800 traps, how many traps does this individual have left to transfer?

And if he's allowed to transfer before the National Marine Fisheries Service completes their rulemaking, then it's possible that individual could transfer more traps than he really had; or, he had the possibility of transferring more traps than he didn't realize he had. By transferring traps that you don't have, then the buyer is going to then have bought traps that don't really exist, which will cause an administrative burden down the road.

So, the committee suggests that until all agencies have allocated traps and the multi-jurisdictional ITT programs has been implemented, that you only allow intrastate, state-only transfers for permit holders.

There should be no dual permit holder transfers nor any federal waters transfers until the National Marine Fisheries Service completes their process of rulemaking.

The next issue is looking at administration. Currently we do not have a tracking program to follow traps as they're transferred. There is no application period that is set so we could have people looking to transfer traps at different periods, and we have no coordinated review process that has been developed between agencies of those individuals that could be potentially transferring traps.

This lack of administration could lead to inaccurate trap allocations as well as an increased burden on administration from both state and federal agencies. It is recommended that we establish and fund a multi-agency tracking system and delay any transfers among the dual permit holders until that tracking system is devised.

We have done some preliminary estimates of cost, talking with ACCSP as a possibility to house this tracking program. The initial estimates, which I think might be the highest end that they would be and possibly could go lower, is \$200,000 for start-up and around \$80,000 for maintenance on an annual basis for salary and benefits of the individual to track all of the transfers.

If we did just in-state-only transfers at the beginning, where individuals could just transfer within their state, those states with more administrative burden upon them would need some additional funding to help them complete this of about \$30,000. The second-to-last issue is multi-area trap allocations. Are there any questions before I go into this?

MR. VITO CALOMO: John, you said in the beginning that we were not here to solve problems, but to listen to what is going on for the public hearings; am I correct in that statement?

CHAIRMAN NELSON: Yes, I don't think that we're here really to debate it unless there's something that we see is a glaring omission or something really so bothersome that we don't want to include it. We can have that discussion after we get through the whole presentation. Right now I think we want just any points of clarity or additional information that the other committee members might want to put in. But once Toni goes through the whole presentation, then we can have that discussion of what is in and what is out of thing.

MR. CALOMO: I'm all set, thank you.

MS. KERNS: So, for multi-area trap allocations, we have distinct area-specific history-based allocations for almost all of our management areas, all but Area 1. These plans allow for the sale of allocation without accounting for the effects on each of these areas. The area-specific allocations can be split by each area and sold and trap numbers increase if allocations are not reduced across all areas.

I think the examples will help make that make more sense. First of all, just to show how we are looking at multi-area allocations currently right now before we would move into any transfers, if we have an Area 2 lobsterman who is a dual permit holder, and they receive 750 traps from the state of Rhode Island based on his landings during the qualifying period, and he previously had an allocation of 1,200 traps for Area 3.

The state informed the permit holder that if he chooses Area 2, he cannot fish or order more trap tags than 750, which he was allocated for Area 2; otherwise, his permit would be revoked. Because the National Marine Fisheries Service has not completed their rule-making process for Area 2, they tell the fisherman that he can fish up to 800 traps, but recognizing that the state may have a more restrictive trap limit and that he has to follow the more restrictive rule.

Again, the state rules are the constraining number of traps that are deployed if this person elects Area 2; and until the National Marine Fisheries Service completes rulemaking, then the state is going to the more restrictive jurisdiction controlling those trap numbers. So that fisherman has 750 traps to fish whether he is in Area 2 or Area 3 because of the more restrictive rule.

So, now looking down the road, and once the National Marine Fisheries Service has completed their rulemaking and transfers are allowed, then we have a transfer dilemma with multiple areas. If we have an individual that fishes in Area 2 and he received 800 traps, as well as he received 1,200 traps for Area 3, that individual decides he wants to transfer 400 of his Area 2 traps – and, remember, at any given time this individual cannot fish more than 800 traps due to the most restrictive rule because he's fishing in both Area 2 and Area 3.

So, he transfers 400 traps, the buyer receives 360 traps. Because of the 10 percent conservation tax, 40 traps go to conservation. The question is does that

seller still have 1,200 traps left for Area 3? If the individual, at any given time, in the most recent years has not been fishing more than 800 traps, should that individual be allowed to start fishing an increased number of traps to 1,200 if he chooses not to elect Area 2?

The committee has proposed a solution, an anti-stacking solution, as we called it, that would have us subtract from any area that you have allocation the number of traps that have been transferred. So, if that person with 800 traps in Area 2 wants to sell 400 of his traps, then his Area 2 allocation is reduced by 400, leaving him 400 left to fish, as well as his Area 3 allocation is reduced by 400, leaving him up to 800 traps to fish in Area 3. And, if he elects to fish Area 2, then he can fish no more than 400 traps at any given time. Are there questions here, because I know this part can get a little confusing?

MR. PATTEN D. WHITE: I guess we need to go over this one more time because if he's selling 400 traps, he still has an 800 Area 3 trap allocation?

MS. KERNS: He is selling 400 of his Area 2 traps, so, therefore, the committee is recommending that his Area 3 allocation is reduced by 400, as well, so any allocation that he has is reduced by the number of traps being transferred total.

CHAIRMAN NELSON: So how many can he fish in Area 3?

MS. KERNS: So, Area 2 he has 400 traps to fish now, and he has 800 traps in Area 3. This way he wouldn't be fishing any more traps than he historically had been fishing.

CHAIRMAN NELSON: Pat, are you concerned whether he is fishing them all at the same time; is that what your issue is?

MR. P. WHITE: Correct, because it still appears that although he has sold 400 traps, he is still able to fish 1,200. Well, I see you shaking your head, but he's got 400 up there and 800 in Area 3; 400 in 2 and 800 in 3.

MS. KERNS: Because of a more restrictive rule, if he chooses to elect Area 2, he cannot fish more than 400 traps at a given time. If he does not elect Area 2, then he can fish 800 Area 3 traps instead of 1,200 because he was reduced by 400. Then that would mean he would not be fishing any more than he historically had been fishing, because he continually had been electing Area 2 before.

MR. ERIC SMITH: This may help Pat, and also Toni can correct me if I'm wrong and then it will help me. The way I had to have this explained to me so that I understood it is the premise is the person with the initial 1,200 pot allocation in Area 3 and 800 in Area 2 didn't fish 2,000 pots. He probably fished 1,200 and seasonally fished 800 when he was in Area 2 only, which is why when you take the 400 from both knock it down to 800 in Area 3 and 400 in Area 2 it makes more sense in the fairness-and-equity test because it's coming off both allocations when he never fished them all at the same time. He never fished 2,000. Then it made sense to me.

CHAIRMAN NELSON: Any other questions at this point? All right, Toni.

MR. KERNS: Next, as the committee continued to meet, we realized that Area 1, even though they do not have history-based programs, are going to be affected by transferability. So, we have brought them into the discussions of the most recent meeting and kind of come up with the Area 1 conundrum, as we like to call it.

As I said, we do not have history-based allocations in Area 1, but the states have implemented types of limited entry, either by zone in Maine or by tiers of trap allocations in New Hampshire. But, the key thing to remember here is that any individual with a federal permit can select at the start of the year Area 1, and that can be a non-trap fisherman, it can be an individual that didn't qualify in the other LCMA's for federal waters, and it can also be just somebody that buys a federal permit, a newcomer to the fishery.

That fisherman is only going to be able to fish in Area 1 federal waters, but at any given time they can just elect right on then, because there is no limited entry. So, the committee was worried about with transfers and selling of federal permits that there would be potential migration into Area 1.

Just for an example, if we have a dual permit holder for Maine in state and federal waters for Area 1, and they have the ability to fish up to 800 traps, as well as they have the ability to fish 800 traps in Area 3, but the seller gets rid of federal permit and keeps his state permit, that individual is going to be able to continue to fish 800 traps in Area 1 in the state waters.

The person that buys his federal permit receives his 800 trap allocation for Area 3, but at the start of the year that individual with the federal permit can also elect Area 1, and so all of a sudden there are 800

additional traps in federal waters of Area 1, so that's doubling effort into Area 1.

The committee came up with a couple of different ways to solve this issue, as well as there might be some other potential solutions out there. The first one is the anti-stacking and no-election clause. We have an individual with an Area 1 trap cap, so they can fish up to 800 traps, and an allocation in Area 3.

That individual decides to sell off all of this Area 3 allocation. With the anti-stacking part of this clause, because he sold 1,200 traps, we reduced his Area 1 state traps by 1,200, leaving him zero traps left. We also put the no-election clause on this one, meaning that the person who received the federal allocation cannot elect Area 1 on their permit, so a type of limited entry for those that were transferring traps. This would be only be for those individuals that have decided to transfer traps.

The next solution is just the anti-stacking clause – it doesn't include the no-election clause – where, again, you have an Area 1 and an Area 3 fisherman decides to sell 300 of his Area 3 traps, so his Area 1 trap cap has now been lowered to 500, so he can fish only up to 500 traps. That person who bought those 300 traps can still elect to Area 1 if that individual so chooses, so you still have the potential to add more traps into Area 1, but that individual already had a federal permit because the traps were only transferred because he didn't sell his whole allocation, if that makes sense.

The last part of the solution is just the cannot elect Area 1 in the future for those that are purchasing the Area 3 traps. Your Area 1 fisherman is not reduced by his trap cap. The only change here is when traps are transferred in Area 3; that individual with that federal permit can no longer elect Area 1 on his federal permit. Questions?

MR. SMITH: So the seller can continue to fish his 800 in Area 1; the recipient can fish his 360 in Area 3, but can't go in Area 1?

MS. KERNS: Exactly.

MR. SMITH: Okay, because the seller only shed some Area 3 pots; it didn't have any effect on Area 1? Okay, thank you.

MS. KERNS: For all of the potential solutions that I brought forward today, these would all be decisions that an individual undergoes that he decides that he's going to transfer his traps, so until that individual

decides to transfer traps, none of these rules are put in place on them in terms of the anti-stacking or the no election, whether it's Area 1 or any of the other areas, so it is a business decision that an individual undergoes when moving forward before any of these rules are put on them.

That is my presentation. I apologize for the lengthiness of it, but I thought it was important that you all understood all these issues.

CHAIRMAN NELSON: Any other questions before we get into any discussions associated with this.

MS. KERNS: If the board initiates an addendum today for these issues, this addendum would address Area 2, Outer Cape Cod, and Area 3, but these decisions would then become the backbone for any other areas that put in place transferability programs. But as you can see through this presentation, there are areas like Area 1 that would be affected by transferability, so all the areas are tied to any addendum that we do put forward, if initiated.

CHAIRMAN NELSON: All right, thanks, Toni. I'd like to move ahead with the motion for the addendum and then we can have the discussion of what we feel is appropriate, if we want to have something more in it than what the staff is already proposing versus our taking something out. I would like to get that on the floor so then we can have that discussion take place. So, the motion is to move ahead with the development of Addendum XII to address the trap transfer program in Lobster Conservation Management Area 2, the Outer Cape, and Area 3.

MR. P. WHITE: So move.

CHAIRMAN NELSON: Second by Ritchie. Okay, discussion on content? Pat, did you want to make the first comment?

MR. P. WHITE: I had two questions, Mr. Chairman, if I could. First of all, I'm a little unclear as to the funding of how we're going to initiate this data collection. Also, there was a discussion in the document about delaying transfers until this system is developed. My question is doesn't this sort of have to go hand in hand and should it be part of the motion or should it be a separate motion?

CHAIRMAN NELSON: Well, the funding I think is something that if we indeed come to how we're going to monitor it, that's what the board would have to decide at that particular time. Limiting the transfer at that time, Toni, did you have a sense of what you

folks were thinking of? I don't think we can necessarily do something like that. That's my assumption right now, Pat, as far as saying there wouldn't be any possibility of having transfers as of now. I think we have to do that through the addendum process. If I'm wrong on that, I'm sure staff will correct me. George.

MR. GEORGE LAPOINTE: I want to follow up a little bit more, Mr. Chairman, on the funding question. Clearly, there is 200K up-front cost and 80K of ongoing costs or 30K if we do the intrastate component. It strikes me as necessary, when we go to the public, to identify where we think that might come from.

If it's allocation of commission funding, that's not a decision this board can make. It's a commission-wide decision. If it's not, are states that comprise the area going to make it up or are they going to propose a trap tag increase? I think we should identify potential sources of funding so that people can make informed decisions.

CHAIRMAN NELSON: Let me see if I can get that. Your points are correct, George, we'd have to lay out options. Mike, did you want to just mention briefly on that one, without resolving it. I don't think you need to resolve it.

MR. MICHAEL S. CAHALL: Mike Cahall; I'm the director of ACCSP. This project is well within the scope of the kinds of things that ACCSP wants to fund. It certainly would be appropriate for the commission to come through the AACSP to requesting funding for this project. Probably not for the ongoing cost of maintaining of personnel to manage the data within the system, but certainly development and deployment of the system is well within the scope of what we do.

CHAIRMAN NELSON: Okay, Mike, so that's a possibility for a startup anyway, George, and we could identify that as a possibility in the document. I think the point of long-term funding, we will have to have different options in there for the people to realize how they're going to fund it. I think my last point is correct. Other points? Bill.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. Since this whole thing is very confusing and the plans that we have put forth promised that they would be able to transfer, it is going to be difficult because we're going to have to basically say, I believe, that until this is straightened out, that transfers particularly within the realm of people that

federal permits, and until this thing is all straightened out, that they can't transfer – and I'm trying to find a way to make this understandable for us, first of all, but also to the public as to the need to do something to straighten this out.

I would try to make an addendum, if approved, as simple as possible. I think there are four scenarios here; there may be five, but I mean there's four basic scenarios that need to be separated out so people can think about something one scenario at a time and some basic principles at the top for whoever is reading this to understand.

One of the principles perhaps is whatever idea is considered in your mind when you're thinking this over, the bottom line is we don't want more traps than were there originally. In all of your scenarios, that's what you're trying to do, and it needs to be brought up that this is what we're trying to do. Now, as you think about your opinion on this, is what is being proposed going to keep the traps basically the same, whoever gets them, wherever; or, would the idea that you're thinking of end up with more traps in the ocean, and then that right away sets their tone as to how they're thinking about this and commenting.

I wanted to ask Toni why are you only considering – since this is a problem that seems to be in all areas, why are you only keeping this confined to Areas 2, 3 and the Outer Cape instead of other areas? That's one question; I do have one followup after that.

MS. KERNS: Bill, the reason I was constraining it to those three areas is those are the areas that have asked for transferability plans. Areas 4, 6, 5 and 1 have not asked for transferability plans. But as I stated before, it is the committee's intention to use all of the principles outlined to be the backbone for any future transferability programs.

MR. ADLER: All right, thank you, Toni, that answered that question. I just forgot my other question, so I'll come back.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman, just one question. Did the subcommittee discuss a possible – I'm not sure what the date would be – a drop-dead date as to any traps transferred after a given date would not be allowed? In other words, let's say you picked September 1st before this document went out and was reviewed by the public so that there wasn't a flurry of transferring of traps from one person to another, to establish a set line, if you will; have you discussed that or has it been

considered? That would, I think, prevent a rush to sell traps.

CHAIRMAN NELSON: Pat, my sense, again, is that I don't think we have a mechanism to control that at this particular time. I think staff, in their discussions of this whole thing, really aren't sure that we have a mechanism that will do that. The intent is to try to have the addendum available at the February meeting, which means probably no Christmas break for some people, and then move it along as quickly possible.

I mean, we can think of the worse-case scenarios and all kinds of examples of people hurryingly stampeding, but I think most people probably want to keep their options available as far as things become even more valuable for them if they have held on a little bit and there are some restrictions associated with doing it. I think we'd probably find that would be more the norm than not. Toni, go ahead.

MS KERNS: It's the intention of the transferability committee to meet a couple of more times to work out the details of the addendum as well as we are going to have an Area 1 LCMT meeting to make sure that LCMT is aware of these issues and some of the potential solutions that we are proposing and also they get feedback from that LCMT as well.

CHAIRMAN NELSON: Okay, I have Dennis and then I'll come back to Eric.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chair. Regarding the federal part of this, I think I heard Toni say that we wouldn't implement this until we had the federal portion of this done, and how long are we talking about a timeframe before that would happen or occur?

CHAIRMAN NELSON: Okay, we're going to point to Harry and put him in the hot seat.

MR. MEARS: Thank you, Mr. Chairman. Toni did an excellent job I think of summarizing a host of issues that were very difficult to articulate six months ago. What we have now here is the sum total and some are very major issues. One as we just discussed impacts upon, for example, Area 1, the need to come to closure on the single-entity issue; is it the individual, is it the permit, how does that affect intertransferability once it's implemented?

I think the answer to the question is this is the key – this would be a key requirement or integral the spectrum of activities that lead to ultimate

rulemaking on the federal level. So, when will federal be completed? It's largely contingent upon addressing the issues that would be germane to this addendum. So, it certainly wouldn't occur before the addendum, because from the federal perspective, the addendum needs to be reconciled before we come to closure on exactly what the consistency is amongst jurisdictions on implementing intertransferability.

CHAIRMAN NELSON: Okay, Dennis, I'm not going to give you another bite because that's the best Harry is going to be able to do, and I think you kind figured that. Eric.

MR. SMITH: Thank you, Mr. Chairman, a quick question and hopefully with the answer to that, then I have a series of comments on the overall document and the approach that we're about to take. My question is Pat talked a minute ago about – and the federal terminology it's a control date, and you had an answer for that. I understand that.

But when something is imminent and we think behavior is going to change a lot because of the imminent action, we also have the opportunity to do an emergency action to lay out four or five common threads, and did the committee talk about the desirability of that and come to the same conclusion as they did with a control date. That would basically, if nothing else, plant the flag that here are four or five things we think the eventual plan is going to have, and that way it freezes things, if you will, where there are now. That's just a quick question for a quick answer before the comments. Thanks.

CHAIRMAN NELSON: She is trying to think of all the things that they discussed, and let her come back to that particular line and –

MR. SMITH: Well, let me just make the suggestion that maybe it can weave its way in and out of the discussion as we go. I don't mind approaching this as an addendum, so I think the motion is on track. The question at the end of the day will be whether there is some additional value with an emergency action, so let's just think about that. One thing, for example, would be to freeze transfers as of a current date, and then you don't have the risk that we talked about earlier. So, we'll leave that aside for moment.

Here are the comments I have, and a couple of them have been made already in different ways either by Toni or questions and answers of others. But, this is so complicated that I have to try and condense it into a list of the common elements that it seems like

everybody is agreeing on from the committee work into where the board is.

I'm just going to run down them in the order that I see they need to fall in there; and if Toni says – I mean, or if I say they're there and everybody agrees, then the document is building in the right direction, in my view. And if not, we have to add something.

First, it seems like for all of these areas we have to do what we did in Addendum VII for Area 2, which is take every entity, which is a vessel permit in the federal terminology, the state license and create one history. I think that's implied in here, but it doesn't come right out and say it, and we should do that because that's point from which we move forward. So, there should be a single history for each person whether a license or permit holder or both, and using Area 2 as a model.

The second point is to simplify this. Otherwise, you know, if we don't simplify this at the outset, we're going to have – every trap tag is going to have a little computer chip in it, and you're going to follow it all over the ocean for years, and it's just going to keep on getting traded. I think maybe we have to draw the line and say no cross LMA transfers. In other words, if you have allocation for Area 4, you've got it for Area 4 and that's all it's good for.

If you want to trade it – now the license holder is not going to like the idea because the marketability of his pots just went down, but they were allocated for Area 4 or ours for Area 6, and maybe they shouldn't be able to migrate out. That's point number two.

Number three, perhaps recipients must elect recipients of an allocation, must elect one area for those traps. And in one of Toni's solutions of the committee I think that was in there. In other words, a guy with an Area 2 – an allocation of Area 2 and Area 3, when he transfers pots, the recipient is going to have to – those pots are only going to be good in one area, whether he elects it or whether it's defined by the plan. But, to cut down on this crossing borders and maybe upsetting the apple cart in an area where a pot wasn't originally allocated, so recipients electing one area for traps that they receive in a transfer.

Number four, and I agree with this one, I am sure it will raise eyebrows and people will have a hard time with it in the public hearing, but I think you have to do it; no fishing in Area 1 if you transfer or receive a pot allocation in the transfer. In other words, you're buying and selling pots in the areas that have history-

based allocations and transferability, but if you do that it's at the expense of not being able to then move your effort into Area 1 when you weren't there initially.

The others that I have here, there are three more, but I think Toni definitely had them in there; a point on no permit splitting, stacking, transfer of pots from a dual allocation holder comes off both. This one I think I heard her say is in there, but I didn't know if it was just until the whole system is fleshed out or not, and she is going to have to remind me – only allowing intrastate transfers for state-only permit holders. That would be a permanent measure or is that freeze measure until the whole system is implemented?

MS. KERNS: As the committee discussed it, it was only until a complete system had been made up. We have discussed different options of degrees of transfers after a program has been completely established and all allocations have been given out by all agencies.

MR. SMITH: We may want to consider in this addendum, although it runs the risk of more complication in tracking tags, limiting the transfer of state-only allocations to within state waters of that area. That's going in the other direction of complication, but it may be necessary or you could have a flood of traps going from far out in the EEZ to right to the beach and back and forth, and that may not be a healthy thing for resources. I can see both sides to that one, so in the addendum it may be worth discussing it in the broader context and then maybe limiting yourselves depending on whether you get good comments on it or not.

Just about the last point here, I think this addendum ought to be an addendum for all areas, including Area 1 even though they don't have limited access, history-based allocations. Part of the reason we're in this problem is because we have different qualifying periods for rules that spanned eight years; and it's harder because when you go to public comment, I can imagine in Maine you'll get comments that are something like "Why the heck are you guys doing this; we don't even history-based allocations?"

That's not the point. The point is the rules should start and have the same rules for everyone at the same time, so we don't perpetuate this leapfrogging of problems when the rules and the qualifying periods aren't the same. So at the risk of going out to areas that didn't already ask for it, I think the rules should try to be designed for the whole lobster fisheries throughout its range and get your comments

based on that; and then depending on the nature of the comments, you may want to adjust. Thank you.

CHAIRMAN NELSON: All right, thank you, Eric. I think staff has captured those, and we'll try to put them into the document, accordingly, and in February when we come back with the document, we can take a look at things and see what should stay in there for public comment. I think in the meantime we do have – in the case of your last comment, we do have an LCMT meeting for Area 1. I think it's in December.

MS. KERNS: January.

CHAIRMAN NELSON: January, and this will be part of the discussion, and we would be able then to have feedback from them that we can factor into our discussion on the February addendum discussion. Otherwise, the intent is for this to serve as the basic policies for trap transfers for any areas in the future. Okay, I had Mark and then Vito and then Dan.

MR. GIBSON: Thank you, Mr. Chairman. I like some of the ideas that Eric advanced that concerns some standard elements of the addendum. I strongly support the addendum going forward to embrace and articulate all of the transferability issues for public comment. One of the things I'm getting a little nervous about is the intrastate transfer possibilities. I think it's important that we come away from this meeting with an understanding of what states can or cannot do relative to intrastate transfers; that is, transfers solely between their state-permitted fishermen to deploy possibly in state waters.

It is quite important that we have that for several reasons. First is as Bill Adler originally articulated, you know, we sold part of this plan on an ability for states to have some transfer ability for flexibility purposes in businesses. And as you're also aware, Rhode Island is involved in a lawsuit challenging the effort control plan; and, to the extent that we had the ability to do some limited transfers, that would extinguish some of the flames that are supporting that challenge.

I am hopeful that we can come away from here with an agreement to go forward an addendum to broadly address all the transferability issues, but an understanding that states have the ability currently and go through their own rulemaking to institute transferability amongst their state-permitted-only fishermen. I think that's quite important to get that going. We really can't wait for an addendum and another year to go by before we can deal with that. Thanks.

CHAIRMAN NELSON: All right, I think our timeframe that we're proposing for this probably addresses that, Mark. At the same time I would point out that states can be much more restrictive if they so desire than what the commission has in its management plans. Vito.

MR. CALOMO: I think, Mr. Chairman, I listened to Toni speak here, and it helped me. There seemed to be a lot of confusion reading it. I know on my part there was, and Bill Adler has tried to help me, too. I think my wife tried to help me, too, but that's beside the point. But I listened also to the ideas from Eric, and a lot of them were very good.

Sometimes, though, some of the comments from other people raised the hairs on the back of my neck, Mr. Chairman, and I worry. I worry about creating one history; will that be equal throughout the range, will that be fair throughout the range? You know, simplification is a great thing, but sometimes we can't have it as simple as I would like it or others would like it.

I think this is a complex issue at best; and for me to sit here and not resolve the issues and just give your thoughts is easy, but to give you ideas of how to resolve issues is very difficult. I know we're trying to do things for the good of the resource, but let's not lose our eye on the fishermen that have put in not only years of history but have held permits for years either to work with their sons or their grandchildren or whatever the case may be.

I don't want to have something come down and all of a sudden a person who has held a permit for 25 years is left out in the cold. I'm not a great believer of somebody that fished 1,200 traps and somebody that chose to fish 300 traps should be treated less equal, because it's the same permit or the same license. You pay the same amount.

When we eyeball the situation on creating history, I would like to make sure that people are fair and equally. Again, it's easy for me to make comments like this and not have resolutions for the problems, but I guess that's why we pay her the big bucks. Thank you, Mr. Chairman.

CHAIRMAN NELSON: You're absolutely right, Vito, on all points. No, the staff will try to weave that consideration in there so that we have various options to consider. We will have Big Bucks talk afterwards about whatever. Dan.

MR. McKIERNAN: Thank you. To Eric's comments, I am confident that the Area 1 LCMT will recognize what this issue is and most likely embrace it because at last year's Area 1 LCMT meeting there was a lot of talk about their concerns of federal permits migrating to the Gulf of Maine from Southern New England. This proposal that we have here is an attempt to address just that.

I had a question for Eric. Eric, I think you did a great job boiling these down to those simple statements and principles, but I had just one question or detail. You had mentioned that your fourth principle was no fishing in Area 1 if you received a trap and a transfer or an allocation through a transfer, but did you mean no fishing in Area 1 if you received or transferred such traps in a transfer?

As I served on the committee, our objective was really to prevent permit holders or entities from parting with their allocation and then resuming fishing in Area 1, so we were just as concerned about folks who got rid of their allocation as well as those that were receiving them.

MR. SMITH: Thank you. My notes say both, transfer or receive. I thought that's what I said, but if I didn't, I apologize. What I have here is no fishing in Area 1 if you transfer or receive an allocation.

CHAIRMAN NELSON: Okay, Gil.

MR. GIL POPE: Thank you, Mr. Chairman. Not to make things too complicated or whatever, but for the general public's better understanding, I think somewhere along the line we need to add some estimates of associated fishing mortality rate reductions for these plans. I'm sitting here and I'm seeing, you know, we're talking all about the economics of the plan and so on and so on, and this is supposed to lead to fishing mortality rate reductions and contribute to the betterment of the populations.

But if I look from 2005 to 2006, there were actually 5 million pounds of lobsters extra landed in the year before. So, for the public's better understanding as to exactly what we're doing, whether it's more economic than biological, I think somewhere along the line I'd like to see some percentage rate reductions for a lot of these plans. Thank you.

CHAIRMAN NELSON: All right, Gil, let me have Penny address that before staff nods in any agreement on that particular point.

MS. PENNY HOWELL: We've looked at effort versus fishing mortality, and there is no direct relationship. You can't say that X amount of trap reduction is going to make X amount of fishing, because there are too many intervening factors. The whole point, from my perspective and from the TC's perspective, is to make the fishery more efficient, to cut down on unintended mortality, which has not been quantified, rather than have a direct effect on F. We couldn't give any kind of a reduction because there is no formulaic response between traps and fishing mortality.

CHAIRMAN NELSON: But to your point, Gil, staff will at least take into consideration what you've pointed out; and if there's anything that can be a positive benefit out of the transferability, they'll certainly try to address that. I haven't heard anyone say, "Good Lord, don't move ahead with this." Unless I hear that and unless there is something else that really is omitted here, staff seems to have gotten a lot of good feedback, and I would like to have people close this discussion so that we can move it along.

MR. AUGUSTINE: Call the question.

CHAIRMAN NELSON: Did somebody call the question?

MR. AUGUSTINE: Yes.

CHAIRMAN NELSON: Actually, Bill, you did have your hand up, so I will take Bill's comments, and then Pat will have called the question as soon as Bill finishes.

MR. ADLER: Thank you very much, Mr. Chairman., four things. I agree with Mark Gibson about moving ahead with state-only permits because as Mark had already said, we can do that, and I think that would help the process. Number two, one more time, to make it as simple as possible in developing the addendum and the principles of keeping it simple. Please think about that.

The third thing; I am wondering if we were to add some things to this addendum; can we do this after we approve the addendum discussion that we've been having; and then if we wanted to add some other things, so we don't have an Addendum XIII, XIV, XV; that we could also add that in. After we approved going ahead, can we add something? And the last thing is you would have an AP meeting before things go on. I'll stop; thank you.

CHAIRMAN NELSON: Okay, yes, yes. Seriously, Bill, there certainly would be the opportunity, when we come in February, to add to this type of suggestions that the staff will have before then. There is also the opportunity to delete before we go out for public comment.

MR. ADLER: I was even thinking of okaying something at this meeting to go into the addendum, that may not have anything to do with this. Thank you.

MS. KERNS: Bill, I'm a little bit confused where you are. I mean, the committee is going to initiate this addendum and any feedback that you have to give to us or the committee, you can give it through me, you can give it through Dan, since he is on the committee. We welcome that feedback and potential solutions from any board member. The addendum will come in the draft format to be approved for public comment at the February meeting, so it wouldn't go out for public comment until February.

MR. ADLER: If I may, Mr. Chairman, the issue about adding stuff actually was what if there's another topic that needs an addendum; and rather than starting another new addendum, today if we approve going ahead with what we've been talking about, that's fine, but if something else comes up at this meeting, can we add that one in just as a separate issue?

CHAIRMAN NELSON: Bill, the board always has the flexibility of doing that. My sense, though, is that this addendum was focused on transferability. As we can see it's got enough complexity in there already, I would suggest that you're better off to just focus this addendum on the transferability issue. Brian is looking forward to doing additional addenda next year. That would be my recommendation to the board overall. Let me get public comment, if there is any, and then I'd like to come back to the board for resolution of this.

MR. JOHN GERMAN: Thank you, Mr. Chairman. My name is John German. I'm president of Long Island Sound Lobstermen's Association, and I wanted to comment on Eric's suggestion that we expand this addendum to include all LCMAs. Right now there is just a request from a couple of them, that's what the plan is set up for.

There is not a big move in my area of Long Island Sound, on the New York side, where I represent, to initiate anything like this. An addendum, if it were to go forward, it would kind of mandate a

transferability program for them, which we don't have on that side, but Connecticut.

I was at a meeting here, not in this room, but before this board, probably eight, nine, ten years ago when Connecticut, Ernie Beckwith in particular, wanted to be able to transfer tags and licenses and the board told them, no, we couldn't do that, and then they went home and they instituted a policy where they transferred the tags and licenses.

So they have been doing it all along, but on the New York side we haven't; we listened to the board. This would be like setting up a program for us to transfer tags, which there is no demand for right now. And if it's just supposed to be the LCMAs that initially wanted it, I personally would rather just see it that way and not include the rest of us. Thank you very much.

CHAIRMAN NELSON: Okay, John, thank you. Anyone else in the public? To this public comment, Dan?

MR. McKIERNAN: Yes, to Mr. German's comment. I think what we have to keep in mind is if this thing goes in as a universal principle and someone had an Area 6 trap allocation and let's say an Area 4, then if the rules went into place to reduce all of your area-specific allocations when you transferred, then someone's Area 6 allocation would be reduced. So even though Area 6 is not asking for a transfer program, these universal rules could reach into that Area 6 and affect the individual's area-specific allocation.

CHAIRMAN NELSON: Yes, depending on the overall principles that ultimately are adopted that are all-encompassing, yes, they may or may not be a limiting factor for that. But, as any addenda or amendment, it is always very important for the LCMTs, all of them, to be focused on it and be aware of what is going on. All right, Pat had called the question. Eric, do you need to add something else?

MR. SMITH: Yes, I do have a few other points, but I'm going to leave them aside because I can comment between now and February on those. But, unfortunately, I disagree with Mr. German. I do think this motion ought to end after the word "transferability" so that we go to public comment with the ideas for all areas.

It doesn't mean it's forced down any particular area's throats, but it does mean the commission has established the ground rules for transferability

everywhere. That would require either acceptance by the mover or a motion to amend, and I would prefer the former.

CHAIRMAN NELSON: Does the maker and the seconder object to putting a period after “transferability” but also recognizing that the focus is on the three LCMTs that are mentioned in the existing motion.

MR. P. WHITE: I would accept that.

CHAIRMAN NELSON: Okay, it is agreeable. All right, let’s take one moment to caucus, and then we’ll call the vote.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: All right, are you ready for the question? Pat.

MR. AUGUSTINE: Mr. Chairman, just a point of order. The question was whether or not, as one of the options within the alternatives that could be developed for this, would it be possible to have an option that listed the original three or has that become a moot point; that this addendum is only going to apply –

MR. LAPOINTE: The question has been called, let’s go.

MR. AUGUSTINE: Thank you, George.

CHAIRMAN NELSON: I think staff has gotten a lot of good advice, and I think that they’ll bring forward a version that will be open for all kinds of discussion and as necessary modifications at the February meeting. All right, are you ready for the vote for initiating an addendum to address trap transferability. Okay, all those in favor, please raise your hand; opposed, likewise; abstentions; null votes. It passes unanimously. Anything else on the trap transferability issue? All right, Eric.

MR. SMITH: Mr. Chairman, we’re having a lot of discussion about the right process to do certain things; and if you indulge me just for a moment, the nature of the discussion that has gone on between the staff and me is this whole issue of the emergency action. My initial reaction was discuss it.

The one I was going to live with was it would muddy the water between now and February when we’re trying to get the addendum, so it probably wasn’t worthwhile. However, if we limited it to just a few

things – and as I understand the rules, if there was a two-thirds vote, that could be done without having to do the four hearings that are a part of the emergency action process, and it would take effect now if it was a two-thirds vote of the board.

I guess hearing it that way, I wonder for the consideration of the board whether it makes sense to freeze transfers as of today’s date as an emergency action. In other words, don’t allow them between now and when the addendum finally kicks in. I heard Mark and Dan both say that is a problem for them, so I would basically say the better way is to freeze transfers to only within a state and an LMA, so that Rhode Island, for example, in state waters could authorize transfers in LMA 2, but they couldn’t – pots couldn’t be transferred into LMA 2 or out of LMA 2 to other areas, state waters only. I’m floating that idea because I want to see what the board has to say. There are some advantages to it, but it does clutter the works up a little bit, too.

CHAIRMAN NELSON: Does the board want to entertain an emergency action? I think, Eric, we would need to – rather than just have a general discussion, if you want to put a motion forward to do something, let’s do it and see if you get a second, and then we’ll move ahead that way. All right, we also have the February meeting, if it’s appropriate at that time because of other circumstances that come forward, you can address it at that time, because the addendum won’t be in place that time, either.

All right, before we go on to the next topic, which is to review the Lobster FMPs, let me just do a little housekeeping. I was negligent, from when I started, not to recognize from New York, Jim Gilmore is here, and Jim is the new director of the New York DMR, is it, so welcome to our board, and I hope you find it very useful and enjoyable as I think all the rest of us always do.

I would also like to recognize from the New England Council, we have, as far as the council is concerned, our representatives of Big Papi, and that’s John Poppalardo is here. He is the chair of the council. He is here with Paul Howard, who is the executive director. I don’t see Paul at this particular moment, but he’s also in the audience. Let’s move on to the reviews of the FMPs. Toni.

LOBSTER FMP REVIEW

MS. KERNS: Thank you, Mr. Chairman. Staff passed out to you the 2006 FMP Review. It was our hope, Penny’s and mine, that we would be able to

give the board an update like we did last year on the relative trends for fishing mortality and abundance for each of the three stock areas. But because of some issues that we're having with a few of the states' landings, totals as well as accounting for the National Marine Fisheries Service statistical area fished, we are unable to give you that information today. We can provide you want an update of that at the next board meeting.

This FMP review will just cover total landings by state, which I realize is not as informative as by stock area, but we can't account to the landings right now, so we won't be able to give that information, as well as some of the recommendations from the plan review team. As you can see, there has been an increasing trend – an increasing amount of trend of landings, total coastwide from 1992-2006.

In 2006 we had our highest level of landings of around 93 million pounds of lobster. If you look at the percentages of landings by state, you will see since 1990 Maine has continued to increase, and the percentage of the coast-wide catch where they currently are around 79 percent of the landings. The next state with the highest landings is from the Commonwealth of Massachusetts. All other states, Rhode Island, New York, Connecticut, New Hampshire and the states of New Jersey south account for less than 10 percent of the coast-wide landings.

This has been the case for about the last ten years, with New York and Rhode Island just above 10 percent in the nineties and the mid-nineties. The X-vessel value has been increasing over time. 2005 was the highest in the time series, just over \$400 million; in 2006 we dropped slightly to just under.

The plan review team has some recommendations and some concerns in the fishery as well. Those include the condition of the Southern New England stock. As the board knows, at the last peer-reviewed stock assessment the Southern New England stock was depleted and overfishing was occurring. Addendum XI implement measures to address some of these concerns, and it also stated that for the future that the TC would look into and examine the relative effectiveness of each of the effort control plans in Southern New England and look into potential future trap reductions, specifically to examine the degree of latent effort that potentially could remain in Areas 2, 3, 4, 5 and 6.

The PRT also in the past had some concerns with the federal implementation of each of the addenda and

lobster management measures. Harry said that he'd like to speak to where the National Marine Fisheries Service is in their regulatory process, so I won't go too detailed into this and allow you to do that at the end of the meeting. In short, the National Marine Fisheries Service is up to date on almost all measures in the commission's plans, except for the effort control programs in Area 2, 3 and Outer Cape Cod.

The PRT would like to recommend to the board that the National Marine Fisheries Service present the results of their socio-economic assessment that was done for the Northeast Lobster Fishery. This report just came out last week, and website is linked in your FMP review. There are some very interesting results in that report, and I would suggest that board members take a look at that, as well as we potentially could extend an invitation at the next board meeting for a presentation to be given to the board.

The PRT also believes that the ability to judge the success or failure of management measures on management area versus stock unit basis is very critical, and they recommend that the TC explore models such as conceptual partial population models to do such plans. The PRT also is concerned about the lobster management program to respond to changing stock conditions and believes that the board should explore using biological triggers that could initiate pre-determined actions through the use of control rules.

The PRT encourages the board to resolve the issues that were outlined in the ITT program white paper. Lastly, the PRT recommends that the board explore methodologies to measure the success or failure of management measures for the objectives of the plan. Are there any questions on the FMP review?

CHAIRMAN NELSON: Any questions? All right, then, we do need to have a motion to accept the report.

MR. LAPOINTE: So move.

CHAIRMAN NELSON: Pat Augustine seconded.. Any objections, then, to the motion? All right, it is approved unanimously. All right, anything else, Toni? The next item is Item 6, and that's the LCMT Area 3 Proposal. David is going to present that.

LCMA 3 LCMT PROPOSAL

MR. DAVID SPENCER: Thank you, Mr. Chairman, David Spencer, Area 3 LCMT chairman. The Area 3 LCMT, through two different meetings, have two

recommendations to the board for inclusion in addendum. Both recommendations are transferability issues. The first recommendation is a reduction in our trap cap. Currently it's 2,200 trap cap; a reduction down to 2,000. The second recommendation that we have is to simplify our conservation tax to 20 percent for partial transfers and 10 percent for whole allocation transfers.

Some simple justifications as to why we took these measures – I'll start with the conservation tax. Currently our conservation tax is a two-tiered system. Anybody transferring traps that results in an allocation above 1,800 would be taxed at 50 percent. Any transfers that result in a lower allocation would be 10 percent. We felt that this was fairly complicated, more so than it needs to be.

And in light of our active reductions, that a 50 percent conservation tax was fairly restrictive. Our current proposal is a 20 percent tax for any partial transfers, any time that you break up an allocation to transfer. And, if it's a full transfer of your allocation with no breakup, it's 10 percent. We feel that this still gives us the benefit of obtaining conservation measures from the transfers that we anticipate will occur.

The second item is currently we have a 2,200 trap cap. Our recommendation is to reduce that to 2,000. Some of the justifications that we discussed at our meeting were that a lower number such as this puts a limit on the trap buildup race that we're all inclined to get into. And given the competitive nature of the fishery, it is expected that once transferability is implemented, many fishing entities will be forced to fish the highest number of traps in order to remain competitive.

Also, we discussed that a lower trap cap number actually increases the potential number of participants in Area 3. Given that there is a finite number of traps allocated in Area 3, the lower the trap cap number, the more participants are possible. The third justification is that a 2,000 trap cap is still above where any Area 3 participant will be at the end of our active reductions.

We have three additional years of active reductions that will result in the highest allocation at that point in time being 1,954 traps. 2,000 is still above that, so we felt that it will lend some credence to picking a number such as 2,000. We also felt that the reduction to 2,000 was consistent with several of the ISFMP objectives, maintaining existing social and cultural features of the industry whenever possible, and

promote economic efficiency in harvesting and the use of the resource.

That concludes my presentation. I will be happy to answer any questions. We would ask that this be included in an addendum. I want to point out that one of these issues was from an LCMT meeting in August of '06, and the other one was from October 20th, so we have been waiting patiently in order to get this moving. With the current discussion of transferability, we think this is very timely and want to make sure these recommendations get into the hands of both the states and the federal authorities so they can digest these along with the other transferability issues. Thank you.

CHAIRMAN NELSON: All right, thank you, David. Let me just say that since these are related towards transferability, since we have various taxes associated with that, and since the addendum that we just discussed was focusing on Area 3 in principle, if the board does not object, that we would be including those items as options under the addendum. So, questions for David? All right, David. Any other comments on this? Bill.

MR. ADLER: Thank you, Mr. Chairman. I think this is why I was saying the statement I said before about adding anything. I didn't know if it would be too confusing to add this idea on to the very confusing transferability discussion or whether we would have an Addendum XIII that included this, which would be easier to deal with; two separated addendums, two different ideas, or adding it together. Perhaps the board could give me some advice on that.

CHAIRMAN NELSON: My sense is that since they're related to the transferability issue, that they should be included in that. Let's see what the staff does as far as structuring this proposal and see if it still makes sense once we look at it in February, Bill. And if it doesn't, then you can always suggest separating that out and starting a different addendum for that one.

MR. ADLER: So, Mr. Chairman, do you need a motion to include this into somewhere?

CHAIRMAN NELSON: I think I phrased it that as long as there was no objection from the board, our intention was to include it in the draft addendum for the board to take look at in February, so we're intending to include that. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Along with what Mr. Adler is asking, let's assume

that the staff feels that this would not be appropriate to include, would it not delay the opportunity to move forward with another addendum off until February? And if it will, the question is would that have any deleterious effect on what we're trying to accomplish with this LCMT plan by itself?

CHAIRMAN NELSON: The staff doesn't feel there will be a problem.

MR. AUGUSTINE: Thank you for that clarification, Mr. Chairman.

CHAIRMAN NELSON: Okay, anything else on this? Any public comment on it? Roy.

MR. ROY CAMPINELLI: It's been a long time since anybody has seen me here. Believe me, I don't want to be here.

CHAIRMAN NELSON: It's still nice to see you, Roy.

MR. CAMPINELLI: Thank you. My name is Roy Campinelli, and I thank you for the opportunity to speak today. I would like to read a prepared statement. This is both on transferability and the trap cap that just was talked about.

My father and brother started lobstering 35 years ago. Since then our family, including my two sons, have worked diligently and we now own four offshore lobster boats. Our vessels fish only in Area 3, so my remarks pertain only to that one area. I have been an active participant in drafting of the Area 3 industry plan, as I was both an EMT and an LCMT member.

I recently missed an LCMT meeting because I was unaware of its taking place. At this meeting it was decided to reduce the recommended trap cap in Area 3 transferability trap plan from 2,200 to 2,000 traps. As it stands today, our company has already reduced more traps per vessel than any other business in the industry.

It's been three years since the first time I addressed the ASMFC Lobster Management Board on transferability. Since then our business has had three consecutive yearly losses. Starting in 2004, each year's losses were more than the last, totaling hundreds of thousands of dollars. We have had to reduce the total shore-crew personnel maintaining the traps and vessels from seven to three.

We can't afford to do non-essential maintenance on our vessels. We have taken out second mortgages on

both the office and our homes, as well as sell assets in order to make up the losses that we have incurred and still pay our bills. Unfortunately, when you create more mortgages and loans like this, you only have more debt that you don't know how you're going to pay.

Our 2,100 trap allocation, which we have now, is already too low to sustain our business. Now I am told that we have to cut the trap cap again. Obviously, I can't support this trap cap reduction. I have always supported a 2,600 trap cap because it allows our business to at least be profitable. Yet I don't believe a trap cap should be part of any regulation because it has no resource effort reduction value whatsoever.

I believe a trap cap regulation only controls people's businesses. I believe the ASMFC and the LMCT are charged with reducing effort on the resource and creating a sustainable fishery and it should not be passing regulations that as trap cap does only controls people's businesses. It has already been established under the history-based trap plan that there are large differences in fishing practices, areas fished, vessels, amounts of traps fished and entire operations.

To continue to penalize those with large trap allocations is simply wrong and only disrupts the socio-economics of the industry. I believe it is the obligation of the agencies to create regulations to do this best and not to disrupt the socio-economics of the industry. I would like to make one thing perfectly clear so everybody understands.

Now that the historical trap plan is fully implemented, you have capped the amount of traps that the industry as a whole can fish and in no scenario can it ever increase; so putting in any individual vessel trap cap in a transferable plan has absolutely no, I repeat, no resource effort reduction benefit.

Please do not pass regulations that just control people's businesses and do nothing to rebuild the resource such as a trap cap of 2,000 in a transfer plan. Leave it up to the individual as to the best way to run their business. If a transferable trap plan goes into effect, our business is considering removing one of our vessels from the fishery; then transferring its remaining allocation, after being assessed the conservation tax, to our other three vessels, so they could once again fish 2,600 traps and be profitable.

This would be a win-win situation, conservation with the retirement of nearly 500 traps and profitability for

our other vessels. But under a trap cap plan with only 2,000 traps, we would be unable to participate in this way, but yet, once again, under the proposed 2,000 trap cap, someone who fishes originally only 1,400 traps not only gets to go back to their original of 1,400 traps, but also gets to add another 600 traps to a total of about 2,000 traps.

This is not fair or equitable. All we want is the same opportunity to participate in the transferability plan and to be able to rebuild our allocations back to our original allocations of 2,600. We can't see why any government agency would allow such a large percentage of operations to adjust, grow and prosper under a transferability plan and at the same time single out and jeopardize large vessels or operations survive by a loan, a vessel trap cap which has no biological gains or resource effort reduction.

Does the lobster know whether it was harvested by the lobsterman who, through transferability, increased his trap allocation from 1,400 to 2,000 or by the lobsterman who increases his trap allocation from 2,000 to 2,600? As far as I know, he can't tell the difference. I don't believe that a transferable trap plan meets or is consistent with the National Standards 2, 4 and 8, as my attorneys have pointed out in the past.

If there is a reason I'm unaware of that the National Marine Fisheries Service needs to implement a trap cap such as to help establish an anti-monopoly clause to prevent a few operators from transferring all the allocation to a small number of permits, I suggest an equivalency would be able to be made to work simply by adding the words "and/or" followed by the amount of trap allocation the National Marine Fisheries Service deems necessary to prevent a monopoly.

Example; no single company or individual may own or share ownership of more than X number of qualified LCMA federal permits and/or X number of trap allocation. This way the federal permits and the trap allocations are not tied together. Another operator would be allowed to transfer the amount of traps they feel is necessary to run their business without having to have such a small amount on each one permit; yet, the integrity of the anti-monopoly clause would not be jeopardized.

If there are instances that the National Marine Fisheries Service felt a trap cap was necessary in a transferable trap plan, I would hope if any equivalency or alternatives were possible, that those equivalency or alternatives would be implemented to

ensure National Standards are met. Maybe our transferable trap plan is too simple.

Should we be looking at a plan like the mobile gear sector days-at-sea transferability lease plan where the concerns of latent effort, trap buildup and keeping the industry status quo would be better controlled? If you had transferring of traps made only between similar-sized boats, you would always ensure the diversity and socio-economics of the industry, as well as making sure effort would be kept in check, because an 85-foot vessel would not be able to purchase a 40-foot vessel's permit and turn it into a 365-day a year effort from its 90 days a year it once fished in Area 3 as a 40-foot vessel.

If we had a baseline of your original allocation, you cannot transfer above, as the mobile gear sector does. You would not have to worry about trap buildup. Maybe only vessels with recent fishing history should be able to be transferable to make sure effort is being reduced. We have all shared in the reduction of effort through the Area 3 trap reduction plan, and we should all be allowed to participate in Area 3 transferability plans. However, make sure the effort reduction we've taken are not for nothing. Transferability should not be made too easy no matter what the trap cap may be.

This is the first opportunity that I've had to take a look at the recommendations by the Area 3. It says statement of purpose for the trap cap. I would like to suggest just one thing that maybe will help everybody out. You know, everybody is concerned about buildup as far as increasing traps once transferability comes in.

Under the statement of purpose, everybody has sort of got blinders on. They're always concerned – or right now Area 3 is always – we're going to have a transferability plan and all we're going to do is have a trap cap. That's the plan. In this case here, the state of purpose, if we were to take and possibly put in a percentage where on a yearly basis you only can increase a certain amount versus throwing in the transferability plan all at once and then everybody just increasing, it isn't going to do the resource any good; it isn't going to do anybody any good.

Whatever plan you put in, you have to put in sort of controls. It may alleviate a lot of concerns by just having us increase the same way we were just reduced. It isn't necessary to have a trap cap then; it isn't necessary to be concerned about a lot of effort coming back into the resource. I would like to take any questions that anybody might have.

CHAIRMAN NELSON: All right, Roy, thank you. I assume you're going to be able to leave that statement so that the staff will have that in the development of their addendum. What I would suggest – you had some suggestions for the LCMT plan, and where you were not able to make that meeting, I would suggest that you get together with David, certainly, and others to provide your input.

They may, indeed, embrace various components of it. I can't really speak to that. I would suggest, then, that either you or they present your point of view again at the – let's see, the staff is planning to have a work session committee meeting probably before – yes, it would be at our February meeting for the discussion of the addendum.

But as I say, I think what you ought to do is get together with the LCMT Area 3, provide the sense of what your feelings are for how they might improve that plan so that type of information could be forwarded to the commission, beyond what your statements are that you are going to leave with us.

MR. CAMPINELLI: Thank you very much; I'll take you up on that. Again, I just look for something that is fair and equitable and something that – there are alternatives out there versus just we're going to have a plan and there is going to be cap on it, because there is just as much a situation that person that has 1,200 traps is going to take an increase as much as that person from 2,000 traps is going to take an increase.

So, with something as I've just suggested another alternative where we increase traps on a yearly basis a certain percentage, it would certainly relieve a lot of concerns, and it would certainly be more fair and equitable. Thank you.

CHAIRMAN NELSON: Okay, thank you very much, Roy, and you'll leave that with staff, your comments. Thank you.

MR. CAMPINELLI: A lot of it is handwritten, but I'll leave it, though.

CHAIRMAN NELSON: Okay, are any other public comments? Dennis.

REPRESENTATIVE ABBOTT: Thank you, Mr. Chair. I am always concerned about process. A question that I would have regarding the last speaker was the meeting notification process. I'd like to have an explanation from David Spencer about how LCMT 3 conducts their meeting and what public

notification process that they go through. That concerns me.

CHAIRMAN NELSON: Sure. David, do you want to briefly give us an update on how you get in touch with all your folks for your meetings?

MR. SPENCER: Thank you, Mr. Chairman. Typically the notification is by e-mail, phone calls and mail. On this particular meeting I was out fishing and I asked Bonnie Spinazzola to do the e-mail and postcard routine. As far as I know, everybody was notified. I just point out that we did have, I believe, three or four absentee votes through e-mail and FAX, as well as people obviously attended. I feel that the notification was consistent and adequate. Thank you.

CHAIRMAN NELSON: Okay, and, David, I would just point out again, as I've mentioned to Roy, obviously, Roy has some thoughts that he'd like to share with the LCMT 3; and if you guys get together and discuss that and circulate it among your membership also, so that we can get as full a representation of what you folks are proposing as possible, we'd certainly appreciate that.

MR. SPENCER: Mr. Chairman, I will take Roy's comments and distribute them to the LCMT members. I have no problem with that. I would like to point out that Roy has been an active participant, and we had discussions. We kind of knew basically what his positions were. We addressed them and discussed them at the meeting, but I will take his comments and distribute them. Thank you.

CHAIRMAN NELSON: Okay, thanks very much. Anyone else on the board? Okay, let's move on, then, to the conservation equivalency proposal.

MR. CAMPINELLI: Excuse me, I don't want to get in trouble, but I don't want to get anybody else in trouble either. I certainly don't want to make it sound like I wasn't informed. What happened is I did receive or the office did receive the postcard that the LCMT 3 meeting was taking place. I wasn't told that the postcard had come in, so it was nobody's fault that I was unaware of this, other than it wasn't brought to my attention at my office. The postcard did come to the office. Thank you.

CHAIRMAN NELSON: Okay, I think that's just something that you guys have an opportunity to discuss a little bit further, and we would look to make sure that all views are fully heard and that we get a

basic consensus from the LCMT 3. Thank you very much.

STATE-SPECIFIC CONSERVATION EQUIVALENCY PROPOSAL FOR ADDENDUM X

CHAIRMAN NELSON: All right, Toni, we have various state-specific conservation equivalency proposals for Addendum X, which is reporting, one of our favorite and close to our hearts and pocketbooks.

I believe it's Maine and Massachusetts wanted to speak about their programs and what they're thinking that they would like to have the technical committee evaluate for conservation equivalency. Is that correct at this time? And it's got to be brief, too, by the way. So, George, thank you.

MR. LAPOINTE: Mine will be brief, Mr. Chairman, because I had a bit of an misunderstanding with staff. The issue for Maine is our landings program for harvesters envisions having landings by Maine's lobster zones and not NMFS statistical area. So we have to come up with a conservation equivalency proposal, which we will do – I think Toni said I've got to do it within weeks, so that's what we intend to do. Oh, she just gave me another week, three weeks, four weeks, five weeks. Anyway, we will have a proposal into staff for the technical committee to review.

CHAIRMAN NELSON: All right, thank you, George. Dan.

MR. McKIERNAN: Even briefer, the Commonwealth of Massachusetts would like the technical committee to review our intended action, which is not to require dealers to report the fisherman's area fished, but instead get the area fished off of the documentation that we get from every fisherman, which is the annual recall log. But as a footnote, just to let the board know, we are on track to implement Addendum X, and we are going to require trip-level reporting of 10 percent of our active permit holders.

CHAIRMAN NELSON: Okay, thank you, Dan. Toni.

MR. KERNS: I have the conservation equivalency proposal from the Commonwealth of Massachusetts and if Maine could send in a proposal in the next two to three weeks, that would be wonderful, so the TC can review it over the holidays. As a note, the

addendum has an implementation date of January 1, 2008.

So allowing these proposals to go through a review by the TC and then review by the board at their February meeting would give them a little bit of time for the implementation of that particular section of the addendum that are asking for conservation equivalency. It does not give any states alleviation from any other section of Addendum X. We are moving forward with reporting and all other parts.

STOCK ASSESSMENT UPDATE

CHAIRMAN NELSON: Okay, anything else on that subject? All right, you've got your timeline, et cetera, and let's see if we can work something out that works for the technical committee. The next item actually on my agenda is the stock assessment update. Penny, do you want to give us an update on that?

MS. HOWELL: Very briefly, we've just begun. The first planning meeting of the stock assessment committee will held on November 8. Just to let you know what we've outlined is we're going to have a meeting devoted entirely to planning and outlining the pieces and steps that will be required for this new size-based model, so that we can figure out ahead of time how much time we'll need for data collection and all of the pieces, because we're all new to this modeling process.

We're doing this up front in order to make sure that we can make the deadline by next spring, because we'd like to be able to get through the whole modeling process and have time left over to do the things that were in the plan review, specifically the utility of using yield or spawning biomass per recruit or surplus production model, so that we're not just using this one huge modeling exercise.

We're simpler models afterward in order to check on the answer and get consistent results, so that we have some time to examine outside mortality possibilities, other than the fishery, and see whether they're presenting limiting factors for productivity and longevity. It's something that we only got a chance to address very briefly in the last assessment process, and we're hoping to spend a lot more time this time looking at things that affect natural mortality and being able to simulate what changes in mortality will have in terms of the fishing effect since they compete with each other.

So our intention by the February meeting is to have an outlined plan of when things will be completed so that we will have some time to go through all of this extra work in the spring. That's the outline we have. Thank you.

CHAIRMAN NELSON: Any questions for Penny? Mark.

MR. GIBSON: Have we set the terms of reference for this assessment?

MS. KERNS: We set the terms of reference I believe at the May board meeting. I can forward them to you if you would like.

MR. GIBSON: Can I follow up, Mr. Chairman? I don't remember what was on those, but something that really makes me squirm around in my chair, when I hear it, is that – you know, we hear it from the technical committee that we don't have any relationship between trap numbers and fishing mortality or some variance of that theme.

We also hear it from testimony from the public and industry trap reductions aren't conservation measures; they just rearrange the chairs on the decks of the Titanic. Given that trap reductions are in some way the centerpiece of our effort control plans, that would be the stunning revelation to individuals looking in on this process or from other fishery management arenas.

It seems to me if that's not on the terms of reference, it's a major oversight, and that needs to be examined. I think pretty critically in this updated stock assessment is just what are trap reductions doing in terms of fishing mortality, are we getting anywhere, are we not getting anywhere; and if not, why are they the centerpiece of our effort control programs?

So, without having the TORs here in front of me, I would suggest that they need to be reviewed to make sure that issue is addressed; that is, the relationship between trap numbers, specifically trap reductions and our ability to meet mortality rate targets.

CHAIRMAN NELSON: Well, staff has got this voluminous thing that you wouldn't think would be on a laptop like that, but there is obviously more information in there than I have in my brain at all. If they can't find it just to update you, they can talk about it at the February meetings; how is that?

OTHER BUSINESS

All right, the next item is other business, and we have a couple of items under the other business. Dan wants to update us on how he is going to do all the work to do a simple addendum for the ASMFC.

MR. McKIERNAN: Thank you, John. What I would like to talk about today is the Outer Cape Effort Control Plan and my agency's desire to craft an addendum that captures the rules as they are now from the perspective of the state. If you remember, Addendum III had an Outer Cape Effort Control Plan that was quite restrictive and quite narrow in its eligibility year, a single year.

The year 2000 was to have been all fishermen's future allocation of traps, whatever number of traps they fished in that year. We came back with a replacement plan or modified plan that brought in the years of eligibility to three years, but at the same time we created a new allocation model that included an input parameter which was pounds fished – I'm sorry, pounds landed, in addition to traps fished.

We have managed this fishery for the past three years quite effectively, and we're quite comfortable with the plan as it's performing. However, if you look at the ASMFC plan addendums, you don't see the details in the original addendum, and I think it would be appropriate for us to submit to the board and the commission a document that essentially replaces the old plan with the current plan.

In addition to that, what we find ourselves in kind of a problem situation, especially among the fishermen themselves, where the original plan calls for a 20 percent cut in allocated traps by the year 2008, and that year is upon us next year. The beginning of the fishing year, as everybody knows, is July 1st, and the date the trap tags have to be on is June 1st.

We have seen a reduction in traps allocated and we have seen a further reduction in the traps fished. What I mean by that is there is a percentage of the traps in the system that are not being fished. So, when you compare the traps fished in 1998 as your benchmark and you look at the current situation, we have seen a reduction that approaches 20 percent compared to the traps fished in the years past and the traps fished today, but the allocated traps are a little bit higher.

Since this plan was put into place, we have a new assessment. The Outer Cape Fishery is primarily fishing on the Georges population, which is not

considered overfished. As part of this addendum, we would also like to re-examine the necessity of a 20 percent cut by essentially the beginning of the fishing year in 2008.

So, what I'd like to propose to you, John, and to the board is that Massachusetts DMF do the legwork for this addendum and we submit it to the board for consideration in February to take it out to public hearing after the February board meeting, but it be a stand-alone addendum and not mixed in with the other issues we talked about today because we don't feel it's necessary for that issue to be aired up and down the coast since all the permit holders are essentially in Massachusetts. Thank you.

CHAIRMAN NELSON: Okay, so, Dan, you're making a motion for the board to initiate Addendum XIII?

MR. McKIERNAN: Yes, I'd like to make a motion to have the board initiate a replacement addendum, Addendum XIII, that would capture the Outer Cape Cod Effort Control Plan consistent with the rules that are in existence now in the Commonwealth of Massachusetts for the Outer Cape Cod Fishery, and it would also address the trap cuts that would be required for 2008.

CHAIRMAN NELSON: Okay, is there a second to that? Mark, okay, thank you. The condition on this is that Massachusetts is going to bring forward the entire addendum at the February meeting for the board to review and decide on whether they want to move forward on that. Is that clear? All right, any discussion on it? Pat.

MR. P. WHITE: I guess I'm just a little confused, Mr. Chairman, if Dan could explain because you're talking about now an effort reduction plan and not a mortality reduction plan based on the conversation we just had a minute ago, and what has changed out there that would want to increase the effort rather than change the mortality rate?

CHAIRMAN NELSON: All right, very briefly, Dan.

MR. McKIERNAN: We're not interested in increasing traps in the fishery. We're simply looking to extend the deadline for which we might meet that 20 percent reduction. We still have reductions that go on each time to permit holders transfer allocation. Even after today's discussion, we're still going to allow state-only permit holders to transfer allocation; and when that happens, 10 percent of those traps are

taken out of the system, so we are on a long-term trajectory to continue to reduce traps.

The fundamental question is do we need to assess all participants in this fishery a trap reduction this upcoming year in order to meet the reduction that was called for back in 2001 when Addendum III was approved. So we're not looking to increase traps; we're just trying to address or postpone an active reduction where every fisherman in the fishery would be assessed a reduction in traps. Does that make sense, Pat?

CHAIRMAN NELSON: Okay, again, the intent is Massachusetts will bring forward a document for us to review at the February meeting, and the board, at that time, can evaluate what they want to do at that point. Is there any objection to the motion being adopted? All right, seeing none, that motion is adopted.

Dan, work with staff so there aren't any flaws in your presentation in your addendum in February. Thank you. All right, our next item, and, Harry, you have about three minutes to give us a very brief update on rulemaking.

MR. MEARS: Thank you, Mr. Chairman, but I was only planning on two minutes. Earlier we talked about moving forward with how we're spending a substantive amount of our time on working toward implementation of an ITT program. Basically, as I said earlier, it's a very complex issue.

We've talked in past years about how we need to work closer together from state and federal jurisdictions, and this is no better example of an increased sensitivity toward the complex issues we have to deal with, toward the shorter term and longer term of lobster rulemaking. But, by no means the only action that we've been involved in, on October 5th the Service published a final rule that implemented several measures, including minimum lobster size increases, lobster trap escape vents, size increases, and also a series of lobster trap allocation reductions in Area 3.

In addition to that, on September 21st we issued an advanced notice to proposed rulemaking. The public comment period closed October 22nd. We're in the process of evaluating those comments. That particular action follows up two recommendations from Addendum X to the plan and also XI. These incorporate 100 percent mandatory reporting requirements for federal lobster dealers, a maximum length restriction in several lobster management area

and a revision to the definition of a V-notch for protection of egg-bearing female lobsters in several management areas. That's an update of where we are with federal rulemaking. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Okay, I'm sure there are no questions for Harry. Seeing none, Toni has requested to make a couple of last comments, and then I have a comment.

MS. KERNS: This is John's last meeting as chairman and last Penney's last meeting as chair of the TC and David's last meeting as chair of the AP, and I wanted to thank the three of them for all of their hard work. It's been a pleasure working with all of them. (Applause)

CHAIRMAN NELSON: I did want to also thank Toni, Penney, David, and Joe, because he's staying, and also all the board members for the last couple of years. We've dealt with a variety of issues, certainly some more interesting than others. I am not just looking at Connecticut for that reason. Hopefully, we are making significant strides to conserve the lobster resource and that it will be there for future generations.

ADJOURN

I want to thank everybody for all their cooperation, the staff, certainly. They do the yeoman work, and I just sit here as just another pretty face. Again, I want to thank the board for all of their cooperation during that time. Thank you very much. (Applause) Brian, good luck. We are adjourned.

(Whereupon, the meeting was adjourned at 11:00 o'clock a.m., October 29, 2007.)
