

**PROCEEDINGS**  
**of the**  
**ATLANTIC STATES MARINE FISHERIES COMMISSION**  
**AMERICAN LOBSTER MANAGEMENT BOARD**

Radisson Hotel  
Alexandria, Virginia  
August 17, 2005

Table of Contents

Public Comment..... 4  
Area 6 Compliance Review ..... 5  
Area 2 Effort Control Plan..... 19  
Review of Draft Addendum VII ..... 26  
Outer Cape Compliance Review..... 40  
Stock Assessment Update ..... 44  
Lobster Health Steering Committee Update ..... 44

## Index of Motions

MR. GEORGE LAPOINTE: And the motion reads move that the board recommend to the ISFMP Policy Board that the State of Connecticut be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it failed to implement and enforce the gauge increase from 3-1/4 inches to 3-9/32 in Area 6 by July 1, 2005. ....	6
This measure is required to ensure that the F-10 targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, Connecticut must increase the Area 6 gauge to 3-9/32 of an inch. ....	6
MR. ADLER: Mr. Chairman, I'd like to make a motion to table this motion until the next Lobster Board meeting. ....	13
MR. ADLER: Thank you, Mr. Chairman. I will the motion to move Addendum VII on to public hearing. ....	31
CHAIRMAN WHITE: Everybody all set? All those in favor of the motion, please raise your right hand; all those opposed; null votes; abstentions. The motion passes. ....	40
MR. COLVIN: I move that the board recommend to the ISFMP Policy Board that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce the gauge increase from 3-3/8 inches to 3-13/32 inches in Outer Cape Cod by July 1, 2005. ....	43
This measure is required to ensure that the F-10 percent targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come into compliance, the Commonwealth must increase the Outer Cape Cod gauge size to 3-13/32 inches. ....	43

ATLANTIC STATES MARINE  
FISHERIES COMMISSION

*AMERICAN LOBSTER MANAGEMENT  
BOARD*

RADISSON HOTEL OLD TOWN  
ALEXANDRIA, VIRGINIA

AUGUST 17, 2005

The Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Radisson Hotel Old Town, Alexandria, Virginia, August 17, 2005, and was called to order at 4:45 o'clock p.m. by Chairman Patten D. White.

CHAIRMAN PATTEN D. WHITE: It's been a long day and it's going to be longer if we don't get started, so I'd like to start the Lobster Board meeting now.

I hope you all have the agenda before you. Assuming there are no changes to the agenda, does anybody have any other business to add on at the end of meeting? Thank you very much.

Proceedings from the February 2005 Lobster Board Meeting, does anybody have any changes? Mr. Mears.

MR. HARRY MEARS: Mr. Chairman, I do have one comment concerning the minutes. I'd like to request that the PowerPoint presentation that Mr. Burns presented as part of the discussion on the Area 3, 4, and 5 historical participation be made part of the minutes, the actual graphics themselves, because they give the substance in context and let the reader understand a lot of the comments that were made during the meeting.

CHAIRMAN WHITE: Thank you, good suggestion. I have a nod from staff that that will be taken care of. Bill, you had a motion?

MR. WILLIAM A. ADLER: Motion to accept as amended.

CHAIRMAN WHITE: Are there any objections to the motion? The proceedings are accepted.

**Public Comment**

I will now go briefly to public comment. Is there anybody from the public that would like to speak? There will also be an opportunity, as we go through the action items, for the public to speak then, too, but does anybody have anything they want to address at this point? Yes.

MR. TED COBURN: Thank you, Mr. Chairman. Ted Coburn, Lobster Restoration. I'd like to start off with a tidbit of good news from the Lobster Restoration relative to Area 2. We have been seeing about 22 percent more lobsters per day trip than we had seen last year.

I think that's good news. I'm sorry to say the Lobster Restoration Program cannot take credit for that because of timing, but I thought you would welcome the good news. Thank you, Mr. Chairman.

CHAIRMAN WHITE: Thank you, Ted, that is good news. Any other public comment? Yes.

MR. DAVID JORDAN: Dave Jordan, Area 2. I would just like to thank Vince O'Shea for the letter I got in response to the letters I sent after the last board meeting. It was greatly appreciated, and it's nice to know that somebody is reading what I write. It's the first letter I've gotten in a long time. Thank you.

CHAIRMAN WHITE: Thanks for your comments, David, and I hope that's not the limit of them. Okay, next issue, Area 6 Conservation Equivalency Update. Toni.

### **Area 6 Compliance Review**

MS. TONI KERNS: Thank you, Mr. Chairman. I'm just going to go through a quick review of the gauge increases that were scheduled for July 1<sup>st</sup> of 2005, and the states that have not implemented those gauge increases.

The State of Connecticut was required to increase the gauge in Area 6 from 3-1/4 to 3-9/32, and this has not been done. The Commonwealth of Massachusetts was required to increase the gauge in Area 2 and in the Outer Cape from 3-3/8 to 3-13/32, and this has not been done. The State of Rhode Island was required to increase the gauge in Area 2 from 3-3/8 to 3-13/32, and this has not been completed.

CHAIRMAN WHITE: Thank you, Toni. Eric, would you like to address that?

MR. ERIC SMITH: Thank you, Mr. Chairman. Recall in February, Connecticut and New York came before the board and announced that we would propose a conservation equivalency plan in lieu of the required gauge increase, and that plan would be based on a V-notch program.

We went through the LCMT process, and at the same time the Connecticut industry got a Connecticut state senator to introduce a bill that would fund such a program. Our department's conditions were that it had to be funded and it had to be able to be done by a contractor.

We were very clear about those two conditions all through the session, and we

worked with the industry to try and make that happen. Based on the plan we developed with the LCMT, it went before the technical committee. You recall the technical committee had concerns and did not vote to support it.

In May we went before the board, made a case that recognized the views of the technical committee, but made other points and the board ultimately agreed with us and approved this plan for conservation equivalency based on expected funding approval by the Connecticut General Assembly in June for implementation by November 1<sup>st</sup>, so that we could notch 100,000 lobsters by the end of June 2006.

The end of the legislative session occurred in the first week of June; and the day before the session ended, the guaranteed or the appropriated funding was removed from that bill, and it was left basically the department should search for all available sources.

I was, frankly, tempted at that time to simply move on and do what the plan required, but I was prevailed upon to see if we could not get something into the Connecticut Bond Fund Bill, which is basically a supplemental bill that they debate during June and fund specific projects through.

That debate was engaged. The proponents of the program worked on it. On June 27<sup>th</sup> the bond bill came out for passage at a special one-day session. The V-notch program funding was not in the bond bill.

On July 12<sup>th</sup> the department announced the interim regulation to be effective August 11<sup>th</sup>, last week, to implement the required 9/32 of an inch gauge increase.

On August 1<sup>st</sup> industry association officers and actually LCMT members and two state senators met with our deputy commissioner and myself, our legislative liaison, and the

two senators. It was intended that we would — actually, it sounded like we were going to discuss how to be effective in getting this program for 2006.

And, of course, not unexpectedly, it evolved into what can be done to get the V-notch program in place for 2005, so that we can not have to do the gauge increase. A senator stated that she had received a firm commitment for state funding from the Chief of the State Budget Office, and that she would have a letter to that effect sent prior to this meeting.

With that kind of a commitment, the department felt it was impossible to increase the minimum length and then come to the commission meeting the very next week and ask for reconsideration and a rollback. That, frankly, in our view was making it almost impossible to get a fair hearing on the alternative funding strategy that we thought was forthcoming.

The department's decision, therefore, was to send another notice to hold off until this coming Monday, the 22nd, which would be after today's meeting, with the understanding that we could very well be found out of compliance.

A notice of fishermen was sent on August 10<sup>th</sup>, stating that on August 22<sup>nd</sup> the gauge increase would occur unless we sent a subsequent notice announcing that ASMFC had approved the revised funding strategy.

Regrettably, we received on such letter. Connecticut is, therefore, out of compliance as of this date, but I expect we will be in compliance on this coming Monday. Thank you.

CHAIRMAN WHITE: George.

MR. GEORGE LAPOINTE: Procedurally, Mr. Chairman, I think we should find

Connecticut out of compliance, and I have a motion to that effect. Should I bring it to staff?

CHAIRMAN WHITE: Yes.

**MR. GEORGE LAPOINTE: And the motion reads move that the board recommend to the ISFMP Policy Board that the State of Connecticut be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it failed to implement and enforce the gauge increase from 3-1/4 inches to 3-9/32 in Area 6 by July 1, 2005.**

**This measure is required to ensure that the F-10 targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, Connecticut must increase the Area 6 gauge to 3-9/32 of an inch.**

CHAIRMAN WHITE: Do I have a second on that? John Nelson seconds. Discussion on the motion? George, do you want to comment on your motion?

MR. LAPOINTE: Again, it's just maintaining the consistency of our program. I fully expect that they'll be back in. It's taken more time than they thought and we thought, and so I think procedurally we should find them out of compliance, and they'll be back in quite soon, but it just completes the loop.

CHAIRMAN WHITE: Other comments from the board? Eric.

MR. SMITH: This is obviously an awkward position to be in, particularly because of the position I took last year on a couple of these things and the one I took yesterday when I actually moved to find a couple of states out of compliance because they hadn't done everything that was required by the plan.

I can't very well argue against it. I would have wished that we had it resolved beforehand. It didn't happen. Five days away is not too far, but I guess I don't dispute the nature of the motion because it's consistent with what we've done before.

The next time we meet is November, and that's a long way. The reason we adopted the process that we used last year, which if you recall with black sea bass and scup, it was kind of a time certain.

Okay, we expect you're going, in this case, to be in compliance on Monday, but if something happens and you're not, then you don't have to wait until November. I am bugged by it, but I guess I understand it. Thank you.

CHAIRMAN LAPOINTE: George.

MR. LAPOINTE: Do we have the latitude to put in language like that? I'm guess I'm looking at staff. I haven't done too well with procedural issues today, so I'm reluctant to ask.

MR. SMITH: If I may, Mr. Chairman, I guess the thing I didn't say -- and maybe Bob was going to say it -- is what we've done in past times is have a sentence -- and it kind of says it -- in order to come into compliance, Connecticut must increase Area 6 gauge to 3-9/32.

I guess the question is what we've done in the past is put a time certain on it and say "by August 22<sup>nd</sup>". That's consistent with -- then technically you're not finding us out of compliance for the five days. Well, of course, we are. I guess I'm going to shut up, we are.

CHAIRMAN WHITE: Bob.

MR. ROBERT E. BEAL: Eric is right, in the past we have put in a time certain if a state is approaching a non-compliance situation. However, since the July 1<sup>st</sup> date has passed, that isn't our normal process. The board does have some leeway to do that in this instance, if they want.

The other thing that's out there is if a state is found out of compliance or this board recommends a state is out of compliance, it goes through the Policy Board and through the full Commission, the executive director has up to ten days to notify the secretaries of Commerce and Interior of that finding.

If, as Eric says, the State of Connecticut is back in compliance next Monday, the 22<sup>nd</sup>, that's within that 10-day window, we can receive that in writing, and that's consistent with our withdrawal of a non-compliance, then Vince, as the executive director, would not have to submit his letters to the Secretary of Commerce and Interior. He can avail himself of that 10-day window, if that's the direction from the board.

CHAIRMAN WHITE: Thank you, Bob. Gordon, you had a comment?

MR. GORDON C. COLVIN: I have a question for the record that may reflect itself in a suggested change to the motion, and that relates to the precise nature of the board's approval of the V-notch program.

As I recall it, Connecticut placed on the table a V-notch program that had been developed in consultation, and with the strong support of the Area 6 LCMT, that called for implementation, the beginning of the implementation of the notching itself, the field world, in November of this year.

I believe that the board approved that program with some condition as an alternative to raising the gauge on July 1<sup>st</sup>, with some condition with respect to the

guarantee of funding, which, of course, the funding unfortunately has not, to date, become available.

So, my question is whether if as an alternative to raising the gauge, funding for the V-notch did become available and the program began and was carried out as proposed beginning November 1<sup>st</sup>, would there still be a non-compliance issue?

Have we already passed the point of no return on the delivery of funding for this program based on the board's record? If we haven't, then it would seem that the last sentence might be modified to so indicate.

CHAIRMAN WHITE: Thank you, Gordon. I think of this was predicated upon the letter that Eric sent in saying that he was not getting the funding, so unless we had something to the contrary to that, I don't see where we could go with it. I'll continue around the room with the discussion. Bill, you were next.

MR. ADLER: Thank you, Mr. Chairman. It was down the road of what Gordon was after, because I hate to have this go through and then -- what's the hope of that -- okay, she didn't deliver the letter today -- what's the hope of getting that soon so that you could implement your V-notch idea?

MR. SMITH: Okay, I've had this conversation with some of the lobstermen, too, and they're not happy with it, but I hope they just understand it. The whole thing we proposed in May -- and I'll try and wrap Gordon's question into Bill's also -- the whole notion of it was know in early June that you're getting the money, because it's going to take a long time through our contracting process to get the people on the ground to actually do this.

We wanted to start November 1<sup>st</sup> because that's when the warm water/cold water issue

is resolved and then you can notch lobsters down in Southern New England without a concern that you're going to have enhanced natural mortality for that reason. It's the only reason we were waiting for November 1<sup>st</sup>.

Our contracting process, at best, according to the Office of Policy and Management, who approves them, at best, if everything works right, it takes six months. If I had actually started in April to do all the background work, the justification, the scope of work, all of the stuff that I could do before I knew whether the money was ready, but we couldn't start the process until we knew the money was approved.

I anticipated that around June 7<sup>th</sup>; and every time it delayed after that, you were encroaching on November 1<sup>st</sup>. And, really, November 1<sup>st</sup> is really October 1<sup>st</sup> from a contractor's point of view because they need lead time.

They need to put people on the ground, train them, hire them, you know, to be able to do those kind of things. That time is just too compressed now. If somebody handed me a check for a million dollars and said, "Here, put it through your contract process and do", it would be sometime early next year.

So, we analyzed what would that mean? I mean, what do we lose? How much of the 100,000 lobsters can we do? And since this meeting on August 1<sup>st</sup>, we've tried to figure that out in a way that was most favorable to the program.

The problem is November and December in Long Island Sound are pretty good months as far as availability of lobsters go; so if you lose those two months, it's a lot more important than if you lose January and February, and March is actually a pretty poor month, too.



So, now you're compressed into April, May and June to do what you wanted to do from November through June. So my answer and my conclusion and the thing that the fishermen don't like to hear me say is the train left the station in the first week of June, and only if we were provided money that didn't have to go through our contracting process could we then do it.

Say you get some new source of money and it's September 1<sup>st</sup>, okay, you've got a month before the vendor needs to know, and that means a month to set up the whole strategy of funding, design who is going to do the work, all of those kind of things; I've been too long in this career to go "what if" that way.

To me it's not possible; the train left the station months ago, and what we ought do is decide what the best program is for next year, because this one, we're already seven weeks gone into where we were supposed to be. So, I appreciate the question and the sentiment, but I don't see it happening. That's the sad reality of life.

CHAIRMAN WHITE: Doc Gunther.

SENATOR GEORGE L. GUNTHER: I'd say this is very embarrassing for me because I was involved in the legislative process. I can tell you if it hadn't been that we had the promise of the money, you wouldn't have had us work for the bill. It would have died, no question in my mind.

I think the enlargement of the gauges out there is going to hurt the little guy out there. It isn't going to help them. It's not going to solve any of the problems we have with the lobster industry. I think that everybody in the legislature knew that money was supposed to be coming.

Unfortunately, on the way to the forum, somebody scuttled it. I can tell you in my

book, from the rumors I've heard, it might have been scuttled. I don't think any of us knew about it. In fact, the senator who made the promise for the money did not take it clear through the echelons, through the governor's office, OPM or nothing.

So, technically, there is no money there. Although I have sat and talked with some of the lobstermen and that -- and there's some possible proposals that might come down the road. Now, whether you can take and stop the procedure on compliance and that type of thing, I don't know.

I would like to see us not take that stand; or, if the stand is taken, that it wouldn't be implemented immediately; because, even through the admission of Eric the remark was made when the money was there, that all available sources are not known to be available.

Now, if there's available sources other than the process -- and, incidentally, the bonding money, it couldn't be. Under normal circumstances, you don't bond for an appropriation like this was supposed to be.

I do think -- and I'm hearing from some of the people in the industry themselves that the lobstermen are willing to take and do this program at their expense, even, and even coming up with some money to help, because the million dollars in that appropriation that was coming up, I think it's something like only \$120,000 was going to go to the lobstermen.

The rest of the money was going to be spent on all the administrative stuff. So, if that were the case -- and that's the first I've heard of it -- I understand that the program, we had a comment that it's only going to involve about, I believe the figure was 6 percent of the lobsters, and yet I hear from the industry it could be 26 percent, so the little lobsterman, depending on who could

believe in this whole situation, the lobsterman is one who is going to take his lumps on this.

I think that other states, in fact, even New York and Rhode Island, I think are looking towards this notching program to see if it could be the answer to our problems and that. So, I think any way that -- I don't know how I can appeal to you, because I know damned right well we've got a law.

The law says that this guy has to go to work. The law says we have these time schedules and that. I certainly would like to see some way of sort of dragging your feet, because I know it's done in the process.

The fact that we don't have it aboard right this minute shows that -- thank God, Eric had dragged his feet a bit, you know. So, I don't know how you broach this thing; I don't know how it can be done. I do think there may be other sources of money out there, be it from the industry itself or, for that matter, within six months we'll be back into session.

Whether we'll go in there and get a repealer on the bill or not and whether we can get money up front or if we could even get money less than a million dollars, because you don't need it all up front, and especially if the cost for the program itself would be the \$120,000 or \$200,000, whatever it might be -- so, it's an awkward position, it's an awkward position for me to be in because I don't believe in breaking the law.

All I can tell you -- and I know that Connecticut hasn't got the greatest reputation for not breaking the laws up there, not with a governor sitting in jail and that, but, anyway, I know there's some things that you like to see done.

I think most of the people I've talked to are very sympathetic that this thing is not the -- the gauge increase is not going help the

lobstermen. He's going to pay one way or another. Otherwise, he grabs a few shorts and throws them in the market for making up what he might lose with that gauge.

And they tell me 26 percent is a loss factor in that type of thing. So, I say there's a good reason to stop and consider maybe there's some way we can resolve the thing with other money sources. I don't have the answer for it, but I would like to see us go slowly.

CHAIRMAN WHITE: Doc, I appreciate where you're coming from and I thank you for your comments. I do think we have a process, and I think we have got at least go around and hear this out. Pat Augustine, you were next.

MR. PATRICK AUGUSTINE: I'll pass, Mr. Chairman. Doc touched on all the issues I was going to raise. It seems to me that the effort that Connecticut went through, even what we did, through the LCMT, the plan looked good.

If it doesn't come to pass, monies for 2006 will be available in 2006 to implement in the fall of 2006. I hope the effort and the direction we're trying to go with the V-notch program will supersede any future look at gauge increases. Thank you.

DR. LANCE STEWART: Pat, I just want to reiterate -- not reiterate what Doc said, but really re-emphasize that it would be a shame to lose this V-notch program, because I really think it's biologically sound for Long Island Sound.

It's a resident population. It has genetic characteristics that need to be retained. A size increase just doesn't buy it for population recovery. It's a great loss to the fishermen, you know, much higher than the 6 percent that's been estimated to be low as part of their catch loss.

This is a residual fishery. We have lost more than three-quarters of the guys in Long Island Sound because of not their fishing mortality effects on the population, but because of environmental or chemical disasters.

So, you have a compounded problem here. You're not working with a penalty because you're overfishing or you're not in a resource conservation mode. It's a back-against-the-wall issue. There's some very ludicrous things that have gone on with the loss of this money that approach conspiracy, quite honestly, and it really bothers me because I just learned about a couple of days ago.

If there is anything we could have done ahead of time, we might have had some assurance that the letter was here. So, all I'm saying is I don't know what the mechanisms are for trying to buy time. It probably isn't possible, but we certainly don't want to lose the V-notch program.

We certainly want to give it the scientific credibility that it seems to have been proven in Area 2. So, with all the ways the Coastal Management Program is coming to rely on V-notching and as a way of infusing a better population recruitment, if we're denied this opportunity because we have to respond to a mandatory, very miniscule gauge increase, it won't help the population. I'm just looking for some solutions.

CHAIRMAN WHITE: Thank you, Lance. Maybe you don't need to comment Gordon, but I have a concern, as we move down this road of discussion, that in the same management area you also have a state that has complied with it and gone up on their gauge because of what happened there. I don't want to put you on the spot, Gordon, and you don't have to comment if you don't want to, but I am concerned if we go down

this road of delay -- I mean, it's up to the board -- then it counters what you have already done.

MR. COLVIN: Well, Brian or Pat may want to speak to this, and I would certainly encourage them as well. I am going to vote for the motion, and it's not going to give me any great pleasure. I think the motion is in order, and I think it has to be voted for. I think the whole thing is a darned shame, and I think Doc said it pretty well.

CHAIRMAN WHITE: Thank you. Brian.

MR. BRIAN CULHANE: I appreciate your concern, first, Pat. I just wanted to say this put New York in an awkward situation as well because we were in a situation of waiting for something to happen in Connecticut. That didn't happen.

And, because this is a species Gordon doesn't have regulatory authority on, it took an effort at the end of the legislative session to get a bill passed that would implement the gauge increase, and we did, and those notices have now gone out.

You know, New York has been out of compliance in the past, and none of us like being in that situation, but we have already taken our steps; and, unfortunately, I think this is something we have to do. Thank you.

CHAIRMAN WHITE: Gil, I had you next.

MR. GIL POPE: Thank you, Pat. On Page 17 of the minutes from the last meeting, it says -- and I think this is quoting Eric -- "Now having said all of that, I'll offer a motion to move that the board approve the Lobster Management Area 6 plan to substitute a V-notch program for a gauge increase project subject to funding being made available."

Now, I didn't know if there was a time certain on that, or whether that was supposed to be done before the scheduled gauge increase? I am looking through the minutes of the last meeting, and it didn't look like it was either resolved or withdrawn. Could somebody refresh my memory as to what happened with that motion?

CHAIRMAN WHITE: I think the motion went forward, Gil, but I think it was predicated upon some very definite time certainties that Eric had given us as to the process of funding that was going to be available to him, which wasn't.

MR. POPE: I know that, but the point is it didn't seem to be tied into any particular time certain. I guess you were tying it into in lieu of the scheduled gauge increase, correct?

CHAIRMAN WHITE: Eric.

MR. SMITH: You have to take those comments and then read all the minutes because the last time I looked through them, I think there were other places where I talk more about the deadlines and so forth.

And, in the documents we put forth, we also talked about, you know, it's understood what we're trying to do is defer the gauge increase at that time. We need the funding to get the program going, and we need to know about that at that time. Well, it didn't happen.

I mean, technically I have regrets. The fishermen won't like to hear this either. I mean, looking back on it now, as soon as June 7<sup>th</sup> came and went, I mean, the writing -- I have equated this to people, you know, at that point we had somebody on life support, we're trying to get them to stay alive -- after June 7<sup>th</sup>, you're really filling in

the grave, you're trying to bring somebody back from the dead.

That's how hard it became. We've tried twice, and it hasn't happened, and now there's no more time. So, in the whole of the minutes, I think I tried to capture that whole part of the process and what the timelines were and what we needed to do.

MR. POPE: And I'm hearing from some of the lobstermen in that area that this program could still be going through even without the funding with their volunteering to work.

I don't know how willing we are at this particular point in time to have that same program go through rather than funding, but have it being done voluntarily. Is that a possibility and should we hear from what they have to say on this?

CHAIRMAN WHITE: You can comment on it, if you want, Eric, but I just question now if it would be the same approval of a conservation equivalency as it was before?

MR. SMITH: Two answers to that, and that's one of them. We had a very specific process that we started out in February to go through. We designed the program. We had those debates interminably with the LCMT; can't we do it voluntarily; can't we do it differently?

Our department, me, largely, but not just me, said this has got to be quantifiable, verifiable, funded. You have to show that you do what you say you're going to do. You know, as late as a couple of weeks ago I still had people saying why can't we just promise that we'll do it?

That's not good enough for our department. If we want to redesign the program and go for conservation equivalency for 2006 and retool it to have those kind of parameters in there instead of verifiable and quantifiable

terms, that's a different proposal. Again, we're talking about 2006 instead of where we happen to be right now.

CHAIRMAN WHITE: Bill Adler, you were next.

**MR. ADLER: Mr. Chairman, I'd like to make a motion to table this motion until the next Lobster Board meeting.**

CHAIRMAN WHITE: I would like to check with staff because I don't know if we can. I don't think that's an appropriate motion for compliance.

MR. ADLER: I've heard other fishery boards --

CHAIRMAN WHITE: Was that on a compliance issue?

MR. ADLER: -- where they postponed some decision for a while on other issues over the last six years, seven years. I just didn't see why that couldn't be in this case, too.

CHAIRMAN WHITE: Well, if you will hold that thought, Bill, and I'll go to the next two speakers; and as soon as I get an answer, I'll come back. George, you were next.

MR. LAPOINTE: Connecticut is in an awkward spot, as is New York, over this issue. We've been lucky in the State of Maine that we did start our V-notching decades ago, so it's will accepted.

As we move forward past the next assessment, particularly because there's interest, I would encourage people to consider V-notching programs that aren't tied to funding, because it's a good thing to do.

The benefits won't accrue right away, but I hope people keep that on their plate as we move forward, because I think it's worthy of consideration by this board and the states as we move forward to the next year.

CHAIRMAN WHITE: Thank you, George. John Nelson, you were next.

MR. JOHN I. NELSON: Thank you, Mr. Chairman. These issues never are very pleasant, but we do have a process and we do have to follow that process. We had a lot of discussion at the last Lobster Board meeting on what was the ramification of delaying or giving Connecticut the opportunity to do a conservation equivalency.

We were willing, at that point, to give them the benefit of the doubt. There was a lot of doubt, quite frankly, that there was going to be money available, but we still gave them the benefit of the doubt that that might happen.

Unfortunately, obviously folks let Eric and department down, and now they really have no other alternatives other than to go back to Plan A, which is you have to put in the gauge increase. I can't see any way of avoiding moving ahead with this.

If they are going to move ahead with the gauge, they can notify us in a timely fashion and stop the non-compliance process, but that does have to take place. Again, we had a long discussion about this, and I would be opposed to tabling it. I think we do have to just move ahead and deal with this now.

CHAIRMAN WHITE: Dennis Abbott, you were next.

MR. DENNIS ABBOTT: Well, I was just going to comment about the tabling motion, but I don't know where we stand with that.

CHAIRMAN WHITE: Hang on one minute, Dennis, and we'll find out.

MR. ABBOTT: Will, I was just going to comment that a tabling motion would seem to be in order if it received a second, and then we'd deal with it. I mean, we should either vote it up or down and move ahead and move the question.

CHAIRMAN WHITE: Well, it was a motion to postpone, not a motion to table; correct?

MR. ABBOTT: I think he said --

MR. ADLER: Which should it be? I wanted to put it to the next Lobster Board meeting. That's all I wanted to do.

CHAIRMAN WHITE: You're postponing it to another meeting and not to the end of this meeting?

MR. ADLER: Right, postpone it to the Lobster Board meeting.

CHAIRMAN WHITE: Well, is someone seconding Bill's motion? Okay, Everett is seconding Bill's motion. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, my normal practice is to give the advice to the chairman, and I have done that, and at his request I just make this comment.

It's the board's prerogative to postpone this motion to the next meeting, but I think you need to think very carefully about what you're doing here. The 1<sup>st</sup> of July something was supposed to happen; it hasn't happened, and it's now been brought before this board.

And, for the board to then say, well, we'll wait until later to attend to it sort of sends an

important signal that you really need to think carefully about.

But, the question you all asked us was technically is there any reason why you couldn't postpone it, if the board decided to do that, so there's no restriction on doing that. And the correct term would be "postpone" to a specific time, and that's debatable with regard to the time.

CHAIRMAN WHITE: And to clarify that, Bill, did you have a specific time, to the next board meeting?

MR. ADLER: Yes, the next board meeting.

CHAIRMAN WHITE: Okay. To the motion, I have Dennis.

MR. ABBOTT: Thank you, Mr. Chairman. I'd be opposed to this motion. I think we have a duty to perform, and I'd think that we'd be just setting us up in the future with always having the opportunity to postpone some action that we should be making and that being an excuse for allowing us to do it, that we've done it before. I just think we shouldn't go along with this motion.

CHAIRMAN WHITE: Thank you, Dennis. Do all the people that have their hands raised have something new or in support of this? Everett, was yours just for clarification? Okay, Vito.

MR. VITO CALOMO: I think you have an unusual circumstance, and when I went to school there was always there was an exception to the rule, and this, I believe, is an exception to the rules, so I will support this motion, Mr. Chairman.

With all due respect to everybody speaking prior to myself, we have a duty to perform. It's funny we say we have a duty to perform; yet, just in the past meeting we didn't perform the same duty. Thank you, Mr. Chairman.

CHAIRMAN WHITE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. New York is not going to support this motion. This is going to drive a stake in the relationship between the Connecticut lobstermen and the New York lobstermen.

They have worked diligently in Area 6 in a team effort to move forward with the V-notch program. They have worked diligently to come to compromise and agreement on all aspects of that. They have met several times, and it's been teeth-gnashing, name calling -- I guess there was some name calling there -- and some threats on life.

If we didn't support where we were going, we'd have hell to pay. My concern right now is that, yes, there's a process that we have to follow, but in this instance to abdicate what we have to do based on the fact that we are contiguous states, fishing in the same body of water, it sends a very clear signal to our legislative body, what are you people doing.

They went forward, based on recommendations that we were going to get the money -- I won't regurgitate all the things that Eric said -- and I am very sorry that we didn't get the money, that we haven't come up with a way of doing it.

There's absolutely no question in my mind, based on what I've read and even comments that Joe has made on the record, V-notching works.

We've got to come up with a way that we can implement this as quickly as possible. But, there's no way I could support the motion, and I'm not sure my other two partners from New York can also support it.

CHAIRMAN WHITE: Thank you, Pat. Ritchie White.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. I can't support the motion. Eric has come forward and said he's going up on the gauge, so I don't understand what we gain by waiting until the next meeting.

The idea of trying to put together a program that the fishermen could do this without raising the money, I mean, I think it's a great idea, but to be able to put that into effect by the next meeting I think is unrealistic. I think we have to stick with our rules and go ahead. Thank you.

CHAIRMAN WHITE: Thank you, Ritchie. Mark Gibson.

MR. MARK GIBSON: I hear what Pat Augustine is saying, and I hear the others about the process. I'm anticipating that this motion to postpone is not going to pass. There are two other states that we'll be shortly dealing with in terms of gauge increases or lack thereof.

I hope the board will listen closely to the arguments about why that's taken place in the other states and nuances and differences between the situations that Connecticut and Rhode Island and Massachusetts will find themselves, and we may very well be asking for the sort of consideration here.

CHAIRMAN WHITE: Thank you, Mark. George, you're next.

MR. LAPOINTE: Mr. Chairman, I think the arguments have been laid out both pro and con, and, therefore, I call the question.

CHAIRMAN WHITE: I have one more comment I would like from Gordon.

MR. COLVIN: This probably is clear, but I need to just make sure the record does

clearly reflect it, Mr. Chairman, and I thank you for recognizing me.

The gauge is up in New York. It was done by statute. It's in effect, and the department will be enforcing it. The gauge is not up in Connecticut. Any postponement that was supported by this board of bringing the Connecticut gauge up would be very unwelcome in New York.

We didn't want to do this. We wanted to support the V-notch program, but it didn't come to pass. As a consequence, our legislature acted, passed a law, and it was signed into law by Governor Pataki, and it's now the law, and it's not easy to reverse, because it was done as a law.

I hope that the board members will think hard about that as they consider this very unwelcome motion to postpone.

CHAIRMAN WHITE: Thank you, Gordon. The question has been called. Have you got something substantive that you want to add to that, Eric?

MR. SMITH: It's going to be earth-shaking, so I guess I'd call it substantive. You know, discretion is always the better part of valor, and sometimes you should just keep quiet, but I can't.

I honor this process more than I honor trying to get what Connecticut fishermen want. We tried the best we could for months, and it didn't happen. If this motion passes, I'll be appalled, frankly.

I don't want to be a part associated with a process that can't stick to its guns. Even though I've got to look those guys in the eye and they're going to despise me for it, I'm going to try and persuade these two guys on either side of me that we should do right by this process.

We tried the best we could; we couldn't get it. Frankly, I wasn't as convinced as Mark. I counted the votes, and I said this is teetering, and I don't think that's right. So, I'll take a hit back home, so be it. I don't think it's right to do this. We have a plan; we have a requirement; we should stick to that.

CHAIRMAN WHITE: Thank you, Eric, and I truly hope that the people back home don't despise you out of this, because if nothing else, they ought to garnish respect for you from the comments that you've made.

We're back to the motion of postponement to the next board meeting. Do states want to caucus? Okay, you have one minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN WHITE: I am out of order on this, so I ask that the caucusing cease for the moment, because I didn't go to the public, which I wanted to do. Then we'll come back. I'm going to the public. Come up and identify yourself and be as brief as possible, please.

MR. MIKE TYLER: Mike Tyler with the Connecticut Commercial Lobstermen's Association. I do appreciate everything that the board has done for us for the past two sessions here. Fortunately, for us, the lobstering has been much better this year with all range of sizes.

The catch in the east has been nothing short of tremendous. What we would like to propose, although I guess it's pretty late in the process here, after hearing a lot of the comments, is that we were able to start this V-notch program voluntarily.

Unfortunately, we do understand the position New York has been put in. Our



organization is willing to work with some experienced groups in developing and designing some sort of voluntary program that would be more long term than simply a one-year program or two-year program that was based on funding.

Unfortunately, the voluntary program was shut down very early in the process due to the verification issues. Obviously, we do not believe that a gauge increase is in order for Connecticut. We believe that through sea sampling, trawl survey and the tagging studies, there would be enough opportunities to verify that a certain percentage of the lobsters in Area 6 were being in fact voluntarily V-notched.

Our session starts again in January or February. We had a very short period of time to get the money. Just so that you understand the process, our legislation passed 50 to nothing. No one on our side really knew that there was no funding, and in fact, just as Eric has said, we've had a number of meetings since then, during our busiest time of year, trying to procure the funds.

One of the big issues that has not been mentioned is that private funding has been available to us. However, our senator, one of our more powerful senators told us point blank at the last meeting in Eric's office -- no, it wasn't you Doc, I'm sorry. Another one that's not quite as powerful -- told us point blank that if we accepted private funding for this from any of the energy companies who were willing to give us money for a program, that we could just count the state out of the process, that the state funding and help would no longer be available.

Obviously, it's something that we must have touched a nerve on. However, we do ask, if it's possible at all -- we feel very strongly that this V-notch program is something that

will in fact bring the lobsters back much sooner than any gauge increase or series of gauge increases. Thank you for your consideration.

CHAIRMAN WHITE: Thank you, Mike. I would also urge, as you move forward this, that you might consider just beginning a volunteer program of your own because it does work.

MR. TYLER: We have already.

CHAIRMAN WHITE: Thank you. Has anybody got something to add, because we're limited on time? George.

MR. GEORGE DAHL: George Dahl, lobsterman in Area 6, LCMT member, and so on. First, I would just like to add that so far all you've talked about is procedure and process here. No one has said anything about conservation.

You seem to be more worried about the process than the lobsters. New York State law says this act shall take effect on the same date as the Atlantic States Marine Fisheries Commission requires that the minimum gauge size for American lobster be 3-9/32.

Now, we argued that you people had not told us yet that we had to do that. We were planning to come to this meeting and lay the cards on the table and then have the commission say, "Okay, you didn't get the money, so now you have to go up."

Other people, Gordon and Brian, interpreted it differently, and that's why our gauge is already up. The fishermen in New York don't know the gauge is up, and they're not going to know the gauge is up until they get the letter in the mail, and I'm not opening my mail. So, you're talking about procedure here, nothing about conservation yet.

CHAIRMAN WHITE: George, I'm not going to spend a lot of time on it. I would disagree with you because I think the whole reason for this procedure is conservation. Does anyone else have something?

MR. NICK CRISMALE: Thank you, Mr. Chairman. Nick Crismale, President, Connecticut Lobstermen's Association. We have talked about procedures here. We have talked about a lot of things here, compliance and so on.

What we haven't talked about is people's livelihood here. The impact that this gauge increase is going to have on the already decimated lobster industry -- nobody wants to see this lobster resource come back more than the industry, because they work hand in hand. You have a viable lobster resource, you have a viable industry, and that's what we want.

Eric has talked about the fishermen, we tried to procure the funding for this. We were told -- we believed in our government. I believe that the DEP is an arm of our government. Eric said that you have to do what you say. Well, we were told we had this funding.

That disappeared. I don't think the government did what they said. I mean, I think we have to use a little discretion here. We're only asking for a couple months. It's not the end of the world for the lobsters. Believe me, this is a resource that is predicated on people catch them.

The average person doesn't go out with his son on the weekend with a fishing pole to go catch lobsters. This is an industry and industry is predicated on this resource. I think that this board needs to give us -- use a little discretion and give us a little time.

I think what you may do or what you may find here is a little cynicism has developed

on the part of the industry towards our government and that there have been gaps that have been bridged that may dissipate.

We would love to avoid this. We would love to work closely for this V-notching program. Our DEP has come out with statements. Pat, I believe you received a copy of this letter that indicated the V-notch program was much more viable than the gauge increase.

As George has said, this is about conservation, not about procedure. It's in the best interest of the lobsters. For a couple of months, I mean, you're going to have a major impact on a resource and an attitude towards this resource by an industry. I think you need to consider that before you make any judgments here. Thank you.

CHAIRMAN WHITE: Thank you, Nick. Does anybody have any comments to speak out opposed to this motion? Last comment.

MR. ROGER FRANCK: Thank you for letting me come here and speak my piece. My name is Roger Franck. I am a lobster fisherman out of Connecticut for the last 45 years and my sons for 20 years. I also own Mary Ann Seafood.

I helped the state start the first logbook in 1974. I went against the short bill, trying to stop the short, which was a multi-million dollar business in Long Island Sound. I taught the state to open the escape vent from 3-7/8 to 3-15/16 to let shorts out.

In our state people called it the healthiest grounds in the world. This was in the early nineties. I took Congressman Shays out with 42 other state men and TV men to see the die-off in Long Island Sound. After then, he called it a disaster and started federal aid.

I talked to Chris last Sunday and told him about the V-notch money failure. He just got back from Afghanistan, he says he's going to start his people working on a million dollars for Connecticut and a million dollars for New York on Monday.

Being a fisherman and owning a market all my life -- and our family lives and breathes lobsters -- it was the healthiest grounds in the world. There were no problems here. The only thing that was wrong with this industry was illegal short taking and egg scrubbing.

CHAIRMAN WHITE: Roger, you're not addressing the issue, and your minute is up, so could you --

MR. FRANCK: Okay. The issue is you're going to kill the lobster fishermen, you're going to protect the pesticide companies that have killed this industry from here to the ocean to Newport to Massachusetts, all the way down from New York City to Cape May.

I have proof. I changed the whole state of Connecticut to use BTI, no-pesticides. This is the best year my son has ever had right now. I just wish you would listen to the men and V-notch. I am against all of it. I just want you to leave the industry alone and let us farm the lobsters like we were doing. Thank you.

CHAIRMAN WHITE: Thank you, Roger. I'm back to the board now on the motion. Is everybody finished caucusing or do they want 30 seconds more? Okay, I'll go by a show of hands. All those in favor of the motion, please raise your hand; all those opposed; null votes; abstentions. The motion fails.

Back to the main motion. Do you want time to caucus on the main motion? There will be a one-minute caucus.

(Whereupon, a caucus was held.

CHAIRMAN WHITE: While you're caucusing, I want to correct the count on the last motion. The motion was 3, 5 and 1; not 3, 4 and 1.

All right to the main motion to find the state out of compliance. All those in favor of the motion, please raise your hand; all those opposed; abstentions; null. The motion passes.

Next issue, Outer Cape Compliance Review. Dan, go ahead.

### **Area 2 Effort Control Plan**

MR. DANIEL J. MCKIERNAN: I would like to ask that we take up the Area 2 issue first and not the Outer Cape Issue.

CHAIRMAN WHITE: Okay.

MR. MCKIERNAN: Embedded in Draft Addendum VII is a postponement of these next four gauge increases. We've worked with the LCMT. We worked with all the jurisdictions together, NMFS. I have worked with Rhode Island, New York and Connecticut to come up with this draft addendum.

So, that's why we have not met this deadline at this time. So, if you find us out of compliance, we will appeal to the Policy Board that there not be an official non-compliance finding until after we go through the public hearing process on this effort control plan as a surrogate for the gauge increase.

CHAIRMAN WHITE: As I understand it then, unless anybody else wants to speak to the point, unless we get motion to find them out of compliance, then this wouldn't be voted on at this meeting; is that correct?

MR. AUGUSTINE: Mr. Chairman, when would that happen? When would it go out to the public and when would it come back?

MR. MCKIERNAN: Well, this is another issue on our agenda today. It's Draft Addendum VII, and we are expecting to come back to the board at the November annual meeting with that Draft Addendum VII.

CHAIRMAN WHITE: Ritchie.

MR. WHITE: Thank you, Mr. Chairman. Has the technical committee determined the conservation equivalency of this gauge increase with this addendum?

MR. MCKIERNAN: The gauge increases didn't have a technical goal, so not yet, but there won't be anything to measure it against since we weren't trying reach any particular F rate with these gauge increases.

This particular addendum at first tried to create a scaled-back fishery with a TAL; and when that didn't happen, we got the infamous effort control plan and four gauge increases. I don't know how you would compare the effects, so the answer is no. But, certainly, the technical committee could look at this plan in the next six or eight weeks, if they have the time.

CHAIRMAN WHITE: George.

MR. LAPOINTE: I guess my question is — you know, we talk about process; and if they're out of compliance, that's an issue. The issue we just dealt with was that we postpone action on Connecticut and coming up with an alternative because they thought they were going to deliver the V-notch program by a date certain, and that didn't happen.

Is there a different course of events here? I mean, has the Commonwealth or have these people in Area 2 said they were going to deliver earlier and not now, because it strikes me that's the fundamental issue we just dealt with in giving some forbearance to the next meeting?

CHAIRMAN WHITE: Dan, do you want to respond to that?

MR. MCKIERNAN: We haven't missed any deadlines. I think we're on the schedule that we had claimed we would be on, but I have to say that from the industry perspective, it certainly has become a quid pro quo, effort control plan, make the gauge increases go away.

So, again, as I said, you could make a motion to find us out of compliance, and we would like to ask the Policy Board to give us a pass until November when we hope to put into final rule the effort control plan.

CHAIRMAN WHITE: Mark, you had a comment.

MR. GIBSON: To follow up on Dan, yes, we delivered what we were supposed to. We have a Draft Addendum VII for board consideration to move out to public hearing and with final adoption in November, and the draft contains a treatment of the gauge increases in question.

So, I think we've delivered on what we promised to the board we would do. As Dan points out, the gauge increase is beyond 3-3/8, which is where we are now. Now, 3-3/8 was the original Amendment 3 requirement to meet F-10, and we met that.

The ones beyond that, which began July of '05, really had no scientific basis for them. They were a backup in the event that the effort control plan and TAL's and that sort of thing didn't come into place.

The original attempt at an effort control plan by industry was found to be deficient. We were given some time to develop a better one. We've done that, so I think we have met our objective that the board laid out for us.

CHAIRMAN WHITE: Everett.

MR. EVERETT PETRONIO, JR.: Just back to George's point a little bit. This is also a slight difference in that we don't have one of the states here who has made a change in their gauge. We're acting in concert. We don't have a situation where one state is prejudiced by another state's lack of action.

CHAIRMAN WHITE: John.

MR. NELSON: Thank you, Mr. Chairman. I don't know which one it is, the chicken or the egg here, Mr. Chairman. In Draft Addendum VII, one of the options in there is July 1<sup>st</sup>, 2005, be at 3-13/32, and I guess that's the fallback if you don't do some of the other considerations that are in this addendum.

But, did the PRT take that into consideration, this draft addendum, or were they looking at what was supposed to be in place under Amendment 3. I can't even remember now which amendment or which addendum has the gauge increase in it, but whatever one has it in there, did the PRT take that into consideration as far as this Draft Addendum VII and the timeline that it was supposed to supercede?

CHAIRMAN WHITE: Toni.

MS. KERNS: This addendum was not developed through the PRT. This addendum was developed, working with the State of Rhode Island and the Commonwealth of Massachusetts, who also worked with their

Area 2 LCMT in great effort to put this together.

MR. NELSON: Can I follow up, Mr. Chairman? I guess the sense is do we have the timeline of when the addendum would be in place? Is it this year or is it next year? Is it July of next year, and, therefore, that becomes a moot point as far as gauge increases. I think you're probably looking at the gauge increase to be in place; and then other activities that this then calls for being put in place after that.

CHAIRMAN WHITE: Dan, do you want to address the time frame?

MR. MCKIERNAN: Yes. We're planning on coming back in November to the board meeting and getting this particular addendum approved, and if it's approved with the licensed specific trap limits, those being in effect for 2006.

So, we're talking about next year's fishing being affected by this plan. As far as the gauge delays that are captured in this addendum, those could also be approved at the November meeting, or they could be not approved; and if that's the case, then we would be bound to the current gauge increase as well as another one on July 1<sup>st</sup>.

CHAIRMAN WHITE: Does that answer your question, John?

MR. NELSON: Actually, no, Mr. Chairman. I'm sorry, perhaps I'm a little thick on it, and maybe it's the time of the evening. Right now at July 1<sup>st</sup>, 2005, we're dealing with the 13/32 instead of 3/8.

So, if this addendum is put into place for the '06 season, I'm making an assumption that we're using our standard time of when the season starts, which is July 1<sup>st</sup>, so it would be July 1<sup>st</sup> of '06, that all of the regulatory aspects would have to be put in place.

That means that there is that one year hiatus of July of '05 through June of '06 that we don't have something in place to deal with the effort or whatever aspect we're trying to deal with in the gauge increase.

So, it's a question of whether or not we should be moving ahead with that one gauge increase for '05/'06 and then deal with Addendum VII to address the other conservation equivalent activities that are listed in here.

MR. MCKIERNAN: Well, as far as the effort control plan goes, I can't envision a state delaying the allocation of traps until July 1<sup>st</sup>, because we license fishermen on a calendar year. So, if we don't get this done this fall for next year, then you're actually going to be looking at July of 2007. So, it's our intent to accomplish this for 2006, calendar year 2006.

As far as the gauge increase goes, again, I think the industry's expectation was that, you know, they worked with us in good faith and didn't expect to see the gauge marching forward.

I haven't talked to the technical committee, but I don't know by what standards we would be judged for failing to meet some conservation goal with the gauge increases, because, frankly, the addendum for conservation actions were really just instruments with no specific targets.

CHAIRMAN WHITE: Bruce Freeman.

MR. BRUCE FREEMAN: I'm somewhat confused here. As I understand perhaps a comment that John made, there seems to be a year hiatus or at least six-month hiatus so far as when Massachusetts anticipates putting in an effort reduction plan. It's not stated when Rhode Island plans to do this, and I'm just curious as to the mechanism to

allow a six-month delay, one way or another. How do we justify that?

CHAIRMAN WHITE: Mark, do you want to respond to that?

MR. GIBSON: Well, I can't say much more than Dan has. This was a point of the two states having to work with the LCMT and the Rhode Island and Massachusetts Lobstermen's Association, and we simply had to commit to them to not going up on the July '05 gauge in order to get this piece of work done.

The fact that none of them are here today means that they trust what we've done. We had a matter of trust a year ago, that they filled the room and complained about things.

We don't have that any more. So, they've delivered and we had to deliver on that. And as pointed out, there was no basis for those additional four gauge increases.

The 3-3/8 we're at now, we have met the existing operational fishing definition for Area 2, which is F-10 percent, 0.83 and 0.84. We met that with 3-3/8, and we did it faster than we were supposed to because of the emergency action.

So, there's no real conservation benefit intended. Those four gauges beyond 3-3/8 were a backup in the event that quota management failed or TAL management failed; in the event that the effort control management failed, and it originally did.

So, when this goes out to public hearing, we will get massive testimony to stay at 3-3/8 inches, and it's our position that's what the finalized amendment will actually adopt in November of this year.

MR. MCKIERNAN: And I just want to say that what we heard from the technical committee and what we heard from the

modeling subcommittee in the critique of lobster management is we've got these different rules within a stock unit.

We're going to get a stock assessment, we're going to be addressing these discrepancies, and I will guarantee you that next spring we're all going to be talking about trying to work towards some kind of common gauge in the Southern New England Lobster Zone.

I don't think you want to move us forward in Area 2 with the largest gauge, you know, other than Area 3, which has gone up. All these inshore areas, I think we need more uniform gauges, and so I just think it's appropriate to delay this at least until we can get to that next phase of lobster management based on a new assessment.

CHAIRMAN WHITE: Ritchie, I had you next.

MR. WHITE: I'm still trying to understand. Does Amendment 3 require this gauge increase; is that correct, the gauge increase that is now --

CHAIRMAN WHITE: Addendum III, Ritchie, not an amendment.

MR. WHITE: I'm sorry, Addendum III requires the gauge increase that they are now out of compliance on. I guess my question is how the State of Rhode Island and the Commonwealth of Massachusetts talked to their lobstermen, saying that they didn't have to go up on this gauge increase; isn't that something that this board has to make the decision on? I'm just puzzled what that process was.

CHAIRMAN WHITE: Bruce, you had a comment.

MR. FREEMAN: I still never got the answer from Connecticut. The point is it's

going to go to public hearing. We don't know if it's going to pass or not. As we hear testimony from the states, they believe it will, but then if it doesn't, what happens?

CHAIRMAN WHITE: You don't mean Connecticut; you mean Rhode Island.

MR. FREEMAN: I'm sorry, Rhode Island, yes. We heard from Connecticut.

MR. SMITH: I've been accused of a lot of things, but never being Rhode Island.

MR. FREEMAN: I apologize.

CHAIRMAN WHITE: They're going to lay it right on you, Eric.

MR. FREEMAN: Does Rhode Island anticipate they're going to take this to public hearing, and it's going to be effective January 1, 2006?

MR. GIBSON: Changes to lobster regulations are already in the pipeline for state public hearings. We're just waiting to see what the board does today in terms of moving this out to commission public hearings. I will have to have state ones at the same time or nearly the same time.

As Dan pointed out, we need to put lobster trap tags in the appropriate amounts in people's hands by May 1<sup>st</sup> I think of 2006; not in July, and so we have to move very quickly on this.

CHAIRMAN WHITE: Point of clarification. As I understand it, this gauge increase was in Addendum IV, as we're reading it now. Am I not understanding that correctly? Okay. Eric.

MR. SMITH: To be clear to that point, the gauge increase above where you are now was in Addendum IV, and it was a required provision?

CHAIRMAN WHITE: Incremental gauge increases, yes. Gordon, go ahead.

MR. COLVIN: I think that's part of what I need to try to get clear, because I don't think the dialogue at this point is clear. If I recall -- and I'm trying to put this and relate to what I heard both Mark and Dan say -- the gauge increases that have been implemented to date that take us to 3-3/8 are those gauge increases that were required to implement the provisions of Addendum III that implemented the detailed schedule to meet the egg production rebuilding schedule in Addendum II; and that the further gauge increases above 3-3/8 appear in Addendum IV, which was proposed, as I recall, as an emergency action by the Commonwealth of Massachusetts and the State of Rhode Island to go beyond the egg production rebuilding schedule that was in Addendum II that flowed from Amendment 3 to deal with the emergency.

And if I'm right about all that, one of the questions that I think the board is grappling with is the question, is there a distinction between this situation and the one we dealt with earlier.

And, I think, to be honest, there is this distinction, if I'm right, and that is what we dealt with earlier was a gauge increase that was required and specified in Addendum III, which was part of, if you will, the base plan, the base requirement to meet the egg production rebuilding schedule that was adopted pursuant to Amendment III; whereas, this gauge increase was adopted by Addendum IV, which went above and beyond that at the initiation solely of those two states.

The board went along with it, but did not impose it; essentially went along with it. I think that's the distinction I see. Now, the significance of it we can debate, but unless

I'm very wrong, that's the difference between the two. Whether that means anything, we will have to decide.

CHAIRMAN WHITE: Well, I think you're right on with what I see and hear, and then what the subsequent addendums were was to amend the effort control and going forward with what we now have as Addendum VII. Eric.

MR. SMITH: Mr. Chairman, thank you, I'm glad we're still polite. I was prepared to vote these two states out of compliance because, damn it, if it's happening to us, it's going to happen to them, you know, I say factiously.

But, the fact is I thought it was kind of a clear July 1<sup>st</sup> they didn't meet the standard either, and, therefore, you know, what's the difference? It should be fairly simple.

Mark said something twice, and I got it the first time, but I'm glad he said it the second time because it reminded me it's a persuasive point, and it ought to be emphasized, and that's the one that seems to me is very clear that in order to get to F-10 percent they had to get to 3-3/8 inch carapace length, and they did that.

The other gauge increases are to do some other things, and we did pass an addendum to tell them to do those things. They slipped a little bit but not too, too bad. I think they were supposed to have the plan here, maybe not approved by this meeting, so maybe they haven't slipped at all, but the point is there was a different basis for those other increases.

That made me stop and think a little bit, and then Dan kind of put a fine point on it by making the point that if they achieve the other things they need to achieve without going up further on the gauge, that may buy a little bit of time to kind of embrace what



the new assessment is going to call for, and whether there's a need or a desire in the future to try and align sizes in adjacent areas more closely.

So, I don't know if I'm persuaded entirely, but I think I am, that there's a substantial difference in what they're asking for and why and what we felt the problem we were in, and I couldn't see my way out of it other than do what the plan required.

The only caveat to that -- and I don't know if it's enough of one to make a difference -- is I have kept on waiting to see their proposal go to the technical committee to do what we had to do.

We started in February and said we're going to have a plan based on V-notch and it's going to be equivalent to what the gauge calls for, and here's the schedule. I laid it out, we're going to develop it in March, we're going to send it to the TC in April, we're going to go to the board in May. It was all very deliberate.

They haven't don't that, and now I'm hearing, and didn't appreciate before, that at least in terms of the F-10 percent management threshold that we're always trying to be on the good side of, they actually didn't need to.

Those extra gauge increases were for a different reason. So, I agree with Gordon, there is a distinction, and maybe it's persuasive enough that they deserve the couple of months' time where, perfectly candid, I couldn't see any way to argue that we did deserve it. So, that's the distinction.

CHAIRMAN WHITE: Bill.

MR. ADLER: This has a bearing on what we've been discussing, and it basically goes to this Addendum VII. I've got to say this, the industry, amid much contention, still not

happy with what we're having to do, but understanding that they needed to do this because of Addendum VI, and what you had sent them back to do, and I've got to say the two states worked very closely with the Rhode Island and Massachusetts contingent of the LCMT to develop this Addendum VII, which you now have in front of you.

And, I think what I would like to see is I would like to see a motion to take Draft Addendum VII out to public hearing so we can keep the ball rolling here. I don't know, Mr. Chairman, if that would move things along here, but it's what you asked for by the August meeting.

There it is. I do have to say that the two states worked very hard with those fishermen. It was not easy. They went back and forth, and they submitted their plan to the states, and the states looked it over and came back, and then, of course, the ASMFC got it and put it into this Draft Addendum VII that you have.

I would like to see this moved to the point where, yes, let's take it out to public hearing so we can get this thing rolling.

CHAIRMAN WHITE: I think you're headed in the right direction, Bill. As I understand it, to go out to public hearing with this would then give the option to repeal what happened in Addendum IV, because that's currently what's in effect.

If Option A was taken, then it would repeal that and go forward with the effort control plan. Am I getting that now?

MR. ADLER: Yes, because that was part of the discussion that they had on this.

CHAIRMAN WHITE: But that's after the compliance date of July 1<sup>st</sup> that we would have had to do to comply with Addendum IV. George.

MR. LAPOINTE: With the discussion, and it's been good discussion, those jumping the gun a little bit for a motion to approve because we have to review it, but it strikes me that we need to postpone this discussion until after we take action — well, I think we can table it until we take action on Addendum VII.

If Addendum VII fails and we don't take it out to public hearing, we need to take up the non-compliance finding again. If it passes, and I have every reason to think it would, we will then go to public hearing, and we will have to take up this issue again — I assume we're meeting in November with the Lobster Board — based on the outcome of the addendum process.

If it fails, we're back to a non-compliance finding. Is that the right stream of events? I mean, it's too late to worry about tabling this issue; and if we can just agree to hold this off until after we take action on the addendum, I think that would be appropriate.

CHAIRMAN WHITE: Unless anybody has any objections to that, then I would like to move forward with Toni reviewing Addendum VII, and we will carry on with that discussion. Gordon.

MR. COLVIN: I'm just not sure how this relates Outer Cape, and maybe somebody could —

MR. LAPOINTE: We have to get back to Outer Cape.

CHAIRMAN WHITE: We're going to have to address that, but at the request of Dan we postponed that for the moment, and we will come back to that with renewed interest. Gil, is this to Addendum VII?

MR. POPE: Yes, just very quickly, the way that I'm understanding it is, is that the F-10 goal was the compliance goal that we were looking for and not so much the way that we got there. That's the way I'm hearing it.

CHAIRMAN WHITE: I don't think that's correct, because Addendum IV goes through the four incremental gauge increases, because that's what they asked for. Go ahead, Toni, with Addendum VII.

MR. POPE: The question I did have was to ask a very quick question about — I asked it earlier about Page 22, and were you able to find any of the information on that?

MS. KERNS: It will be in the presentation, Gil. I was able to get some information, but not all of it due to lack of time. Dan, you had asked me earlier to introduce the addendum; do you still want to do that?

MR. MCKIERNAN: In the interest of time, I think you can go ahead and do it.

### **Review of Draft Addendum VII**

MS. KERNS: Thank you. This is Draft Addendum VII to the Lobster Management Program. As we stated before, this addendum was put together with the State of Rhode Island, Massachusetts, and the LCMT.

The time frame that we would be looking at for this addendum is to have public comment in the months of September and October, ending October 14<sup>th</sup>, and the review of the public comment and the final action on the addendum would be at the annual meeting in New Jersey.

The purpose of this addendum was to establish a multi-state effort control program for the Lobster Conservation Management Area 2 that governs traps fished in state and federal waters to cap effort at recent levels

and allow adjustments to traps based on further stock conditions.

Options presented here include options endorsed by the Area 2 LCMT, with an Outer Cape Cod-like plan crafted for Area 2 as some of the preferred alternatives.

There are two types of management measures within the addendum. There are mandatory elements, which will be necessary regardless of which options are finalized from the proposed plan, as well as optional elements.

The first mandatory element would be the qualification for the Area 2 permits. There would be a moratorium on new permits for commercial fishing of lobster in Area 2. It would include a moratorium on new state landing permits required in states by a permit holder taking lobsters solely from the EEZ.

There would also be a moratorium on permit splitting accomplished through the establishment of a new joint state and federal licensing scheme that identifies each fishing operation as a combination of the individual permit holder at the state level and the federally permitted vessel.

The next mandatory element would be the trap allocation authority. The state shall process and determine trap allocations for both state and federal permit holders. For federal permit holders, the state shall forward all determinations to the National Marine Fisheries Service for its concurrence.

No vessel or permit shall hold more than one allocation corresponding to a permit's fishing history. The states and National Marine Fisheries Service will ensure vessels or permit holders do not receive duplicate allocations.

The next mandatory element would be to establish an Area 2 fishery-wide overall trap cap. This would not be decided within the addendum itself. We would have to wait until we knew the total number of traps that were decided through the allocation scheme. The reason why we would need to wait is because if we were to allow for data appeals, as well as medical or military appeals, we would not want have to take away traps from fishermen if we were to give traps through the appeals process.

The next mandatory element would be compliance. States shall incorporate trap levels and fishery performance into the annual lobster compliance report.

The annual compliance report is due on March 1<sup>st</sup>, and I would ask that all states who would be affected by this to go back probably to their TC members to see if this compliance date would be effective, or you would be able to comply by this date. I think for some states this would too early in the year, and we would have to set a different date.

The last mandatory element would be data disputes. Permit holders could request corrections to qualifying data if efforts are found attributable to data entry and mathematical errors in logs. However, state-issued recall-log catch reports and/or logbooks signed by the permit holder should be considered the best available data.

False reports would not be able to be appealed. There would be limited time for submission of an appeal, and we were thinking three months would be that time.

The optional elements, the first is the trap allocation. We would be devising a trap allocation system that grants participants fishing authorization for a specific number of traps that is commensurate with their

recent fishery performance in traps and landings.

Each permit holder's unique fishing history will determine his or her trap allocation. Appendix A is the system that we would use to look at each person's fishing history. It's the second to last page in the document.

Fraudulent documentation may have the allocation permanently revoked from a fisherman. There are four options that we would look at from the most conservative to the most liberal in determining trap allocations.

Option A is to grant the initial trap allocation based on the highest value of effective traps fished during the 2001 through the 2003 period. This is the preferred method. The effective traps fished is the lower value of either the maximum number of traps reported fished for a year or the predicted number of traps that's required to catch the reported poundage of lobsters for a year.

This option is expected to result in an initial aggregate trap allocation that exceeds the 2003 traps by about 23 percent. To avoid the single-year effects on trap allocation, the maximum effective traps for three years is used.

In no case would an individual's trap allocation exceed their maximum of traps fished during the performance period. If an individual's effective traps fished is higher than what they actually reported fishing in that year, they are given their reported trap value.

Gil, this graph is to your question, and this shows how many fishermen would fall into the bins of receiving zero to 99 traps, 100 to 199 traps, 200 to 299 traps, and so forth.

MR. MCKIERNAN: Toni, it's not a bin.

MS. KERNS: It's not the bin --

MR. MCKIERNAN: This is just a frequency count, just so people are clear that people aren't going to be given a hundred traps. It's still a unique number.

MS. KERNS: This is that same thing in the table format, and Option A is the middle column. Trap allocation, Option B is very similar to that of Option A, except for the fact that the time period used to find the effective trap is from 1999 to 2003, so that would be a five-year period.

The initial aggregate trap allocation is expected to exceed the 2003 aggregate traps fished by about 61 percent. This option would be inconsistent with the previous board guidance at the last meeting that you guys discussed and how much you would want the trap allocation to exceed. The board had discussed somewhere between 25 and 30 percent.

Option C is to grant the initial trap allocation based on the highest value of predicted traps fished over three years, 2001 to 2003, based solely on the relationship between pounds reported and maximum traps fished.

This the LCMT-endorsed option. This option is expected to result in an overall initial trap allocation that would exceed aggregate 2003 traps by 47 percent. In some cases an individual's trap allocation would exceed their maximum number of traps fished in a given year during the performance period. Again, this option is inconsistent with previous board guidance.

In the maroon color you will see the allocation scenario that, Gil, you asked for earlier for Option C, and I think it's easier read in this table, the last column.

Lastly, is Option D, which is very similar to Option C, which is to grant initial trap allocation based on the highest value of predicted traps fished over a five-year period, from 1999 to 2003, based solely on the relationship between the pounds reported and the maximum traps fished.

This would exceed the 2003 aggregate traps by 87 percent, and this is also inconsistent with the board's previous guidance.

The next issue is how to deal with trap reductions. If the overall trap allocation exceeds the board-approved trap cap, how would we reduce the trap allocation in subsequent years? We could have more than one method under this scenario.

The first option is Option A, and we would do a percent reduction to reduce each permit holder's allocation by a specific percentage to reach the trap cap.

Option B would be to allocate the traps below the 800-trap limit. This action would affect the current 800-trap limit, but would require fishermen to obtain traps from another fisherman to scale back up the 800-trap limit.

Issue 2 is adopt one or both mechanisms for further trap reductions if, after a stock assessment is completed, further trap reductions is warranted.

Option A would to have active trap reductions, which would be to have each permit holder's trap allocation to be reduced by a specific percentage fishery wide to meet the trap allocation goals.

Option B would be to have passive trap reductions. Upon the transfer of trap allocation, assess each transfer recipient a percentage of the allocation that would be retired.

Next is the allocation of non-transferable traps. The first option would be establish "B" traps. Permit holders would receive an allocation of "A" traps, which are fully transferable, based on specific criteria and an allocation of "B" traps. "B" traps would be 800 minus their allocation of "A" traps.

"B" traps cannot be transferred and would only be fishable when the total number of "A" traps falls below the floor trap value. The floor trap value is estimated at 143,245 traps for Rhode Island and Massachusetts fishermen combined and would be increased slightly based on the number of verified traps documented fished in Area 2 from other states.

The overall number of "B" traps would be substantially higher. This is expected to be 324 percent higher than 2003 levels if only fisherman who fished pots during 2001 through 2003 were to qualify. If all current permit holders were to qualify for a "B" trap allocation, the trap level would increase to 746 percent over the 2003 level.

Option B would be to not allocate "B" traps, and this is the preferred option.

Transferability: All transferability of trap allocations among permit holders to increase or decrease the scale of their business. Transfers of trap allocation would only be within the state; and if an entire business is being transferred, then transfers between states would be allowed.

The transfer program would not be implemented any sooner than one year after the approval of the effort control plan. The interstate transfers would be allowed once the National Marine Fisheries Service was able to accomplish complementary rules. Option B would be to not allow transferability of traps.

The next issue is dealing with monopoly clauses. An anti-monopoly clause would be intended to prevent entities from controlling excessive numbers of permits or traps, and there's two to five permits for each of those, and the same applies.

No single company or individual will be able to own or share ownership of no more than two -- and you can replace that with 3, 4, 5 -- for qualified LMCA 2 federal permit holders. However, those individuals who have more than two permits in December 2003 may retain the number they had at that time, but may not own or share ownership of any additional permits. The last, Option E, is to not have an anti-monopoly clause in the addendum.

Next is for appeal for medical or military hardships. Option A would be to allow for a medical or military appeal. This option would allow permit holders who fished during the 1999 and/or 2000 fishing years, and not during 2001 through 2003, to request their fishing performance for the earlier years to be considered for the initial trap allocation. Option B would be to not allow for a medical or military service appeal.

The last page of the document goes through the medical or military appeal process, and there's some dates that need to be changed in that process.

Under Number 1A, instead of 2001 to 2003, it should read 1999 through 2000. Under Option B, it should read -- instead of 1999 to 2003, it should read 1999 through 2000. Everything else would remain the same.

MR. SMITH: Could I ask for a clarification on that, the second point you made? I am not sure the date change in 1B is correct. It is correct in 1A.

The whole point of this proposal is if you didn't have the activity in what the LCMT approach proposes to be the '01-'03 qualifying period, and that's what B means. You had to have the material incapacitation during the LCMT qualifying period in order to drop back and use '99 and 2000.

MS. KERNS: Eric, there's two B's. It's the second B. I'm sorry, I didn't realize there were two B's. It should be the second B, which is really C, is what I meant to change.

MR. SMITH: Well, that one says '99 through '03 now, and I think it should say that.

MS. KERNS: I'm going to refer to Dan on that.

MR. SMITH: He's probably going to refer to me.

MR. MCKIERNAN: Exactly.

MR. SMITH: I'm the one who has been attending the Area 2 meeting, and I'm the one that proposed this approach. That doesn't mean I didn't get my dates wrong, but I think the way it's supposed to read is 1A should say, "A license holder must have landed lobsters with traps during any year from '99 through 2003.

Then the one that really does say "B" reads as it is; and then the second "B" that should be "C" should say, "Individuals who qualify under A can use during the period '99 through 2003." I think, without reading it carefully for logic -- and I'll try to do that while we're having other questions -- I think that's the way it's supposed to read.

CHAIRMAN WHITE: So the only one you're changing, Eric, is in 1A to 1999 instead of 2001?

MS. KERNS: That's fine. And, lastly, are the minimum gauge sizes. Option A would be to set a minimum gauge size for Area 2 at 3-3/8 carapace length. This is the preferred method and it's also LCMT endorsed. Future addenda or plan amendments may require adjustments to the minimum gauge sizes pending stock assessment results.

Option B would be to continue with the current Area 2 gauge schedule, which is outlined as we have been discussing all evening. That is the addendum and I will take any questions on the addendum.

CHAIRMAN WHITE: Does anyone have any questions of Toni at this time? Gil.

MR. POPE: When you mentioned "preferred" options, who did you mean by "preferred"? I am not sure who you mean by that. I know when you say LCMT options, I understand that, but I wasn't sure who you meant by preferred options.

CHAIRMAN WHITE: Dan.

MR. MCKIERNAN: That particular document that Toni wrote the addendum on was based on the memo that Mark and I put forward on behalf of the subcommittee or the committee to implement the effort control plan in Area 2.

We were in close contact with the other states and the National Marine Fisheries Service in terms of our attempt to try to write rules that would accomplish the rather loosely defined goals of the board, which was around a 20 or 25 percent maximum increase over current levels and make it a plan that could be implemented and administered by the jurisdictions. So, preferred is preferred by this committee.

CHAIRMAN WHITE: Thank you, Dan. Does that answer your question?

MR. POPE: So that's the three state agencies?

CHAIRMAN WHITE: Correct. What I'd like to see at this time, to move things along, is somebody to make a motion to move forward the Draft Addendum VII. Bill.

**MR. ADLER: Thank you, Mr. Chairman. I will the motion to move Addendum VII on to public hearing.**

CHAIRMAN WHITE: And somebody seconds? Pat Augustine seconds. All right, comments on the motion? Harry.

MR. MEARS: Thank you, Mr. Chairman. As Dan indicated, the National Marine Fisheries Service staff did participate and provided input into this draft. I am acknowledging that the collective group, along with the LCMT, this must represent thousands of manhours putting this together with all the collective discussions.

I endorse this going out for public comment. However, having said that, I don't downplay the complexity and the issues that lie before us, several of which impact potential future federal rulemaking.

What this current addendum does not have is a section for recommendations to the Secretary, and I would urge that be incorporated, even though there are sentences throughout the text where those expectations are laid out in terms of what NMFS would as part of the process.

Some of the issues we have to address are how the federal government issues permits to vessels, how the states issue permits to individuals, what about federal permit holders that own more than four vessels and how does this relate to what we often hear of as the pregnant boat syndrome?

So, there's a lot of history allocation issues that we have to be very concerned with in terms of federal permit holders. They're not show stoppers, I don't think, but it's going to take a lot of ingenuity, a lot of negotiation.

I do support this going out for comment. My other important comment is that there's four options on allocation. Currently two of those say that they're inconsistent with board guidance.

One is unclear, Option C. I think that's the LCMT preferred allocation. It's silent on whether or not it's consistent or inconsistent with board guidance, but I think the record should be made clear at this meeting; is that guidance binding or not?

In other words, as we approve this to go out to public comment, I think it's incumbent upon the board to recognize that some of the approaches are in fact inconsistent with previous advice, and what does that mean?

Does that mean we should further subject those options to public comment or should somehow the document be revised in some way to address it, but I think it's important at this point to address that. Thank you.

CHAIRMAN WHITE: Toni, to this point, did you want to just clarify that, please?

MS. KERNS: Harry, I read through the minutes of the last meeting where we discussed what kind of guidance we would give the state of Rhode Island and the Commonwealth of Massachusetts on putting together this document on how much over the aggregate trap allocation for 2003, and there was discussion, and it was discussed probably somewhere between 25 and 30 percent, but no one made that specific recommendation that they had to hold to that.

So, we are not bound by that, but I felt compelled to remind the group that was what you all had discussed.

MR. SMITH: I would like to have Mark pay close attention because we chatted briefly before the meeting, and I probably raised a false hope.

I have four comments here, and I'll take them in sequence. A couple of them are more important than the others, but it's easier to go sequentially.

Page 4, I have an issue, like Harry said, on this point, if it goes out to hearing, that's fine, but I have a problem with the perception that it sounds like a person can only own one boat or fish off of one permit, and I think what's intended is that we not split permits and the pregnant boat syndrome.

It doesn't read real clearly to me, and I'm talking about half way down, 3.1.1 B, A — well, mostly B; and again in the next section, 3.1.1.2,B, it talks about you can't hold more than one allocation corresponding to a permit's fishing history.

That troubles me. It just sound like somebody is going to be limited to one allocation; and if a person owns three boats now or, you know, a federal permitted boat and a state permitted boat, and that's a fishing unit, this thing should end up with those being two fishing units; not that that person ends up having to have one consolidated allocation.

It's going in the opposite direction from where I thought we were going. We didn't want a guy with a state license and a federal permit to buy another boat, split them off, have 800 federal pots and whatever the state allowed.



This language, every time I read this -- and I've had the same comment three times and I've e-mailed -- it never comes out sounding like what we intended. So that's just looking for clarity, and I'll leave it at that.

Page 6 is where I have -- yes, that's my biggie -- and it's very relevant to the whole question of how important is the board guidance of 20-25 percent reduction, because in fact in Addendum VI, I think it was, the board voted for the qualifying period to be 1999 through 2003.

The LCMT subsequently -- and I'm sure with the encouragement of trying to capture the attrition, that whole logical discussion, the LCMT decided on a different set of years, and I would beg to differ.

Once we decided on '99 through 2003, that had allocation implications. When an LCMT comes to a successive meeting and decides, well, we can do a better job differently, we're going to change those years, I think this board needs to ratify that before it goes out to hearing.

I would not propose we ratify it, quite frankly. To the contrary, it makes it a tougher row to hoe; but, once we pick those years, there was an implication to everybody out there.

And let me just, by way of an example, show you what I mean. If we have voted for '99 through 2003, it would be like ten guys on an LCMT saying that we want the qualifying period to be April 10<sup>th</sup>, 2002, through August 3<sup>rd</sup>, 2002, because that benefits them.

The only difference between that ludicrous suggestion and what's happening here in the addendum is a matter of degree. When we said '99 through 2003, I believe the LCMT has no business changing it. So, that one may very well end up being a motion to go

to hearing and revise the numbers based on what the board voted to do.

If that happens, one of my other points becomes relatively less important, but I'll cover it now so I get all of them. Page 7, bottom of the page, I think the second line from the bottom, I don't think it is legally or justified, even logically, to say that transfers can only occur within a state.

There's something about discrimination that if a person has a permit to fish in Area 2, regardless of where he lives, and another Area 2 fisherman wants to acquire some of his pots, you know, to me it should area-specific, not state-specific because, you know, if we've got a couple of Area 2 guys, they're out luck, they can't find anybody else to transfer to, there's only two of them.

So, the implication of what happens is discriminatory, and I don't think we should design regulations or plans that give a benefit or take a benefit based on state of residency.

That's all sorts of constitutional problems and all sorts of other things, including fishery things. I don't think we ought to do that. So, that I think needs to be broadened to say within an area.

My last point is -- and I'm now going to be shamelessly obvious on what's motivated this; the last page, Page 16, what's motivated this. One of the LCMT meetings I went to, I kind of got a better sense of the predicament Dick Allen was in, and he's e-mailed about his own thing, so you read it for yourself.

And we had this same kind of thing come up in Connecticut with some of our transferability rules and pot limits and so forth. It's galling that a medical incapacitation that is just very untimely

could keep you from participating as you had in the past.

That's why I started to try and write something up that would apply to anybody in similar circumstances. It's not just not a Dick Allen Amendment, but, clearly, he's the typecast person of it because, you know, it just doesn't seem right.

If this board eventually votes no on it, after deliberating, well, that's the way it goes, but I didn't think it was right to go unchecked. I kind of cobbled this together, ran it past the LCMT at the next meeting.

It's kind of evolved into here -- I don't even know because I haven't talked to Dick, quite frankly, whether it actually satisfies his problem. But, one thing I would suggest, if we finally end up with the '99 through 2003 period, his problem goes away, but maybe there's some other guy in a medical circumstance; and after talking about it further, it dawned on me that the military circumstance with the war and all of what's going on internationally could very well have somebody called up and kept on duty and not be able to participate.

So, I even broadened it to identify that possibility. However, Dick's problem goes away if '99 through 2003 becomes the qualifying years because he didn't have his heart problems until 2000 or 2001.

The one other thing I would suggest, in addition to the date change, to keep this on the table to be discussed because, as I say, we did it in Connecticut. We had to because of legislative interest, and we found a way to do it.

It's gory. You know, you have to be careful that people don't jump on it as a great opportunity, and you find yourself boxed into letting a whole lot of people who shouldn't qualify get in. Both states have

rightly made the point that you shouldn't let that happen. I agree with that concept.

I think we ought to leave this in there for discussion purposes, and I would suggest in 1B, that the last sentence end after the word "presented".

Well, it's substantial in this sense, it basically means that if a person fished a little bit in the three-year qualifying period that the LCMT qualified themselves, that really wouldn't count. It's basically if you have that material incapacitation in the three-year period, if you can prove that -- you can't make the documents up after the fact -- it means you can draw back on your experience in the two previous years.

That's exactly what we did in Connecticut. It worked fine; a couple of guys got in, probably deserved to get in. So, I think it can be managed based on our experience, but taking out that last phrase, "that prevented qualification based on Paragraph 1A", cleans it up.

If there is no objection, I would take that phrase out, and then this would be consistent with the kind of thing I had been trying to get in there as a talking point. Thank you.

CHAIRMAN WHITE: Thank you, Eric. I have Vince and George, and what I think we need to do is address the four pages that Eric is talking about. Is that to the point, Vince?

EXECUTIVE DIRECTOR O'SHEA: Not really. I would recommend you attend to that and then call on me later, Mr. Chairman.

CHAIRMAN WHITE: Okay, let's go back to the Page 4 issue that Eric was discussing, and I think we need to have Dan address that, please.

MR. MCKIERNAN: Okay. Eric, I'm sure you and I are on the same page; and when I crafted this language, I knew exactly what I was saying or meant to say, and I'm just not being clear enough.

But, in the Outer Cape Plan, when we went to administer that plan, we had a fisherman who owned two boats and moved his state permit back and forth between those boats every year. And, by the way, he had a federal permit on one of those boats.

So he came in and said, "Well, I have enough history because I fished -- within that three-year period, one year I've got, you know good federal history, and the other year I've got good state history, so I want an allocation on both boats."

And we said no because it was essentially one fishing operation that just moved from boat to boat. That's what I was trying to capture here. So, if you have a suggestion as to how to clarify that, I'll listen, but I am not sure that -- I don't know how to fix that more than one allocation corresponding to a permit's history, because it's not just a vessel's fishing history.

CHAIRMAN WHITE: George, can you cure that?

MR. LAPOINTE: I probably can't cure it now, and I am reluctant to answer a colloquy. What I think we need is an issue that should be identified during the public process as one that still needs to be tightened up and look for suggestions so we don't try to fix it and edit at 6:45 or 6:50, whatever it is, right now. So, what we need is just identifying the issue and the commitment to clarify before we go for final approval.

CHAIRMAN WHITE: And to that point, Eric, I think if you and Dan could get together just to make that clearer, and then we'll go forward with it.

MR. SMITH: Fine.

CHAIRMAN WHITE: Okay. On the Page 6 issue --

MR. MCKIERNAN: Let me take a crack at this one. Eric, you can see the decline in traps and the decline of participation over those five years, and the whole spirit of this is that the industry came to us and said, "Give us credit for the fact that a bunch of us aren't here anymore."

And if those permits are simply idle in people's back pockets while they went off and did other jobs, you won't have accomplished anything. In fact, if you give traps and maintain all of those permits and all of those traps as potentially active, you're going to allocate, what do I estimate, about 67 percent more traps than are being -- 61 percent more than being fished in 2003.

And, in fact, you're going to probably have a bunch of guys who haven't put a trap in the water for four years selling their allocation.

So, our thinking in this was let's use this addendum to replace the old addendum, and, yes, it's a different set of years, and, yes, it may have some allocation shifts in benefits to permit holders, but it really is consistent with what the LCMT was asking for, which was to credit the industry for all the less fishing that's going on.

CHAIRMAN WHITE: But, Dan, to address what Eric's concern is, as it was other people, if you went forward with those new dates, then wouldn't you have to redo the allocation process so that you didn't go to the 67 percent, which is contrary to what you were advising?

MR. MCKIERNAN: Sure would, yes. I guess if you allocated 61 percent more traps

than were fished in '03, then you have to whack everybody when it came time to allocate them traps through some kind of active reduction.

MR. SMITH: Well, if I may, you know, you're quite right, you're going to allocate more pots, but a lot of this has been let's try and get number as low as we can because it's probably good for the resource.

I would maintain if the resource recovers, then maybe more pots can be sustained than happen to be out there right now at the low point. Opinions will vary all over place on that, and probably it can be quantified in time.

My only point is when we're looking at this as the policy implication and we pick dates, there's a big consequence to that. When an industry group changes the dates, that creates winners and losers that bugs me. You know, that's not the place that I think the LCMT ought to be offering the guidance. I mean, we ought to be setting the policy on what's a reasonable qualifying period.

And if it means everybody has to take a little bit more of a cut, then that's spreading the pain, if you will, across everybody equally. I would maintain that I don't think there's anything required in the plan that says we have to get as many pots out of the water.

It apparently is a strongly held desire of the two agencies, and maybe it's even good management, I don't know. I'm not sure, but there are other ways to manage and conserve the fishery other than just getting the pots as low as possible.

So I would say it's not an absolute mandate; it's a desire, and I'm not sure the desire persuades me yet that changing the dates by an advisory group of people who have a stake in it is a good idea.

CHAIRMAN WHITE: Gordon, to that point.

MR. COLVIN: Mr. Chairman, I'm going to make a suggestion for process; that unless there's a motion on the table to amend, that we curtail the dialogue.

CHAIRMAN WHITE: That's a good suggestion. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I don't think people are going to want to hear what I am going to say, but I am going to say it anyway.

First of all, this addendum doesn't have a problem statement in it. I understand maybe why that happened, but the closest thing to that is when I read the introduction it says the purpose of this management plan is to establish a multi-state effort control program that governs traps fished in state and federal waters to cap effort at recent level.

That what says the purpose. Then, as we were walking through Pages 5 and 6, I noticed that every one of the proposals results in a number of traps that exceed the 2003 number by some amount, 23 percent, 61, 47, 87, which is a weird way to reducing traps.

But, I'm just wondering and question to the board, is there value in building in another option that results in capping traps at the 2003 level, just strictly as an option? We're talking about what guidance were people given, where was it put down, is it the 28 percent target, whatever it was, and it seems to me there's some vagueness around the board about what that is.

So my question to you all is it worth putting to cap effort at the 2003 number of traps as an option in this addendum? Thank you, Mr. Chairman.

CHAIRMAN WHITE: Dan.

MR. MCKIERNAN: Vince, one thing we learned in the Outer Cape Plan is just because you allocate a trap, it doesn't mean it gets fished, so we have a problem in our definitions. Looking at the number of traps reported fished in '03 and then allocating that number may result in less traps being fished after the plan.

So, a lot of these are moving targets. We may have a 20 percent latent aspect to all these allocations, so then we would have reduced traps by 20 percent just by virtue of the constraints of the plan.

CHAIRMAN WHITE: Well, I think to Gordon's point, it is really well taken. Let's move forward with what the motion is that's here; and if somebody wants to make an amendment such as what Vince has suggesting, then that's fine, but let's move forward with the motion. Eric.

MR. SMITH: I guess I'm not going to make that motion as long as the proponents of this plan understand that I'm very likely to come back in November and vote for the strategy that has the '99 to '03 years in it.

And if they think that's a bad idea, then we ought to try and clear the deck now and just go to the public with a cleaner proposal. I am going to leave it to them. I feel pretty strongly about it, but I also am an adjacent state and not a direct state, and I am going to take a little bit of lead from them on how they would like this to go to the public.

MR. GIBSON: I think it's essential for the options as written to go forward for public comment, given the amount of effort the two states put in with industry. We've heard Eric loud and clear, and I think you'll hear an abundance of testimony on the merits of both the '99 to 2003, as well as the 2001 to

2003. I wouldn't characterize them different. One is a subset of years of the other.

CHAIRMAN WHITE: Okay, before we go for a vote, I would like to hear from the public.

MR. SMITH: To that, Mr. Chairman, you may have jumped a little quick. I didn't say I had no motions, but not that issue. If you want to get the motions and clear them before you get public comment, let me suggest them.

Okay, at the bottom of Page 7, I would suggest that sentence say, "In the initial phase, allow only transfers of trap allocations within the management area." I would move that.

CHAIRMAN WHITE: Dan.

MR. MCKIERNAN: It doesn't really make sense because even in the final phase you only want to allow transfer of traps within the management area. What we were thinking about was in the first year of this, each state could work out its process internally; and then in the second year —

CHAIRMAN WHITE: Dan, hang on one second. You're moving to amend?

MR. SMITH: Yes, it's a motion to amend. Didn't I say that?

CHAIRMAN WHITE: No. Would you do that again, Eric.

MR. SMITH: The first sentence, replace the word "state" at the end with the words — let me read the whole thing. It's in Section 3.2.1.4; transferability. The first sentence after the bold face says, "In the initial phase allow only transfers of trap allocation within a state."

So, for those of you with the other formatted document, it's Page 8, top line. So the motion would be to change the word "state" to be "within the management area".

MR. MCKIERNAN: Can I offer a substitute motion to strike the whole paragraph?

CHAIRMAN WHITE: Not unless it's acceptable by the motion maker because we don't have a second yet. We need a second. Will anybody second Eric's motion? Seconded by Bruce Freeman. Now, Dan.

MR. MCKIERNAN: Yes, it really doesn't make sense to say, "The initial phase only allow transfers of trap allocation within the area," because that's supposed to be the ultimate goal entirely. What I suggest is strike that whole paragraph, and that way we don't get into any trouble.

MR. SMITH: The whole paragraph or the whole section?

MR. MCKIERNAN: The whole paragraph from "In the initial phase", all the way down to -- the four-line paragraph that starts with "In the initial phase".

MR. SMITH: And ends "effort control plan"?

MR. MCKIERNAN: Yes.

MR. SMITH: So now that section reads: "States working under the oversight of ASMFC and NMFS shall develop an interstate transfer program for permit holders seeking to transfer permits and traps between states."

MR. MCKIERNAN: Yes.

MR. SMITH: Okay, so that paragraph you say applies to the whole management area?

MR. MCKIERNAN: Yes.

MR. SMITH: Between different states within the management area? Okay, I'll accept that.

CHAIRMAN WHITE: Do we need to have that as an amendment if we're just striking it out of the document?

MR. BEAL: Well, if there's consensus around the table that everyone is comfortable with that, I think we can probably just get rid of the whole motion altogether.

CHAIRMAN WHITE: Is there any objection to what Dan is suggesting? Then I'm going to have the motion withdrawn and the correction made, and we'll move forward. Dan, would you repeat the omission and give the page number.

MR. MCKIERNAN: Yes. On Page 8, top of the page, under Section 3.2.1.4 called "Transferability"; the paragraph that starts "In the initial phase" be struck entirely.

CHAIRMAN WHITE: Eric, do you have something else?

MR. SMITH: Last one, you might want to address this one the same way; in other words, without objection. This is Page 16, in 1B, the suggestion I offered earlier that the last sentence end after the word "presented".

CHAIRMAN WHITE: Does anybody have any objection to that? It says, "notarized at the time that the appeal is presented", and then period; omitting the words "that prevented qualification based on Paragraph 1A".

Are there any other amendments to the main motion? Go ahead, John.

MR. NELSON: Thank you, Mr. Chairman. I'll make mine very brief. I have been very quiet during this whole thing. Under Appendix B, I really think there's a number of dates in there that need to be reviewed by the folks that have put this together.

Some of them don't make sense to me, like, for example, under Item D, "Individuals who qualify under Requirement B can use landings from any year or years, highest or the average, between the period 1999 to 2000."

So, I ask if we can give the liberty to the makers of this addendum and the staff to refine dates as necessary under Appendix B.

Then I think you said earlier, Mr. Chairman, or it was said earlier that where it's now listed as endorsed by various entities, like LCMT-endorsed, et cetera, et cetera, or preferred or things like that, those were going to be eliminated?

CHAIRMAN WHITE: I didn't understand that. I understood that it would be clarified that the preferred was by the joint committee that was formed to review and develop this plan. Am I correct, Dan?

MR. NELSON: Well, I wonder if that's appropriate that it's coming out of ASMFC and we have not chosen any preferred, and I don't think another entity should be listing what's preferred, and so I would recommend that those types of things be removed.

CHAIRMAN WHITE: Does everybody agree with that? Are there any objections to that? Bill.

MR. ADLER: Just a clarification. John, you're talking about every time it says "preferred", just dropping it out?

MR. NELSON: Yes.

MR. ADLER: That's it, just the preferred ones?

MR. NELSON: Well, no, it says "LCMT endorsed". It might say "preferred". There's a variety of things in here that I just don't think are appropriate for a document that's coming out of the commission.

MR. ADLER: That's all right, yes. I agree with that, yes.

CHAIRMAN WHITE: All right, again, Pat.

MR. AUGUSTINE: A clarification to Vince's point. It doesn't say what the goal is other than what we're trying to do is buried down in the middle of the document. Could the staff actually clarify that with Dan and Mark, whoever wrote that section, and pull out a sentence or two as to what the specific goal is?

We have background information, but then buried in there we say we're trying to do something. Could we pull it out as a highlight?

MS. KERNS: Pat, because this is just replacing the effort control plan of Addendum IV, I will go back and replace the statement of the problem from Addendum IV and put it into this addendum.

CHAIRMAN WHITE: Eric, you were next.

MR. SMITH: Very quickly while it's fresh on our minds, the point John Nelson made about that Paragraph D, it's really during the years 1999 and 2000, and that's why it says the average of two years or one of the years. So, Toni has that, too. Then we don't have to go back and try and figure out what we were saying.

CHAIRMAN WHITE: Thank you. Harry.

MR. MEARS: Thank you, Mr. Chairman. My comment pertains to discussions we had back on Tuesday concerning LCMT's and the board. We just decided to take out preferred options, and now we're going to have a document for public comment that says "LCMT preferred options". No?

CHAIRMAN WHITE: Harry, that was removed.

MR. MEARS: Both have been?

CHAIRMAN WHITE: Yes.

MR. MEARS: So doesn't there have to be a preferred option by somebody? There does not, okay.

CHAIRMAN WHITE: More comments on the motion? The question has been called. David, go ahead.

MR. JORDAN: I'll be brief. David Jordan, Area 2 fisherman and lobsterman. I just want to put a human side on this whole LCMT process. There's younger people that got into this business. I don't know why, but they did the last couple of years, and they're going to be eliminated under this plan.

They're going to have to actually buy traps from somebody who left the business in '01 and is gone. That is totally unfair. I just can't believe somebody would pass a plan that would eliminate a young -- we always used to talk about younger people; we want to get younger people.

Now they're going to try to eliminate them, and I just think that is so unfair. I just want to put a human side to this whole travesty that's about to happen.

And, believe me, you are going to hear plenty at public hearing, because there's plenty of old-time fishermen, 20 and 30

years, just like Mr. Allen, who are going to be eliminated for economic reasons.

They had to do something else to support their families in '01 and '03, and they didn't fish. If you went with Eric's thing, '99 to '03, they might get in, but that '01 to '03 is terrible for this industry in Area 2. That's all I've got to say.

CHAIRMAN WHITE: Thank you for your comments and your patience, David. I appreciate it. Back to the board, do you want to caucus?

(Whereupon, a caucus was held.)

**CHAIRMAN WHITE: Everybody all set? All those in favor of the motion, please raise your right hand; all those opposed; null votes; abstentions. The motion passes.**

MS. KERNS: Can states who want to have a public hearing please raise their hand. Connecticut, New York, Rhode Island and Massachusetts have asked for public hearings.

### **Outer Cape Compliance Review**

CHAIRMAN WHITE: Okay, compliance issue on the Outer Cape, deferred issue. Statement of the problem, Toni.

MS. KERNS: The Outer Cape Cod did not increase their gauge from 3-3/8 to 3-13/32 as required by Addendum III.

CHAIRMAN WHITE: To that point, I need a motion. George.

MR. LAPOINTE: I would like the Commonwealth -- I don't think we had a good discussion on if there's a difference. You know, we operated the other two issues in different ways based on the history; so



before I make a motion for non-compliance, if there's some reason not to, I want to hear it.

MR. MCKIERNAN: Okay, this action or lack of action is more similar to the New York and Connecticut, or I should say the Connecticut non-action, because it was part of the "if necessary" provision.

However, from our perspective and from our regulatory commission's perspective, we believe that the stock assessment that was supposed to have been done to determine "if necessary" is actually happening now and is going to be released in the weeks ahead.

If we go forward with this gauge increase and we don't go forward with the gauge increase in Area 2, we are going to have three different minimum sizes in the Commonwealth; and when the environmental police walk down the pier, everybody is going to hear them coming because of all the gauges on their waist.

Specifically, we would like to re-examine this or actually ask for time because we think when the new assessment comes out, we're going to see some different strategies for the Outer Cape. We need to attempt to get more common minimum sizes in our state's waters, and we think that's possible under some new management initiatives under the new plan.

So if you find us out of compliance, we intend to appeal to the Policy Board tomorrow and ask for a delay in any further findings until July 1<sup>st</sup> of '06. We could certainly consider action on July 1<sup>st</sup> of '06 to either catch up to the Area 3 gauges or to make this gauge similar to what is going to happen in other parts of the state.

CHAIRMAN WHITE: For a point of clarification, I'd like Toni to read -- what you've stated is this was dependent on a

stock assessment, and I think there's a clarification in whatever. Toni, would you read that, please.

MS. KERNS: This comes straight from the proceedings in the February 2002 meeting: The fourth issue relative to Addendum 3 deals with the "if necessary" provisions.

It's not an issue that needs to be addressed specifically by the board at that time, but they want to make it clear on the record that the "if necessary" provisions are necessary and not now and is only that a stock assessment will prove them to be not necessary.

CHAIRMAN WHITE: Now there are a few questions. Questions to that point? Gordon.

MR. COLVIN: With some passing familiarity, I would like to make a motion, Mr. Chairman. With some passing familiarity with "if necessary" and how they work, if necessities were deemed necessary, period.

The schedule has been implemented, and the prospect for further deferral of gauge implementation based on the status of the stock assessment was a question asked and answered at the annual meeting in New York a year and a half ago.

At that time Area 6 was given a year. There was a motion to give other areas time. That motion didn't pass. There is no basis to ask for a deferral of a specified gauge increase based on the "if necessary" based on the status of the stock assessment that I can see in our record anywhere.

**And, of course, that check came due for Area 6 this last July 1. Mr. Chairman, I have to move non-compliance -- that the board find Massachusetts in non-compliance in that they have not raised the Area 2 gauge from 3-3/8 to --**

CHAIRMAN WHITE: Do you mean the Outer Cape?

MR. COLVIN: -- the Outer Cape gauge from 3-3/8 to 3-13/32 on July 1, 2005; and thereby have failed to meet the requirements of the egg production rebuilding schedule and the requirements of Addendums II and III; and that they may be found in compliance when the gauge is increased to 3-13/32 inches.

CHAIRMAN WHITE: Thank you. May I have a second to that motion, please. Seconded by Dennis Abbott. Yes, Bob.

MR. BEAL: Just a comment. I think if we give staff a minute to perfect the language as far as referring it to the Policy Board and those sorts of things, if Gordon would indulge us, we can maybe have another one to read and ask Gordon to re-read it into the record.

CHAIRMAN WHITE: George, go ahead.

MR. LAPOINTE: I think this is the right thing to do, and I'll tell you why. We're going to have an assessment that comes out that's going to be peer reviewed at the end of this month. We're going to look at it for the first time in November.

We talked yesterday about the probable need for an amendment. I think what will be critical for this board and this commission is really thinking deliberately about how we want to act. If we go to a number of addendums right away, I think we'll lose the chance for thinking deliberately about the broader policy implications of the assessment and where we need to go.

So, I'm reluctant to have us dive into changing a lot of things in the short term and not paying attention to the long-term issues.

CHAIRMAN WHITE: Thank you, George. Bill Adler.

MR. ADLER: I have a problem with this. It's a process. We talked a lot about following process. I listened to this for a couple of days here. In this addendum, the addendum that first stated this, it was Addendum III.

In that addendum, which is supposed to be the bible around here -- we keep following the addendums or the amendments and what they say. And in there it did say that they would go up on the gauge in the Outer Cape if, following an updated stock assessment, it is necessary to meet, de, da, de, da.

They didn't just say "if necessary". It said after the next stock assessment. That was in bold print in the addendum. Now, I know about the other votes that came after that. However, I therefore looked in Addendum V and VI to see where you said, "Boys and girls, we changed our mind on this," which you can do, and, therefore, it's in an addendum that all "if necessities" are hereby necessary, so let it be written and so let it be done. And they're not there.

The other thing that happened was you found it necessary to adjust the traps for Area 3 from the original addendum, and therefore you had to do a whole addendum, Addendum V, to change some numbers.

Addendum VI, Addendum VI was to simply say stop to the Area 2 trap plan. Why didn't you just take a vote at this meeting? I'm trying to figure out when do need addendums, when do you not need addendums?

If we can change some of this stuff without doing an addendum, okay, then we can do plans without an addendum. Why is it that we need an addendum to change a trap number, an addendum needed to stop

something that's already been in an addendum, but yet we don't have to put in an addendum the fact that, well, we took all the "if necessary" out, which you can do, and we just hereby said they're all that way.

I have a problem with the process here. Of course, in Massachusetts -- I didn't see, by the way, in any of these things where it is now a compliance factor that the Outer Cape has to go up before the next stock assessment. I didn't see anywhere written in here that that's the case.

In our state we have a law that says the director may raise the gauge in our state if he determines that it is necessary to be in compliance, and a lawyer could look probably at where does it say it's got to be in compliance?

I see "if necessary" after the next stock assessment. I see that in the bible. Now, by the way, our commission did vote; our local commission did vote to go up on the gauge. They did decide to take that first thing, and they voted to go up on the gauge in the Outer Cape, and it passed, following the stock assessment, which, of course, is supposed to be out anyway.

So, my problem is with the process here; and since we are following processes everywhere, I didn't see it put into the formal bible. That's my problem with this.

CHAIRMAN WHITE: Other comments? George.

MR. LAPOINTE: Bill's points are well taken, but did we take action through an addendum that put a gauge increase and a date for the Outer Cape, in one of these areas?

MR. ADLER: It says, yes, there will be a gauge increase if --

MR. LAPOINTE: No, no, is there a compliance date associated with a gauge increase, this gauge increase of July 1, 2005, in one of our addenda? I'm not asking what that said. I will ask staff, then.

In one of the addenda, is there a compliance measure that says the gauge will go up in the Outer Cape area on July 1, 2005? Was that taken out to public hearing; was that vetted through our process and the public process and approved by this board?

MS. KERNS: Yes, in Addendum III.

MR. ADLER: I've got Addendum III. You're right, it says 2005, 6, 7, 8, right? In the same section it has that footnote. That's what I'm going by.

CHAIRMAN WHITE: Additional comments, please? Seeing no further comments, do we need to caucus? Gordon, could you please read the motion.

**MR. COLVIN: I move that the board recommend to the ISFMP Policy Board that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce the gauge increase from 3-3/8 inches to 3-13/32 inches in Outer Cape Cod by July 1, 2005.**

**This measure is required to ensure that the F-10 percent targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come into compliance, the Commonwealth must increase the Outer Cape Cod gauge size to 3-13/32 inches.**

CHAIRMAN WHITE: Any further questions on the motion? Do you need time

to caucus? Eric, do you want to make a comment?

MR. SMITH: Actually, I would. I mean, I understand but don't agree with Bill's frustration. He's quite right, Addendum III said what it said, but we also took some actions, and he's frustrated there.

When I think back to the meeting in December 2003, what we gained for Connecticut and New York fishermen to try and get some time out there, hoping that the assessment was in, we did deliberately, and we did it by a vote, and then the very next vote and the very next debate was exactly as Gordon characterized it.

So, the problem is if we had defect, it was in December 2003, but it works both ways. I'm not voting for something -- I mean, I'm voting for the motion. I'm not going to oppose the motion because of Bill's points, but because of what we just went through two hours ago that Connecticut fishermen would have a right to claim, well, but, "if necessary" was in Addendum III. We debated that incessantly in December, and we concluded what we concluded by votes. We need to move on. Thank you.

CHAIRMAN WHITE: Thank you, Eric. Okay, all those in favor of the motion, please your hand; all those opposed; abstention; null votes. The motion carries. Toni, a quick up date on the stock assessment.

### **Stock Assessment Update**

MS. KERNS: I just want to let the board know that the stock assessment has been completed, and it has been passed on to the peer reviewers. The peer review for the Lobster Stock Assessment will be on August 29<sup>th</sup> through the 31<sup>st</sup> in Boston, Massachusetts.

The Stock Assessment Peer Review Panel is composed of Mike Sigler from the National Marine Fisheries Service -- and he will be chairing that panel -- Rich Methot from the National Marine Fisheries Service; Doug Woodby from the Alaska Fish and Wildlife; Mike Murphy from the Florida Fish and Wildlife Commission; Terry Quinn from the University of Alaska; and Rick Deriso from the Inter-American Tropical Tuna Commission.

CHAIRMAN WHITE: All right, thank you, Toni. Any questions on the stock assessment update? Yes, Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. One thing just to note is that two of the folks that were listed up there have written one of the classic books on modeling, Dr. Deriso and Quinn. I think the commission should really be commended for going out and getting a world class panel of scientists put together that are going to look at this stock assessment.

There's a lot of influence from the northwest, strong crustacean background, and I think it's just an absolutely blue ribbon panel here.

Also, I want to commend the fact that the stock assessment that went forward did not have a minority report in it. I think that's another thing that is working in our favor here. We've got some good things lined up on this stock assessment. Thank you very much.

### **Lobster Health Steering Committee Update**

CHAIRMAN WHITE: Thank you, Vince. Gordon, Lobster Health Steering Committee.

MR. COLVIN: Thank you, Mr. Chairman. You recall, please, that this board has approved an expansion of the Lobster Health Steering Committee that has existed for a couple of years under the auspices of the board with respect to the Long Island Sound Program.

A charge and an expansion of the geographic scope and membership of the committee was proposed and essentially remanded to the current committee to make recommendations as to how to go about that.

The steering committee met on May 18<sup>th</sup>, and in its first order of business agreed to select Dr. Jack Mattice, Director of the New York Sea Grant Institute as its chair. Jack couldn't be here, but asked me to submit to the board and to the chairman a summary of his recommendation on behalf of the committee.

The memo that Jack sent to Pat has been distributed to the board and recommends, in effect, an expansion of the membership of the current committee to include representatives of the state marine fisheries directors offices; the Sea Grant directors; and the lobster industry from the states of New Jersey, Rhode Island, Massachusetts and Maine; and a representative of EPA Region 1 to the current membership, which is outlined in the memo.

Mr. Chairman, we respectfully offer that recommendation and suggest that the board consider or the chair consider the most appropriate means of identifying lobster industry representatives that could, for example, be chosen from among the current advisory panel members or other interested people from the involved states at the recommendation of the state agency.

The other accompanying recommendation is that we recognize that some of the lobster health issues are of concern and interest to

folks are of less than the span of the entire geographic range of lobsters, so that it may well be appropriate to authorize an expanded steering committee to create subcommittees based on smaller geographic scope; or, to deal with special issues such as a group of people dealing with shell disease.

I would also point out that the increase in our ACFCMA grant this year does provide some funding for lobster work and lobster health issues, and we do expect to have funding under that program to support meetings of the expanded committee.

That's our committee's recommendation, Mr. Chairman, and I hope that it will be suitable to you and the board to act favorably on.

CHAIRMAN WHITE: Question, if I might, Gordon. That's quite a task that you're asking here, and what do you intend for the number to increase to? Do you expect to have a person for each one of these designated states and committees? I mean, how extensive do you want these additions to be?

MR. COLVIN: In effect, what we're talking about is three people per state, someone from the fisheries agency, someone from the Sea Grant office -- and we do understand, by the way, that the New England Sea Grant Directors are interested in doing this. There has been feedback through the Sea Grant offices. There is an Association of the Northeast Directors -- and of the industry.

So what it would amount to are sixteen prospective additional members. We recognize that's a substantial size committee, certainly, smaller than this board, and that's part of the reason we suggest that ultimately the committee may wish to consider some smaller geographic sub-units to facilitate their deliberations.

CHAIRMAN WHITE: Thank you very much, Gordon. Unless anybody has an objection, I think I would accept this as wholeheartedly supported by the commission and will move forward with it. Thank you very much.

MR. COLVIN: Thank you on Jack's behalf, and I would suggest that if that's how we're going to proceed, that the state agencies begin to think about how they might want to assign staff to this.

In some cases, if you have like Maine has folks that are very knowledgeable on lobster health issues and may wish to designate someone from that part of their agency or their associated university system.

CHAIRMAN WHITE: I'll have staff work with the state agencies on that, and thank you. In the interest of time -- and I appreciate everybody's patience -- Toni has worked up a summary of yesterday's meeting; and rather than get into a heavy discussion on that now, I would like people to comment on it, but I'll get you the summary of yesterday's meeting and where we want to move forward with it, and we'll comment on that later, unless anybody has any serious objection.

Is there any other business to come before the board? Move to adjourn; we are adjourned.

(Whereupon, the meeting was adjourned at 7:40 o'clock p.m., August 17, 2005.)

- - -