

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

Radisson Hotel
Alexandria, Virginia
May 26, 2004

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ATTENDANCE

Board Members and Proxies:

George Lapointe
Pat White
Dennis Damon
John Nelson
Dennis Abbott
G Ritchie White
Paul Diodati
Vito Calamo
Bill Adler
Mark Gibson
Gil Pope
Eric Smith
Gordon Colvin
Pat Augustine
Brain Cullhane
Bruce Freeman
Roy Miller
Howard King
Bruno Vasta
Harry Mears

Joe Fessenden, LEC representative
Bob Glenn, TC Chair
Bob Baines, AP Chair

ASMFC Staff:

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Vince O'Shea
Robert Beal
Megan Gamble
Geoff White

Members of the Public:

Bob Ross
Anne Lange
Tom Meyer
Everett Petronice
David Spencer
Bonnie Spinazzola
Peter Fanelli

ATLANTIC STATES MARINE FISHERIES
COMMISSION
AMERICAN LOBSTER MANAGEMENT
BOARD

Radisson Hotel: Alexandria, Virginia
May 26, 2004

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The Atlantic Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel, Alexandria, Virginia, on Wednesday, May 26, 2004, and was called to order at 3:00 o'clock p.m. by Chairman Patten D. White.

Approval of Agenda

CHAIRMAN PATTEN D. WHITE: We'll get the Board meeting started in two minutes, so will you all try and take your seats, please. Okay, welcome to the Lobster Board meeting. I'd like to move into this because we've got to be out by 6:00.

I would like approval of the agenda if everyone has one. Any objection? Thank you. Approval of the proceedings from the March 2004 meeting. Thank you. Second.

Approval of Proceedings

MR. DENNIS ABBOTT: I make a motion to accept the minutes of the previous meeting.

CHAIRMAN WHITE: Seconded by Bill Adler. Any objections? So moved. I'd like to open it up now. There will be occasions, as we go down through the agenda, for public comment but is there anybody in the public that would like to make public comment now or forever hold their peace. Good.

Advisory Panel Report

Advisory panel report. We have Bob Baines here for his last meeting, and I would like to give him a vote of thanks from the Board. He's been a great help. He's done a great job. We've enjoyed working with him and we look forward

to working with his predecessor. Thank you, Bob.

MR. ROBERT BAINES: Thank you, Mr. Chairman. The advisory panel met last week. There is only a small group of us, but we still seem to take up an hour and a half on a conference call. It began by Carrie updating the AP on the most recent developments on the stock assessment, Amendment 4, Addendum IV, if necessary clauses, and transferability. I'll go through some of the things now, but I'm going to wait on the transferability until Carrie gives the subcommittee report. The AP discussed the "if necessary" clauses and the Lobster Board's action on the "if necessary" clauses at the December Board meeting.

The AP recommends making sure this issue is clarified in all future management measures to prevent confusion. Then we spent quite a bit of time on transferability, and then we discussed the activities for the coming year and what we wanted to work on.

The AP discussed issues they would like to work on through the 2004 and beyond. At the next meeting the AP would like to discuss coast-wide zero tolerance, v-notching definition; a universal gauge size for the coast; the placement of escape vents in traps; lobster health and disease information coming out of Long Island Sound research; dedicated access programs; and the role AP members can play in the national dialogue funding the research activities; and, finally, when the model has been chosen for the stock assessment, the AP requested a presentation from Bob Glenn about the model. Also, John Sorlein who is now the vice chair will be the chair coming up at the next meeting. Thank you.

CHAIRMAN WHITE: Thank you, Bob. Next on the agenda is the plan review team report on state compliance, Carrie.

Plan Review Team Report on State Compliance

MS. CARRIE D. SELBERG: What I'd like to do is run through the whole plan review team's

report, beginning to end, and then we'll go back to issues where the plan review team had areas of concern and visit each of those individually.

I'm going to start north and go south, go state-by-state, and highlight any areas of concern or compliance issues the plan review team had with each state, starting with the state of Maine.

The state of Maine has not fully implemented the most restrictive rule. They are in rulemaking to implement management measures for all other LCMAs except for Area 1. However, this rulemaking does not include minimum sizes higher than 3-1/4.

They've indicated the need to introduce new legislation in order to include minimum sizes higher than 3-1/4 inches. That was the area of concern for the state of Maine. Could I run through them all and then we'll go back to each one?

Thank you, I appreciate it. Then you'll see the range of issues and we'll go back to each state. The state of New Hampshire, there were no compliance issues for the state of New Hampshire.

For the state of Massachusetts, have not fully implemented the most restrictive rule. They need measures for Area 4 and Area 5, or they need to document that they have no fishermen from those areas landing in Massachusetts. At this time Massachusetts has indicated they don't have fishermen for Area 4 and 5, so we simply need documentation that is the case.

We have one area of concern which is the alternative marking strategy for the recreational fishing, which is an issue that the plan review team brought forward to the Board in the past. Massachusetts indicated that they would like some time to implement their recreational program, so we are just raising this as a concern that has not yet been addressed.

For the state of Rhode Island, no compliance issues. For the state of Connecticut, also no compliance issues. For the state of Connecticut, though, we did feel that their most restrictive language could be strengthened, but we did not

think it was a compliance issue.

For the state of New York, the most restrictive rule, they have not fully implemented, still need the Area 5 management measures for the state of New York. And the state of New Jersey, no compliance issues.

Delaware, Maryland, Virginia and North Carolina all requested and all qualify for de minimis status, and the PRT is recommending that the Board grant de minimis status to these four states.

Finally, the plan review team has four general issues and recommendations. I'm going to run through each of them. The first is the most restrictive rule.

The PRT notes that several states have chosen to implement the most restrictive rule through reference to the most restrictive rule and the ASMFC management measures for each lobster conservation management area.

The PRT simply encourages each state to confirm through their legal teams in their state that the management measures from other areas are enforceable in this format.

A second general issue is the "if necessary" clauses. Based on the Board action at the December 2003 meeting, all "if necessary" clauses are considered to be necessary compliance criteria with the exception that the Area 6 measures are delayed by one year. The PRT will be basing all future compliance based on this Board guidance from December 2003.

Third, the Addendum III footnote, there is a footnote in Addendum III which reads that "The Commonwealth of Massachusetts will monitor the percentage of v-notched egg-bearing female lobsters in commercial catches during 2002. If the observed percentage does not reach 50 percent, the Commonwealth can consider additional management measures." It goes on to further discuss those management measures.

The technical committee last year put together a report indicating that Massachusetts' v-notching

compliance rate had been increasing, but was below 50 percent, and at that time the Board decided they wanted to wait until the report could be updated with an additional year's data before moving forward with any action. The PRT is simply recommending that the technical committee update this report when the data is available to do so.

And, finally, Addendum IV, which we'll be talking about a little bit later today, most states included information outlining how they intended to implement Addendum IV with varying degrees of detail.

The PRT is urging all states with Area 2 and Area 3 fishermen to actively engage in the transferability subcommittee discussion to ensure their programs can be implemented by June 2005.

That's the PRT report in its entirety so we'll back up now and go back to Maine and step through and I can answer any questions at that time.

CHAIRMAN WHITE: What I'd like to do, Ritchie, if we can, is go down through the state order and have a discussion, and we'll go around it by state, if we could, please. George.

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. We, as we said we would, went through a regulatory process for most restrictive. A copy of that regulation I believe is in the package for today's meeting.

During the course of that discussion, when we proposed increasing the minimum size in those other areas to the appropriate level, we were told by our AG's office that we did not have the authority to do that. Our state law says the minimum size limit will be 3-1/4 inches, and any changes to the minimum size need to be made through the state legislature.

So it is our intention, in conjunction with my Marine Resources Committee, the chair of whom is at my right, to submit legislation to allow us the flexibility to increase the minimum size for those other areas, to fill out our most

restrictive rule obligation.

CHAIRMAN WHITE: And what would you anticipate the time frame is on that?

MR. LAPOINTE: The legislature meets next January. We would submit legislation in the fall, but it wouldn't be heard until next year.

CHAIRMAN WHITE: Comments on Maine, discussion on Maine. Ritchie.

MR. G. RITCHIE WHITE: A question, George, where this process started in 2003, when did you find out that it would take legislation to fix this?

MR. LAPOINTE: When we submitted the regulation to our AG's office, and they came back with this, I mean, the interpretation of the law. And the regulations were submitted early this year. I don't remember the exact date.

MR. WHITE: Follow up. So you did not have time in this legislative session to --

MR. LAPOINTE: That's correct, I was past the time I could submit legislation.

CHAIRMAN WHITE: Other questions for George?

MR. LAPOINTE: Mr. Chairman, if I might.

CHAIRMAN WHITE: Yes.

MR. LAPOINTE: The other thing in regard to Maine is under the most restrictive rule in the general compliance related recommendations, the PRT asked about implementing the most restrictive rule through reference, and they encouraged the states through legal advice to see if they can enforce that. We have talked to our AG's office and we can enforce what we have in place.

CHAIRMAN WHITE: John, you had a comment.

MR. JOHN I. NELSON: Do you want to go wait until you go through all the compliance issues, Mr. Chairman, or -- my concern is that

states like ourselves have put the size restrictions in place, and therefore the fishermen that are fishing in those areas are abiding by those.

I am in a very awkward position. I'm using that term very loosely. If I've got a state next to me that the fishermen don't have to abide by those regulations, my guys are going to be very upset. I've already heard from some of them that we should just suspend our rules.

I'm really in a tough spot here because we put ours in a year ago, which is when we all knew that these things were going to be put in place. We are going to be criticized for doing what was required of us, but not required of other states. That creates a big problem.

CHAIRMAN WHITE: George, do you wish to respond?

MR. LAPOINTE: My response would be that the fishermen in Area 3 are bound by those size limits through their federal permits so it's not like they aren't bound by them.

MR. NELSON: I don't think the federal ones are in place yet, and so it was up to the states to implement the plan. That's where the problem comes into play.

CHAIRMAN WHITE: Would the Board like to take action on this item? Pat.

MR. PATRICK AUGUSTINE: Well, it sounds like we have a dilemma. We have a policy and we have a state that has a problem, and it's a legislative problem that unless the state can somehow work through an emergency legislative action, I hate to say it, but it almost sounds like we have to find the state out of compliance.

That's what it sounds like. Unless somebody can clearly state a way for us to get around that situation, it's a very ticklish situation to have us be put in, particularly with Mr. Nelson being chairman of the whole situation and being a neighboring state and having his fishermen fish literally the same waters.

It also puts Mr. Lapointe in a very bad position because he has been a very active and aggressive member of all of our Board actions, so I would almost ask our executive director if in his opinion there is something that he might suggest we can do short of taking an action that is going to find the state out of compliance. Mr. Chairman, that would be my comment.

CHAIRMAN WHITE: Vince, do you want to respond?

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I want to think about it.

CHAIRMAN WHITE: Okay, in the interim, George, you had your hand up.

MR. LAPOINTE: It does put us in an awkward spot, and do I wish I wasn't here? Yes. I would say that we have had other states out of compliance with a plan for long periods of time; and when these kind of situations come up, we've been giving them some forbearance to get through the legal process they have to go through, and I'd just ask for the same courtesy.

CHAIRMAN WHITE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, the two options that come to mind is one that the obvious one to say, okay, let's see what happens next year if this can happen.

The second is it seems to me earlier this week, we had Boards that have taken action that said if certain things didn't happen by a certain date, it would be the action or intent of the Board to find a state out of compliance.

That might be a mechanism to a little bit more reflect the Board's concern about the date, the action actually appearing at the date. Those are two thoughts that come to my mind at the moment.

CHAIRMAN WHITE: Dennis.

SENATOR DENNIS DAMON: Thank you, Mr. Chairman. Given the concern of the Commission, it would be my promise to the

Commission, as chairman of the Marine Resources Committee, to personally sponsor this bill and shepherd it through the committee in the next legislature.

This past legislative session being the short legislative session and being unable to introduce new legislation per our rules, it would have been very difficult to -- had we even known about it, it would have been difficult to get it in, not impossible but difficult.

But, the timing of the understanding from the AG's office and then trying to get it into this session was truly impossible. I would commit to you to sponsor that legislation and shepherd it through in our next legislative session. Thank you.

CHAIRMAN WHITE: Ritchie.

MR. WHITE: What would be the time frame, George, that you would see going through the next session which these regulations could be in place?

MR. LAPOINTE: We would submit legislation to have it -- our normal laws go into effect 90 days after the end of the legislature, which would put it in September. We have provisions for emergency bills, which put them in place as soon as they're signed by the governor.

It would be my intention to submit it through that route. I can't say when the chairman's -- I don't know the exact scheduling, but it would happen I think fairly early in the session.

We could follow through with regulations; then we could implement the regulations by emergency if -- no, I probably couldn't do that, but we could get that process going so it would be early in the new year.

MR. WHITE: So, the 15th of February, would that be a safe date?

MR. LAPOINTE: I would think that the 15th, if they heard the bill early and it was passed, I think I would then need to go through regulations. That will take -- I would think March would be a better early date, but I hate to

predict somebody else's schedule. But, you know, March makes sense to me.

CHAIRMAN WHITE: Go ahead, Ritchie.

MR. WHITE: I'd like to make a motion then if that's appropriate at this time, Mr. Chairman.

CHAIRMAN WHITE: Yes, it is.

MR. R. WHITE: I'd like to make a motion that Maine be found out of compliance if their regulations are not in place by the 10th of March, 2005, and we would forward a letter to the Policy Board for further action.

CHAIRMAN WHITE: Thank you, Ritchie. Do I have a second on that? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman.

CHAIRMAN WHITE: Dennis.

SENATOR DAMON: Mr. Chairman, there is some discrepancies here as to when that would go into effect in an emergency manner. The commissioner thinks it would go into effect upon the signature of the governor, and it's my opinion that it would go into effect at the end of the legislative session, immediately upon adjournment.

Failing an emergency, it would be 90 days after the end of the legislative session, so we're going to work to straighten that out now, because if in fact it is submitted as an emergency, which it could be and should be, and if it is passed and signed by the governor, then the end of the legislation indeed will be in June.

But if it is as the commissioner suggests and suspects that it is upon signature, then in fact it could be in March. We're going to straighten that out.

CHAIRMAN WHITE: I'd like to continue on with the discussion a little bit if we can while George is finding more of that out. I'll call on Joe.

COLONEL JOSEPH FESSENDEN: Just two

points, we only have a handful of fishermen that fish in Area 3, very, very few fishermen that are out there. There are still a lot of them that are still going through the qualification process and not even eligible to fish out there right now.

We only had like a half a dozen that initially qualified, something like that, maybe eight, less than ten certainly, so there are very few fishermen that are out there. We've got 7,000 licensed fishermen in Maine, probably less than 30, maybe, will qualify when it's all said and done, so there's very few fishermen.

And the other thing is as far as I know about legislation and stuff, if the governor signs an emergency, it goes into effect upon his signature. I think George will find that out, but I've dealt with a number of them over the years, so I'm pretty sure that's the case, but he'll check it out.

CHAIRMAN WHITE: Thank you, Joe. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'm wondering if the chairman might ask the question of Mr. Nelson if that would be appropriate or create additional problems, the definition or explanation that Mr. Fessenden gave to the group. Would that be helpful; is that helpful to you?

MR. NELSON: Well, I'm going to go through a year is what it boils down to and see what type of pressures are brought upon us. Obviously, we don't want to go out of compliance and we've been trying to be proactive.

We have probably less than seven people that fish in Area 3, but they're going to fish under those regulations. I would hope that it can be done in as speedy as possible. I think we have talked about this quite a bit.

Maybe I was premature putting mine in, but I thought we were trying to do it in a proactive way, and we all had a clear time line that these things had to be done, and, quite frankly, knew which type of process we needed to put it in place.

MR. AUGUSTINE: Mr. Chairman, a follow-on question. With those six or seven folks that are going to be fishing in that area, that would then be in your opinion or in your state's opinion be out of compliance, do we have a sense what the real negative impact is in terms of either poundage of lobsters or total economic impact?

I'm just trying to get a sense for it. I mean, on the one hand we're talking six or seven. It could go more; it could go less. And you have a similar amount, but what kind of dollars are we talking about? Do you have a feel for that?

MR. NELSON: Yes, most of them are big boats and you're going to have big operations. I wouldn't be surprised if you saw in excess of a million pounds.

MR. AUGUSTINE: That puts it in perspective. Thank you.

CHAIRMAN WHITE: George.

MR. LAPOINTE: Well, Carrie said somebody asked a question while I was out of the room. All right, I called the governor's office. Emergency bills go into effect on the governor's signature.

CHAIRMAN WHITE: So does that address where you were headed, Ritchie?

MR. WHITE: Then you are comfortable with the March 10th date then?

CHAIRMAN WHITE: Let's assume if they don't have objection to it, Ritchie, that would stand in your motion. Paul.

MR. PAUL DIODATI: I know it would be helpful to me when I go back and review the records for this meeting if the motion actually specified what regulation and what part of the plan that Maine is out of compliance with, so if the maker and the seconder wanted to make that correction.

CHAIRMAN WHITE: Good point, Ritchie, and I think —

MR. WHITE: I'd be happy to have Carrie add that to the motion.

CHAIRMAN WHITE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, while we're doing that the other thing, we'll check for you all is advise you on the Commission's 2005 meeting schedule to make sure you're not setting a date that is the Monday after our March meeting week, for example.

We'll get that date for you. If you're going to do that -- you may decide to do that, but it ought to be a conscious decision so we'll get that for you, too, Mr. Chairman. Thank you.

CHAIRMAN WHITE: Thank you, Vince. Any other comments while we're modifying the motion? Eric.

MR. ERIC SMITH: Since we have a little bit of dead time, let me just make sure I understand this issue. The debate has reminded me why on some things I think it's important to really obsess on the compliance criteria and on other issues sometimes it's not that productive.

As I understand this issue, and Joe can correct me if I'm wrong, a guy with a federal permit who fishes in Area 3 and lands in Maine, right now Maine law enforcement cannot enforce anything other than 3-1/4, that's part of this.

They're still in violation of the federal area management plan minimum length because they're supposed to fish by the higher one, and it's just a question of when they hit the Maine coast and they land, it can't be enforced by Maine law enforcement.

An interim way of dealing with this perhaps if it's a problem for New Hampshire -- am I wrong on that? Okay, well, let me just -- the interim way of dealing with it would be for maybe Maine law enforcement, when they come on one of these boats that's doing it illegally according to the federal law, is just document that and then send it to the fisheries service for

attention.

That's a more cumbersome law enforcement process, but it would be an incentive against somebody coming into Maine to break the law between now and March 10th.

CHAIRMAN WHITE: John Nelson.

MR. NELSON: Well, I was going to ask Harry if he could update us on what the federal regulations are, just make sure that we're all in place, because my understanding is they don't have them in place yet.

CHAIRMAN WHITE: Go ahead, Harry.

MR. HARRY MEARS: Thank you, Mr. Chairman. Just to clarify Eric's remarks, it is true that there was a recommendation from the Commission to undertake federal rulemaking for the gauge increase in Area 3, along with a host of other requests, including inter-transferable trap program, adoption of the most restrictive rule.

At the current time these in fact are not in place. We have not reached the stage of a proposed rule yet. It's still under development. In terms of the increased gauge size in Area 3, yes, it's part of the interstate plan. Yes, it was recommended to the Secretary, but it is not as of yet a part of federal regulations.

CHAIRMAN WHITE: Does that answer part of your question, Eric?

MR. SMITH: Yes, thank you.

CHAIRMAN WHITE: Thank you. Bruce.

MR. BRUCE FREEMAN: Just to follow up on Harry's statement, is it anticipated -- are you in proposal to implement that portion of the rule or is it something you have not yet proposed?

CHAIRMAN WHITE: Go ahead, Harry.

MR. MEARS: Is your question are we in the process of federal rulemaking to implement that?

MR. FREEMAN: Yes.

MR. MEARS: Yes.

MR. FREEMAN: But do you have an approximate date when that rulemaking will conclude?

MR. MEARS: No.

CHAIRMAN WHITE: Bill.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. Harry, the feds are up to what addendum right now is in place, one, two and three?

CHAIRMAN WHITE: Go ahead, Harry.

MR. MEARS: Addendum I plus part of Addendum II. I believe part of Addendum II was the accelerated trap reduction schedule in Area 3. The remainder of Addendum II and also Addendum III, as I indicated, where we are right now, we did publish a notice of intent for proposed rulemaking. We have not yet come to the proposed rule stage.

MR. ADLER: And what about Addendum IV and V; you haven't got into that one yet at all?

MR. MEARS: No, we have not begun rulemaking for Addendum IV nor Addendum V.

CHAIRMAN WHITE: So the issue as I understand it, we have two different things here. We have what we agreed to as a Commission to move forward with these regulations. And, that, as I understand it, is what the compliance issue is. Whether or not the federal government has gone forward with that at this point is irrelevant.

It might help New Hampshire. If there is no gauge increase up there, it might help them get through this program, but indeed we are in -- Maine, excuse me, is in violation to what the Compact has agreed to.

Okay, the new motion is move that the Lobster Management Board recommend to the ISFMP

Policy Board that the state of Maine be found out of compliance with the American Lobster FMP in that it has not implemented the most restrictive rule, including minimum sizes for all LCMA's.

The most restrictive rule provisions are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement the most restrictive rule.

If by March 10th, 2005, the state has not implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Policy Board.

It was made by Ritchie White and seconded by Pat Augustine. Comments, George.

MR. LAPOINTE: Point of clarification. We have implemented the most restrictive rule except for minimum size; so rather than saying "including minimum size", it should say "for minimum size" because that implies we haven't done anything and in fact we have.

CHAIRMAN WHITE: Is that okay with the seconder? Discussion. Vince.

EXECUTIVE DIRECTOR O'SHEA: Not a discussion, Mr. Chairman, but it looks like the meeting in 2005 will be 7 through 10 February.

CHAIRMAN WHITE: So might I suggest that you make it March 10th?

MR. WHITE: How about March 5th?

CHAIRMAN WHITE: Well, because we usually have a Board meeting on the second or last day of the last day of the --

MR. LAPOINTE: Did you not say February and not March?

EXECUTIVE DIRECTOR O'SHEA: February, yes.

CHAIRMAN WHITE: Leave it as it is?

MR. WHITE: If that's the earliest that the state of Maine thinks that they can be into compliance, then there's no use setting an earlier date.

CHAIRMAN WHITE: Okay, thank you, Ritchie. Comments on the motion. Okay, seeing no comments.

MR. AUGUSTINE: Call the question, Mr. Chairman.

CHAIRMAN WHITE: Mr. Augustine has called the question.

MR. AUGUSTINE: Yes, Mr. Chairman, I did.

CHAIRMAN WHITE: Show of hands, all those in favor; those opposed; one opposed, Maine; abstentions; null votes. The motion passes.

Next issue, New Hampshire, do you have anything to say for not being out of compliance? (Laughter)

MR. NELSON: I feel downtrodden. Thank you.

CHAIRMAN WHITE: Massachusetts.

MS. SELBERG: I was just going to reiterate what was in the plan review team's report for Massachusetts; that they needed measures for Area 4 and 5 or to document that they don't have any fishermen from Areas 4 and 5; and then the area of concern, which we didn't raise as a compliance issue but simply as an alternative marking strategy for the recreational fishery.

CHAIRMAN WHITE: Paul.

MR. DIODATI: Well, a couple of things. When did you do this review, Carrie, because it's my understanding that we have changed our regulations fairly recently?

MS. SELBERG: March 31st, 2004, based on regulations that were submitted on March 1st, 2004.

MR. DIODATI: Well, there are a couple of things. First of all, I'm fairly certain that we have already corrected or modified our regulations to account for this, the most restrictive rule. In addition, we have also changed our regulations that it really requires only one LMA in addition to Area 3 on a permit, so we can easily do a search to demonstrate that we don't have any 4 or 5 area fishermen. In any case, I think we can accommodate this very quickly or clarify it.

CHAIRMAN WHITE: Okay, it sounds like that has been resolved. I would just ask that you send that data in to the Commission.

MR. DIODATI: Yes, we'll send a letter within seven days to the Commission.

CHAIRMAN WHITE: Thank you, Paul. Are there any other issues on Massachusetts? Oh, the marking strategy.

MR. DIODATI: Well, this is one, I think this is the third or fourth time that we've discussed this particular issue, and it keeps coming up as an area of concern, to who I'm not sure.

But, we have indicated that it is nearly impossible for us to administer a tag program to our 12,000 permit holders in our recreational fishery, so we've offered and developed an alternative marking system that numbers their buoys, and we don't seem to be having any problems with that.

We can provide at the end of this year perhaps some type of law enforcement report in order to demonstrate that this is consistent with the tagging or would be somewhat equivalent to that. Other than that, I don't know what else to offer.

Certainly, what I've offered in the past is we would make available the 120,000 potential trap tags to Vince or to staff at ASMFC, and they're welcome to try to get them out there in place; or, if you want to attempt to close our recreational fishery because of this area of concern, you're welcome to try that.

But, I've responded with this alternative markings strategy, which I think the Board should accept here and now as an alternative method so we don't keep revisiting this issue. But you have alternatives, it's up to you.

CHAIRMAN WHITE: Comments from the Board. Mark.

DR. MARK GIBSON: Could you summarize again what the alternative strategy is?

MR. DIODATI: Yes, every recreational buoy -- they're single pots that are fished and every buoy has to be numbered one through ten, along with their other markings, their individual markings.

CHAIRMAN WHITE: Are you all set on that, Mark?

DR. GIBSON: Each participant is allowed ten pots; is that how it works? They're individually marked buoys?

MR. DIODATI: Right, it's a ten-pot fishery.

DR. GIBSON: All right, and what else goes on their buoy?

MR. DIODATI: Well, they're color-coded and they also have the permit number. It's actually more effective than trap tags because you can whiz by and see them.

CHAIRMAN WHITE: Is the Board comfortable with that or would they like to take any action on this? Is there any further discussion? Bruce.

MR. FREEMAN: Paul, those pots or traps, do they individually have to be marked or could they set all ten on a string?

MR. DIODATI: No, they're single traps.

CHAIRMAN WHITE: Any further comment? Go ahead, Joe.

COLONEL FESSENDEN: This issue was

brought to the law enforcement committee and discussed. We voted pretty much unanimous. I believe we filed a report with this Board saying that the traps should be marked. I believe this was some type of compliance requirement in the plan, so I just want to throw that out.

I think law enforcement reviewed this and we had a chance to talk about it in our committee. This was probably a year or so ago. I think we submitted a letter or comment that they're required to be tagged.

CHAIRMAN WHITE: Any other comments? It's up to the Board. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Well, okay, that kind of leaves us in a dilemma again. We've got a state that's implemented a rather simplistic system that appears for all outward looks to be effective and working, but it doesn't meet the letter of the requirement.

Is there a requirement in our amendment or addenda that state that each pot has to be marked or just that there has to be some identification that that is a recreational pot? I don't know, Bob or Carrie, maybe one of you know.

If not, if it was a requirement from law enforcement, then it was a matter of whether we took it up as an action item to do that or not, so is there some clarification on that?

CHAIRMAN WHITE: Let me have Carrie read that to you, please.

MS. SELBERG: I'm just going to outline a couple of points that are in the plan review team report. The first is that the PRT was concerned that Massachusetts was using an alternative marking strategy for the recreational fishery. Addendum I requires that all recreational lobster traps be tagged.

Now at the August 2002 Board meeting, the Board indicated they'd like to give Massachusetts time to implement. Then at the June 2003 Board meeting, Massachusetts indicated that they were looking into the recreational fishery management in general and

would be putting some measures in place for the recreational fishery.

The PRT is simply highlighting as an area of concern that they've chosen to use an alternative marking strategy rather than a tag for each trap.

MR. AUGUSTINE: A follow-up, Mr. Chairman. We're back in that compliance/non-compliance situation again. On the one hand, it appears that the Commonwealth of Massachusetts has come forward with some type of marking device that seems to satisfy part of the requirement.

However, the plan specifically states that each pot should be tagged individually, so we're back to do we find Massachusetts out of compliance for not following the amendment, and I think that's where we are. So, if someone wants me to make a motion, I will but I'd like to hear further discussion around the table.

CHAIRMAN WHITE: Bill Adler.

MR. ADLER: Okay, Carrie, what does the addendum say about tags? Do they go into tag definition?

MS. SELBERG: We're getting the details of what it says. What we have in the plan review team report is simply that it requires that all recreational lobster traps be tagged, and we're going to get that section and read it to you in a moment.

MR. ADLER: Mr. Chairman, may I come back to that when they get the answer?

CHAIRMAN WHITE: Yes, you may. Go ahead, Eric.

MR. SMITH: This is another one of those where sometimes I think in our zeal to have compliance criteria, we have things that then make us second guess, but as Pat rightly points out, you've got a law, you've got to live by it.

I wonder if the method that Massachusetts has adopted, which is have the fisherman himself number the buoys I would gather sequentially so

you have ten pots and you have ten buoys that are 1, 2, 3, 4, 5 through 10, whether the Board would accept as enough of a good faith effort to have them also number their pots that way.

You know, we have people put their license plate number in the ballast or on a tag of their own choosing in pots so that we know who the pot belongs to. I'm just trying to find a way to accommodate this.

But, I mean, Paul got my blood up a little when he said go ahead and find us out of compliance and close our recreational fishery. Well, if they were out of compliance, it's their whole lobster fishery. It's not the recreational part of it.

I don't think we want to go there and I don't think they do, either. I think what we really want to do is make sure that the unnumbered pots are not creating a problem for the lobster fishery in some way that we don't want to see it set a precedent so that every state says, okay, for our recreational guys, we don't have to do this.

I don't think it's a compliance issue, and it's not pointed out on the slide here to be a compliance issue. Somewhere, though, we've got to find a way to rationalize the real things that need to be compliance criteria versus the things that probably don't need to be.

CHAIRMAN WHITE: Well, I guess the big question is, and I'd like to hear from the Board, is the Board comfortable with what Paul is doing as an alternative to the proposal of tagging recreational lobster traps? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Yes, we're satisfied to the degree that he is doing something but not satisfied because he is not meeting the letter of the law, the agreement that we agreed to do.

And if other states have to do it, again, we're back to a compliance issue. It just seems to me that if commercial fishermen are getting tags for each one of their pots and the tag manufacturer is making bazillions of these things, what would be so difficult about issuing that tag number for recreational angler with, as Mr. Smith suggested,

1 through 10 right on the tag that goes on the pot?

I mean, yes, it's going to cost a couple more pennies, but it seems to me we're getting bogged down in minutia that amounts to nothing; whereby, if the states took the bull by the horns and did what we had to do because we committed as a Compact member to do what the other states said we were going to do, I think we could alleviate a lot of this around the table back and forth conversation.

So, my suggestion is unless we get further positive comments as to what else we can do, to recommend we find the state of Massachusetts out of compliance on this issue. Thank you.

CHAIRMAN WHITE: Ritchie.

MR. WHITE: I'd like to understand why the PRT listed this as an area of concern and not a compliance issue.

MS. SELBERG: I think probably the distinction is that the Board has heard about this time and again, and it was a matter of -- it appeared that Massachusetts was moving in the direction of addressing this issue and the Board was looking for an update on it.

I also have the section which Bill Adler requested in Addendum I which simply says, "The commercial and recreational lobster trap fisheries shall be included in the trap tag system."

CHAIRMAN WHITE: Does that answer your question, Bill? Paul.

MR. DIODATI: This has not only come up after adoption of the plan, but the Commonwealth has made it clear to this Board, as it has on a number of management actions that it has adopted and is now requiring the Commonwealth to do, that many of these measures are inappropriate for the Commonwealth.

This was one of those measures that we made it very clear in developing this requirement that we

would have a very difficult time given that we have the largest recreational fishery on the coast.

We have 12,000 participants in the fishery and a ten-pot limit. We don't have the administrative capabilities to issue every one of them ten tags. The tag company also will not, as they do for the commercial fleet, issue individual tag orders of ten to the individual participants.

So, we've done everything possible to come up with a conservation equivalent. I've offered it. This is the third time that I've had to explain it, and that's why in my frustration I said if you want to find us out of compliance -- I'll say it again -- do so.

CHAIRMAN WHITE: Thank you. Dennis.

MR. ABBOTT: Thank you, Mr. Chairman. I think maybe we're going a little bit overboard here. What Carrie just said is we need a trap tag system. Now if I interpret that carefully, that doesn't necessarily mean that we need tags on the trap, if we so interpret it that way.

It might be the way I look at it. I think we as a Board should have a motion that we agree with Massachusetts' trap tag system as marking the buoys and be done with it, if the Board agrees that that trap tag system works. I would make of that motion if necessary.

CHAIRMAN WHITE: Without getting into a motion, what I would suggest that we might do is all agree that we will include this type of wording in the next addendum process that would accommodate what Paul is trying to do so we don't have to get bogged down.

MR. ABBOTT: Yes, but obviously we're remaining with a problem, an area of concern, and we should put this to bed if we can at this meeting. I'd like to see it put to bed and see Paul relieved of this problem, if we can.

CHAIRMAN WHITE: Right, and following through with what you're saying, Dennis, unless the Board has the will at this point in time to vote them out of compliance, then it's a non-issue at this point.

MR. ABBOTT: Mr. Chairman, not to belabor the point, but I don't know that a lot of us are convinced that this is a compliance issue at this point.

CHAIRMAN WHITE: Then don't make a motion to make it a compliance issue. Gordon.

MR. GORDON C. COLVIN: Mr. Chairman, I'm not particularly troubled by what Massachusetts has done here. The only thing I can say to the issue, based on Paul Diodati's description of the program that's in place, is that I could not be persuaded to take further action on it unless I had some fairly detailed assessment from the plan review team and/or the law enforcement committee that explained why the system they have in place creates a difficulty with respect to meeting the objectives in the management program that I can't see from the description of it.

You know, there are provisions made for identifying the individual pots of recreational lobster fishermen in the Commonwealth, as such. That being the case, I can't see a problem.

If there is a problem, perhaps a detailed report on what the problem is and how it's interfering with our ability to achieve the FMP's objectives could be brought forward at a future time, in which case I'm sure that the Commonwealth itself would be glad to undertake a further review of it. But, absent that, I think we should move on.

CHAIRMAN WHITE: Mark, you were next.

DR. GIBSON: I guess maybe I'm having trouble understanding why this is so difficult. Why don't you just buy 120,000 color-coded tags that say "Commonwealth rec lobster tags" and then sit them in a box next to the person who hands out the permits and just give ten to every person who gets a permit for this? You don't have to have common lots. You don't have to have special information or tag numbers or anything like that on them.

CHAIRMAN WHITE: Paul, go ahead.

MR. DIODATI: Yes, we actually have done that one year, and we just can't afford to do it. I don't know how you do it, but our permits for the recreational fishery, for the most part, are issued over the Internet now.

And so it gets into a lot of administration in terms of mailing and setting up these packets. I think when we think about compliance issues, I think we are wasting a lot of time on this.

Compliance or non-compliance is usually based with how a state fails to implement a rule that then jeopardizes the conservation benefits of the plan. Our recreational fishery, although large, represents only about 2 percent of our landings.

So, I caution you on this and I'll do what I can to provide information about our marking program that might make you more comfortable with it. I agree that it would be appropriate to consider alternate marking programs for recreational fisheries everywhere as conservation equivalence in the next addendum.

CHAIRMAN WHITE: Okay, we're getting behind on this, and I think the majority of the people here are comfortable with where we're headed with this. So if there is no further objection, I'd like to move on to the next item, which is Bob Glenn.

MS. SELBERG: We could jump to New York. The plan review team expressed concern that New York had not fully implemented the most restrictive rule with no management measures for Area 5.

CHAIRMAN WHITE: Gordon.

MR. COLVIN: And we have one more bad boy to deal with today, before you can move on, Mr. Chairman. Memory fails, okay, but as I vaguely recall, I think our regs on most restrictive rule were about the first to be implemented and it was done early-on.

At that time, there was not yet anything for Area 5 to include, that the Area 5 stuff came along a little later; so when we adopted our rule, it didn't

include an identification of Area 5 or measures that people who declared for Area 5 would have to comply with.

So this is a matter of catching up through rulemaking, which we need to do. And, as many of the Board members can appreciate, we prefer to bundle rules instead of do 27 bazillion little individual ones.

So we are at a point now where we also need to update our most restrictive rule references to deal with Addendum IV. I'm kind of surprised that, by the way, didn't get picked up in the PRT report. Our expectation is that later this year we will amend the rules to address the Addendum IV changes as well as the need to address Area 5.

And I'm not even sure — Carrie, I notice our rule doesn't address Outer Cape. Now, I'm assuming that means that the PRT has information suggesting we don't have anybody declared for Outer Cape, and that could be the case.

I know at one point we did and I think that changed, so we may be all right on Outer Cape, but that's something else that ought to be double checked before we initiate this rulemaking. We will be doing rules on this. We'll try to have them in effect by the beginning of the year. It's just one more brick on the load of an already spread-very-thin staff.

CHAIRMAN WHITE: Any comments from the Board? Discussion? Any action proposed on this issue? Hearing none, we can move on. Bruce.

MR. FREEMAN: Thank you. Gordon, do you have an anticipated date when those rules will be in place or could be in place?

MR. COLVIN: Bruce, we're going to shoot to have them in place by the beginning of the year, but I can't get started on them until Kim gets a few other things off her plate so she can work on this.

MR. FREEMAN: All right. I'm just thinking

for future reference that New York anticipates making that rule change by the end of the year and just move on.

CHAIRMAN WHITE: So noted, Bruce, thank you. All right, now I think if there are no —

MS. SELBERG: No.

CHAIRMAN WHITE: What else have you got?

CHAIRMAN WHITE: Okay, are there any objections to approving the de minimis status of Delaware, Maryland, Virginia, and North Carolina? Hearing none, so be it. Ritchie?

MR. R. WHITE: I'd just like to make a general comment to the PRT. Issuing an "area of concern" was not helpful to me in this process. I would rather see in compliance or out of compliance and then maybe a footnote associated with that.

The Massachusetts issue was not clear to me whether they were in or out of compliance, and it would be helpful if the PRT told us that one way or another, if they are in compliance and it's an area of concern, or it's out of compliance and an area of concern, but just the area of concern doesn't help me in this process.

CHAIRMAN WHITE: Duly noted. Thank you, Ritchie.

MS. SELBERG: To wrap up the plan review team report, we're back to the general issues and recommendations which revolved around the most restrictive rule, if necessary, the Addendum III footnotes, and Addendum IV.

I just wanted to come back to these issues and see if the Board had any questions. I would draw your attention especially to the Addendum III footnote if you would like to direct the technical committee to update that report when they have the ability to do so.

CHAIRMAN WHITE: Comments from the Board. All right, now we can move. No comments as per Carrie's request on the footnote? Pat.

MR. AUGUSTINE: Mr. Chairman, is there anything in particular she'd like?

MS. SELBERG: The plan review team has made a recommendation that the technical committee update the Massachusetts v-notching compliance rate report when the data is available to do so, so I need to hear from the Board if that is something you would like the technical committee to do or not.

MR. LAPOINTE: It would make sense to me. Do we need a motion? I don't think we do but --

CHAIRMAN WHITE: No. Eric.

MR. SMITH: I would like to be sure that the technical committee does not do this until the assessment is done. They should keep the deck cleared and do everything they need to do for the assessment; and if this is a half a day of one of their meeting days, that would be too much. Twenty minutes would be too much. You know, let's get the assessment done.

CHAIRMAN WHITE: Good point, Eric. Clarify that to some extent as to whether this interferes with what you're doing with your stock assessment.

MR. ROBERT GLENN: I guess I don't have a definitive answer for you either way. It's not a major undertaking to do that particular analysis. However, obviously with the assessment on hand, we have a major undertaking there, so I guess I would leave it up to the Board's discretion as to what they want to do for a priority.

CHAIRMAN WHITE: Is the Board comfortable with giving Bob the discretion, if they can work it out, to try and do it, but realizing that they won't have the time to spend a half a day on it. If they can do it in an hour's time, it would be probably valuable information? Does anybody have a problem with that?

Bob Glenn, do an update on the stock assessment. I sat through the last technical committee meeting, and I have renewed respect

for what Bob is going through in that he is doing a commendable job. It's a very difficult task. My hat's off to him. I think he's doing an amazing job.

Stock Assessment Update

MR. GLENN: Okay, I'll give you an update as to where we are with the assessment. Okay, I think for clarification's sake it may be helpful for me to discuss a little bit about how the assessment is being conducted and what the jobs are of the various committees and subcommittees that make up this whole process.

The way we're structured right now is the TC has two subcommittees, including the modeling and the stock assessment, and they all have different responsibilities. The technical committee, the core group, a member from each state is overseeing the whole process.

Right now the primary responsibility of the technical committee is we're working on the input parameters and defining the stock units. This is the information that typically gets heavy into the biology of the animal and kind of requires personal information that each individual member from each state has about the fishery and about the biology of the animal that they're aware of.

That goes into decisions like looking at the stock assessment boundaries, choosing the input parameters like fecundity, maturity, natural mortality. Another large duty that we have on the TC is to do the gap-filling process in the database.

Each of the states has various fisheries-dependent and fisheries-independent sampling programs. Most of these span different time periods. Typically they sample from May through November.

However, we know that we have landings information coming from 12 months of the year because that's the nature of the fishery, even though it's a small portion. So there are decisions that needed to be made as to how to characterize those landings with biological

information from the sea-sampling information.

That's the gap-filling process whereby we apply a size distribution from one month to months where we don't have samples -- we have landings but not sampling information for. We have to do that for each state and for each stat area and then combine that off to a stock unit basis.

Now that we have the lobster database on board, that process is going to be a lot more streamlined. It doesn't have to all be done manually. We just have to make the decisions as to where to put what and then essentially the database does the calculations for us, or it will.

The other thing is that we're going to be tasked with choosing the model which the modeling development subcommittee recommends. I'll get a little bit into that process of how the models are going along in a second. And, finally, would be to sign off on the final assessment for peer review and send it on.

Okay, the model development subcommittee has essentially different terms of reference. They're tasked with developing and testing a range of different models. At the request of the Board, they've been required go ahead and through a series of modeling exercises to try to see if there are alternative or perhaps more precise ways of assessing lobster fishing mortality and biomass rates.

Along those lines, it's also their responsibility to outline the pros and cons of each approach, identify areas of concern with an approach and how it may or may not be appropriate for lobster.

And then essentially, what they're going to do is recommend one or more models to the TC as being the models that should be used in the upcoming assessment. In addition and very importantly, they're going to be developing reference points recommendations that are appropriate with the models that they are sending forth.

Different models have the ability to give

different either fishing mortality, abundance or biomass based reference points, and they will be forwarding their recommendations as to what those reference points would be appropriate for each model as well.

And, finally, their work, in addition to the TC reviewing it, it's also being sent to an outside panel of experts, people who have particular expertise in the field of modeling as well as modeling specific to crustaceans.

They're going to review those and to see if the work that the modeling subcommittee has done is appropriate and the best and most technologically up-to-date models being used.

Now, finally, the stock assessment subcommittee is kind of contributing to both processes. They are working with both the technical committee and the modeling development subcommittee, and they are providing input with both. We'll use the TC and the modeling development subcommittee input to conduct the actual assessment once the model and input parameters are chosen and the database is gap-filled.

So essentially, once all our i's are dotted and t's are crossed and the TC has put forward what their final recommendation is for which models are going to be used in the assessment as well as the baseline assessment, this is the group that's actually going to be doing the cranking the cranks and doing the heavy lifting and coming up with an assessment report and plugging in the data.

And, as I said, they'll also be conducting a baseline assessment at the same time, which means they're going to be doing a turn-of-the-crank assessment whereby they're going to be using the same models and same reference points as the last assessment and same input parameters, but simply just updating the biological and catch data with more current information.

Okay, the overall timeline. As Pat attested to earlier, this process has been really difficult, lobster being the contentious animal that it is,

and also the fact that it's has a very complex natural history, and we're not able to have luxuries that other species have like being able to age them and things like that.

We're pretty far behind at this point from our original schedule. The technical committee has been working very hard trying to work out the issues of biological parameters since this is a benchmark assessment and not just a baseline.

One of our tasks was to reevaluate all the biological input parameters as well as the stock boundary definitions. This has proven to be a pretty difficult task but we're working on it.

As such, this summer we're expecting that the model development subcommittee will complete their work and it will go to review. The TC is going to still continue to work on gap-filling and choosing the appropriate input parameters.

By fall we hope to have a technical review of the models complete and a baseline assessment pretty much finished. And, finally, this winter we'd like to have the assessment with revised input parameters and models.

That's about it. That's where we're at. Hopefully by this February we'll be at the point where we're ready to put a finalized assessment out to peer review.

CHAIRMAN WHITE: Great, Bob, thank you very much. Questions and comments from the Board? Hearing none, we'll move on with the next issue. Being so technologically advanced, I did get my agenda off the Internet, and there is one wrong item on there.

It was premature to discuss recent lawsuits impact lobster management. That won't be an item for discussion today. Next, Carrie, if you would like to begin on the transferability subcommittee update.

Transferability Subcommittee Update

MS. SELBERG: At the last meeting, the Management Board requested that a transferability subcommittee be formed to

address the details of the transferability programs established in Addendum IV and Addendum V and begin to discuss among the various jurisdictions how they were going to implement transferability.

We formed a transferability subcommittee with membership from Massachusetts, Rhode Island, New York, Connecticut and National Marine Fisheries Service. We met this May, a couple weeks ago, to discuss how to implement transferability programs for Area 2 and for Area 3 to ensure consistency.

I'm going to outline a key implementation issue which came up at the meeting. At the meeting NOAA Fisheries outlined their concerns about their ability to immediately implement transferability programs.

Their thought was that the Ocean Commission report recommended the National Guidelines be developed on dedicated access programs and that NOAA be waiting for action by Congress on those dedicated access programs.

So the transferability subcommittee started their meeting with this knowledge base. Based on that, we thought that the Board had three options: for states to implement transferability on their own through Area 2; offer states to implement transferability on their own only within state waters; and offer ASMFC to delay implementation of the Area 2 effort control program until NOAA Fisheries can implement.

In further discussions since the subcommittee meeting, I think that some Board members have some other options that they might be talking about once I finish my subcommittee report. At the time that the subcommittee met, these are the three options that we saw available to the Management Board.

At that time, the subcommittee recommendation is to delay the Area 2 effort control program and the Area 3 transferability program until NOAA Fisheries is able to implement complementary measures. We're very concerned about the states' ability to implement without complementary NOAA measures.

They talked about some of the details of that. We are concerned about having two different allocations from state and federal jurisdictions, concerned about legal challenges, concerned about future implementation from National Marine Fisheries Service, concerned about the inability of some states to implement the program, and finally concerned about increased complexity.

The details of some of these concerns are outlined in the transferability report which went out to you last week and was just passed out in hard copy form.

The subcommittee then moved on to discussing what we call program specifics. We focused on two things: one, the allocation program for Area 2; and, second, transferability. So, these are some of the details that we developed for the Area 2 allocation program.

Those are outlined in your document, but we discussed initially that in order to determine your Area 2 allocation, that landings from all areas should be taken into account. Because some states are not able to determine which area a lobster is caught, all the fishermen's landings should be included when determining the trap allocation.

Next is that permit holders should demonstrate that their landings have been caught with traps in order to obtain this trap allocation. There's two ways that we talked about doing that.

One was verifying through logbooks and catch reports that they mark they fished with traps. In addition, permit holders should have purchased traps during this specified qualification period to receive a trap allocation.

Next we talked about an appeals process. The recommendation was that an appeals system should be established only for situations to dispute an improper finding based on the documents used and not for hardship or failure to meet qualification requirements.

Next, that lobsters should be landed, sold and documented so that permit holders should

provide documentation to demonstrate that all lobsters have been landed and sold.

Next we started talking about some of the details for the transferability program. The goal of the subcommittee was really to put as many of the details on this program to ensure consistency between the various jurisdictions, so these are some of the details that the group discussed.

The first is that trap transfers may only occur within a specific area and not between different areas, preventing shifts in effort from one area to another. We started putting some dates on this so there would be consistency between the different jurisdictions.

The recommendation was trap transfers may occur throughout the year, but they would become effective at the beginning of the following fishing year, June 1st, and all documentation should be submitted by November 30th in order to be considered for the following fishing year.

The subcommittee started talking about a system that would allow permit holders to transfer traps between fishermen who hold permits from a different state jurisdiction, for example, a Rhode Island fisherman transferring traps to a Massachusetts fisherman. Those discussions are still ongoing just how those details would be worked out.

They talked a little bit about how you would document forms with notarized forms with information about both the person selling the traps and the person receiving the traps, annual reporting, including a section on annual state compliance reports about transfers that are taking place, and then including trap allocations on permits.

Finally, the group discussed what we called the pregnant boat syndrome, and this is an ongoing issue that the plan review team has raised in the past. But, with the implementation of transferability, the subcommittee feels that it's even more critical that the states address the pregnant boat syndrome and we have three recommendations.

The first is that states should not allow any new licenses or landing permits; states should begin to associate permits both with an individual and their vessel; and, finally, that they should work with NOAA Fisheries to reconcile fishing histories and decide what constitutes a business when determining allocations. I'd be happy to answer any questions the Board has about this.

CHAIRMAN WHITE: Before we entertain comments, I'd like to hear from the advisory Board and their comments that they had on transferability, please.

MR. BAINES: Carrie briefed the AP last week, basically giving the same presentation you just heard. There were a number of concerns that we had and I'll read through our minutes.

The AP indicated that it was important not to split up the effort control management measures for Area 2. Therefore, if there is a delay in transferability, the Area 2 allocation should be delayed as well.

The AP urges the Board and NMFS to move forward with planning and implementation of transferability as quickly as possible. The AP is concerned that waiting for NMFS and Congress could take a long time.

This was really our major point is not allow this glitch coming out of NMFS to stall the whole process. Several LCMAs have already passed transferability programs and more LCMAs may be interested in doing so in the future.

In light of the Ocean Commission recommendations, the AP recommends that the ASMFC and lobster community participate in the larger national discussion that will likely take place about dedicated access programs.

There may be a need for regional workshops and dialogues about these programs, and the AP would like to participate in those discussions and urges the Board and the ASMFC to do so as well.

Finally, as more LCMAs move toward dedicated

access programs, the AP feels it is important that all states move towards required catch reports that are needed to implement these programs. That's it.

CHAIRMAN WHITE: Thank you, Bob. I'll turn it over to the Board now to ask either Bob or Carrie specific questions as to the presentation. George.

MR. LAPOINTE: In the context of trap tag transferability and effective program implementation, have there been discussions on how this will be enforced as the program goes forward?

MS. SELBERG: The transferability subcommittee did not have length discussions about enforcement at this time, no.

MR. LAPOINTE: It just strikes me that -- I mean, as you change the number of tags in a system, it becomes harder to enforce, and that's a question worthy of following up on. Actually, maybe I should see if the law enforcement committee has discussed it or see if the Board concurs that it should be an item for further discussion.

CHAIRMAN WHITE: Okay, two parts on that. Joe, I would defer to you as far as the law committee; did they have this discussion?

COLONEL FESSENDEN: I think we need to discuss this. Law enforcement needs to get together and it needs to be submitted to the committee and discussed and come back with a recommendation. We haven't done that.

CHAIRMAN WHITE: Okay, I would look also for the same recommendation to come from the Board for the committee. I assume that it's still there, to go forward with this and work with law enforcement and come back to us with a report, hopefully, by the August meeting. Can we do that?

COLONEL FESSENDEN: When we developed the trap tag system, we actually worked with the committee, so it may be a good idea to probably put a couple members or at least one member from the law enforcement committee on the

subcommittee and work with that group, have them get together and go through this and try to work out the bugs.

CHAIRMAN WHITE: Okay, that's a point of discussion, Joe, and I think we'll work on that. It may be more important initially for the two committees to work separately and then let the Board have the reaction to that, too. Any further comments? Harry.

MR. MEARS: Just a comment on the group's report and recommendations on program specifics for Area 2 under the second bullet, landings from traps, and there is a statement made that this can be verified through various logbooks and catch reports submitted to the state or federal government.

This issue, in terms of documentation, certainly is one that we've had to wrestle with at the federal level for historical participation. I just want to emphasize that sentence should not be read thinking that in all cases there will be federal logbooks and catch reports for anyone with a federal lobster permit, because there are no mandatory reporting requirements for lobster permit holders, other than that occasion where they also have permit for other fisheries where mandatory reporting is required, in which case they are required to report their lobster catch.

So, again, this is going to be a hit-or-miss type of situation where it's going to be very easy for some individuals to provide this type of information and arguably not so easy for others.

CHAIRMAN WHITE: Thank you, Harry. John.

MR. NELSON: Mr. Chairman, there were several recommendations or there were some recommendations by the subcommittee, and I wonder if we could go back to those for the Area 2 transferability.

CHAIRMAN WHITE: Certainly, go ahead.

MR. NELSON: I forget which one they recommended, but I would suggest that we not adopt that recommendation and give direction to

the subcommittee that, Number 1, that the states implement transferability throughout Area 2 be the guiding focus for them in further developing a transferability process that the states could then follow. I think we've got our suggested recommendations coming up, Mr. Chairman.

CHAIRMAN WHITE: Okay, Paul.

MR. DIODATI: Just to follow along with John's recommendation, I agree. I also agree more broadly that that should include other areas such as the Outer Cape Cod Lobster Management Area. I think that -- in fact, I think that the states are probably better positioned to do a more streamlined implementation of both the allocation of traps and the transferability of traps.

I think we probably, in addition to this, should request that the National Marine Fisheries Service not continue on the path of transferability in these two areas at least. I don't think that their efforts would be of any benefit to us given that the states I think are in a much better position to implement these programs.

CHAIRMAN WHITE: John.

MR. NELSON: I think the three points that I think we needed to provide guidance to the staff are up there, and I think Paul was saying maybe perhaps Number 1 should be a little bit more than just Area 2. It should be Outer Cape Cod area also included in that. Is that correct, Paul?

MR. DIODATI: Yes.

MR. NELSON: All right, so if staff could just put in the Area 2 and OCC in Number 1, that would be helpful. Then I think we ought to have the discussion if everyone concurs with these three suggestions.

CHAIRMAN WHITE: That's great, John, thank you. Gordon.

MR. COLVIN: Mr. Chairman, I certainly can appreciate the desire of Massachusetts and Rhode Island to go ahead, and Massachusetts in particular with both Outer Cape and Area 2, and

that they are willing and able to conceive and implement a mechanism to institute a transferability program even applicable to fishing in the EEZ.

And, certainly, the vast majority of the fishermen who fish in Area 2 are from those two states. There are a few from New York and I suspect from Connecticut as well.

And, certainly, at the time we looked at the addendum for discussion and adopted, it the impression we had was that implementation of a transferability program for New York-based fishermen -- and there is no New York waters in Area 2 so all New York fishermen are fishing in the EEZ out there, so they have to have a federal permit.

We don't have an MOU with NMFS right now on the trap tag program, so our expectation was that the New York fishermen in the area would be affected ultimately by federal regulations applicable to transferability.

And on that basis, we're able to support the implementation of the addendum with the transferability program and didn't conceive where we could get in a situation where its implementation might create excessive administrative burden or even compliance issues for New York.

Pulling NMFS out of it might change that picture a little bit. I don't think anybody wants that to happen. I certainly don't want this issue that affects a small number of fishermen to get in the way of an important initiative that's of interest to the states of Rhode Island and Massachusetts.

But I do want to kind of lay the foundation now for the need for the group to proceed in a manner that gives some flexibility to us as we go forward and attempts to address our issues and concerns and prevent us from getting in that situation where we might be required, as a compliance measure, to implement something that is excessively burdensome or that creates legal problems for us.

So, you know, kind of with that caveat, I'm certainly prepared to support the recommendation, but let's see if we can't work something out that we can live with.

CHAIRMAN WHITE: Thank you, Gordon. As I understand it, New York is on the subcommittee, and so I would ask that you initiate discussions within the subcommittee to explore any of the potential solutions to the problem you've described.

MR. COLVIN: Thank you, we are, and, of course, the subcommittee recommended something different, so I came here today with a different impression of where we were going to end up than what I just heard.

CHAIRMAN WHITE: We all did.

MR. COLVIN: That being the case, nonetheless we're prepared to try to be helpful in that spirit of cooperation, but are very hopeful that this isn't going to be a big millstone around our necks.

CHAIRMAN WHITE: I'm sure you can work that out. Other comments. Mark.

DR. GIBSON: I'm trying to understand the process here. Is this going to take the shape of some guidance on three issues from the Board to the states of Area 2 states and the transferability subcommittee that we might then adopt by motion, or where are we trying to get to with these?

CHAIRMAN WHITE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, Mr. Chairman, first of all, the reason it's up on the Board is because it's different than what was recommended to you before, and that was up on the Board. I thought it would be helpful for you to have it in front of you.

Depending on the controversy of this and the feeling of the Board, I think an expression of sentiment from the Board that this is the direction you want to proceed would probably be okay.

If there is controversy here, then I would suggest that you revert back to putting it in the form of a motion and vote on it. But on the surface of it, I suspect that there is probably general support for this. If that was the sense of the Board, I think that would be adequate direction to the staff and others.

CHAIRMAN WHITE: Is there objection to moving forward in the manner as described here? Is there a problem with that? Then there is no need, as I understand it -- Bill.

MR. ADLER: Does the addendum include any language with regard to Number 2 there, withdraw request to NOAA to implement? Is that in Addendum IV?

Does it say that anything in concrete there or is it sort of wishy-washy that we can just go along and say, well, I think we're going to change our mind and not ask NMFS? Can we do that?

CHAIRMAN WHITE: We're looking that up, Bill, just a moment. Gordon, do you have a comment while we're waiting?

MR. COLVIN: Only, Mr. Chairman, that I would hope that the written record reflects in the outcomes the caveat and concern that I just expressed on the record a minute ago. Thank you.

CHAIRMAN WHITE: Yes, no problem with that. George.

MR. LAPOINTE: It strikes me in regard to Item Number 2, we should have staff look at the letter that's written to the Secretary following the passage of Addendum IV -- which is our normal operating procedure, is it not -- and look at those provisions that relate to this and just ask them to write another letter.

I mean, that strikes me that's sufficient. It refers back to our correspondence to them. It pulls out the sections we don't want, and then we're done.

CHAIRMAN WHITE: Everybody's nodding their head, which doesn't help Joe, but that

seems like that will be taken care of. I also think it's important probably to read this into the record for Joe so that we have it as to what we're doing.

The three outcomes: The states are going to implement Area 2 and OCC Outer Cape effort control programs on their own; Number 2, withdraw request to NOAA to implement complementary measures in Area 2 and the Outer Cape; and 3, the subcommittee further outline details about Area 2 allocation and transferability by August for approval by the Board. Further comments, Bill.

MR. ADLER: I'm assuming that there is nothing written in Addendum IV. You know, how we get very sticky with Addendum IV if we're not absolutely the way it is. There's nothing that says we can't withdraw our request in Addendum IV, is that --

CHAIRMAN WHITE: Bob, do you want to address that issue, please.

MR. ROBERT E. BEAL: Some of the wording of the addendum and some of the other documents that kind of initiated the transferability program that the states are grappling with right now, I think some of that is pretty complicated.

It would probably be more efficient if the staff goes back, looks at those documents, looks at our process and recommends a course of action to kind of deal with these three issues at the August meeting.

The National Marine Fisheries Service has indicated they're not able to move too quickly on this, so I think submitting the letter in early June versus late August probably isn't that different of an outcome for the National Marine Fisheries Service.

CHAIRMAN WHITE: Comfortable with that, Bill?

MR. ADLER: Oh, yes, that's fine.

CHAIRMAN WHITE: Thanks. More

discussion on the issue? Eric.

MR. SMITH: Do you have the concept in your notes so you can add it to this later, the point that Gordon made about? You do have that?

CHAIRMAN WHITE: Absolutely.

MR. SMITH: Okay, good, thank you, because it's not up there, but that's all right as long as it's captured.

CHAIRMAN WHITE: Geoff, are you prepared? If there are no further comments on this issue, I'm going to move forward with the database presentation. Paul.

MR. DIODATI: Yes, in addition to the subcommittee's major recommendations, they do go on for several pages to detail a lot of other areas of concern and some questions, and so are we going to leave those aside and come back to those when the subcommittee or staff gets together with a more elaborate implementation plan?

I would assume that's what we're going to do. Then that would still leave your last recommendation about this pregnant boat syndrome that I think is a little bit different than what we're talking about with transferability. So, is that something that we should deal with now before we move on, or are we going to come back to that as well?

MS. SELBERG: It's up to the Board whether you'd like to address that today or address that at the August meeting. We are going to take, as you said, the rest of the issues in the document, and the subcommittee is going to keep flushing those out with more detail, the details of the Area 2 allocation and transferability to ensure consistency.

You are right that that last issue, the pregnant boat syndrome, is slightly different; and if you're ready to talk about it today, then you could move forward. If you need some time to think about some of the recommendations, you certainly could address them in August as well.

CHAIRMAN WHITE: Go ahead, George.

MR. LAPOINTE: I'm showing my ignorance here and my biology has been a long time in the past, but tell me what in the hell a pregnant boat is, for God's sake. Define that puppy. (Laughter)

MS. SELBERG: All right, this is a situation where you have someone who has both a state and a federal permit, so they've a vessel and they're a person. They have two permits, state and federal.

And the permit holder then can keep their state permit, sell off their federal permit to somebody else. That person, because many states still allow landings licenses, can get a new landings license from a state so that one business has now --

CHAIRMAN WHITE: Given birth. (Laughter)

MS. SELBERG: Given birth and turned into two. So, it's a situation where you had 800 traps and now you have 1,600 traps; where you had one business, now you have two businesses.

In a system like the Area 2 system, when you are trying to set the number of traps through allocation and begin a transferability program and those traps start having a value that can be transferred, it becomes even more of a concern than it has been in the past.

CHAIRMAN WHITE: Does that answer your question?

MR. LAPOINTE: Thank you, yes.

CHAIRMAN WHITE: What's the Board's desire? Do you want to have a preliminary discussion on this? No more jokes, Pat.

MR. AUGUSTINE: No, Mr. Chairman, it's not a joke. I think somebody like Bill Maher could probably get a hold of this and be questioning whether it's politically correct or incorrect. I don't mean to be facetious on it.

It may be a very good way to describe the vessel, but I'm not sure it's politically correct;

and for whatever it's worth, if we can come up with some other way of describing it. I thought you did a very good job with it, but I couldn't find in my "Funk and Wagnall", so maybe you can come up with a different term.

CHAIRMAN WHITE: Eric.

MR. SMITH: Isn't the issue really permit splitting, and isn't it kind of muddied a little bit? What we really need to do is train ourselves to talk about federally permitted vessels and state license holders, because all states issue fishing licenses to people and the federal government permits vessels, and they don't care who the person is who runs it.

MR. LAPOINTE: Exactly.

MR. SMITH: Having said that, Carrie is quite right in her description of what can happen. You can sever the permit and the license, and the boat goes with the permit and the license holder buys another boat, and you've just magnified the effort.

So it seems to me we may need an addendum that says permit splitting is not allowed. And, the one that I have a little trouble with is landings permits are not allowed, because I have visions of people who decide to move their business somewhat.

They have an allocation for the EEZ. They used to land in Massachusetts; they decide to land in Connecticut. They are still EEZ fishermen, but they're kind of a man without a country. I think we ought to make sure we don't create that problem.

Now several states have for several species and it is a problem, but let's not make it worse. I'm not sure if a prohibition on permit splitting is the only solution that is needed or if it creates other problems.

There may be people in the fishing industry that say, oh, you can't do that. I think the principle behind all of this is you don't want 800 pots to turn into 1,600. We deal with that all the time in Connecticut by simply saying that, you know,

whatever we allow to be done with licenses, it's no net gain of pots.

And that is the guiding principle that all of our various rules and how we interpret statutes and the whole thing is intended to accomplish. I don't know if that's an addendum-type thing that we ought to consider, because it seems like we are identifying the problem but we're not identifying the solution.

I view it as not, you know -- as Pat says, the term of art has been pregnant boat syndrome, but it really is permit splitting. Thank you.

CHAIRMAN WHITE: Your point is really well taken, Eric. What I would ask is the Board comfortable with the staff developing an issue paper and presenting it to the Board at the August meeting? You're welcome to have more discussion on it now, but I think if we had more knowledge on the topic, we'd have a better discussion. Paul.

MR. DIODATI: I'll just say that we have ample evidence in Massachusetts that this has been occurring, and we have taken the steps to put a temporary moratorium on issuing any new offshore lobster permit. We are not issuing any, and that seems to have controlled it.

But I agree, an addendum process that identifies permit splitting would be appropriate. I think that's the right step, but it's also a long-term one. This is something that is going on right now, so I would encourage other states to take the actions that we have by taking moratorium actions in their own states to counteract this.

CHAIRMAN WHITE: Thank you, Paul. Any other comments on this subject? Geoffrey.

Lobster Database Update

MR. GEOFFREY G. WHITE: Officially it's Geoffrey, you're correct. Thank you, Mr. Chairman. We have the database installed and functional and working on the Commission servers. We've been working over the last two months to work with the states and make sure that we're actually loading the data correctly.

We've found a lot of small but data-coding problems and corrected them as they're going in, I've worked with several of the technical committee members, and we have a pretty good feeling that we're improving the data in terms of the starting standpoint from the landings as well as the sampling data that is going into this.

In terms of the landings, we're real confident on just about all the data sources. New Hampshire has found a discrepancy between their inshore landings records and the NMFS inshore landings records.

They are working directly with NMFS to straighten that issue out. Considering it's not really a Commission decision to decide which landings are correct, we're letting them work out the issue.

When the landings have been adjusted in the NMFS system, we'll download into the lobster database the corrected values and be ready to move forward with the gap-filling process.

I've heard from Trudy Patterson and they're moving along. She and Craig Powers are working well together on this one. In terms of data submission, I think we're really on the right track. We're ready to go.

Next week we'll be having a conference call to start some of the database parameter setting with the technical committee, and I'm going to be there to help them with that.

In terms of confidentiality, I did want to give you a brief update there. We have asked states that have supplied confidential landings data, which is Massachusetts, Connecticut, North Carolina and also the National Marine Fisheries Service, to provide confidential data access to everyone on the technical committee, modeling subcommittee, and stock assessment subcommittee.

We have those signatures back, and it makes it a lot easier for us. The system is all named-users and passwords, but everybody on those committees has the ability to see the other state's data and work with that under the limitations of

it will not be presented in any format without the originating data source's view of what the summary tables are, basically to protect the interests.

That makes it easier for us to implement as well as for everybody to do their work. Finally, there has been one adjustment in how the database will function relative to the survey data indices.

Originally it was going to calculate the arithmetic mean, geometric mean and delta means for the mean catch per tow for the surveys. We couldn't get it to calculate correctly the delta mean, so we're going to be asking the states to provide that data directly.

We will still be able to store that information in the database so that in future years it will be there to revisit. Just a little bit of a change in procedure on what we were able to do on that one.

But, in general, it looks like we will be able to support the technical committee in their gap-filling process and looking forward to the July 14th meeting.

CHAIRMAN WHITE: Thank you, Geoff. Any questions of Geoff? You must have done a good job, Geoff. Thank you very much. Eric.

MR. SMITH: If there is a problem in the programming or whatever the problem is that you can't create the delta means, and that's really what is needed by the assessment scientists, does that kind of throw into the question the need for the common coast-wide database in the future; or, is it better, then, to go back to a system where we tell each state what we need and have those states provide tables or spreadsheets or whatever is needed by the assessment scientists, and then the assessment scientists have that as the states generate it, and they can ask for it year by year or every six months, if they need it, but you get it the way the state produces it as opposed to getting raw data, doing a lot of manipulation to create one big database, then find out you can't do one thing that the assessment people need?

It kind of negates the effort in some respects because now you have to go back to the states and say could you run it as a delta mean and give that to us and we'll store it in the computer. It seems like that's kind of a circuitous way to put the information in a usable format for the assessment people, it just struck me.

CHAIRMAN WHITE: Geoff, do you want to answer that and then Bob has a comment, too.

MR. WHITE: Relative to the survey data, this is obviously not the best case scenario. We couldn't figure out the programming in the time frame needed for this assessment. I think we can do it, just not in the time frame of the assessment. So, that's one issue, and I think it can be resolved.

The other point that I wanted to make is that's only for the survey data. The way the entire system is set up for the landings data and the biological data, a lot of what the lobster technical committee needs to do is the gap-filling and the data manipulation to prepare it to calculate the final catch-at-length matrix.

The system is working very well for all of that. That also captures all the metadata and the decisions and choices that go into how that data was segregated, which this year will take a fair amount of effort, and the purpose of the database is to not have to recreate that effort every time.

It will store the rationale for all of those changes. So two-thirds of the system is working perfectly and will be very beneficial. The other, the survey data isn't where we wanted it, but I think we can get there in the future.

CHAIRMAN WHITE: Bob Glenn.

MR. GLENN: I'd just like to kind of reiterate what Geoff is saying relative to the database. What I've seen to date, my feeling is that it's going to meet the needs of the assessment and the lobster technical committee very well.

What I view it's largest function is, is it's ability to collate and amass all the fisheries-dependent data. The fisheries-independent data is a very

important aspect of it as well, but it's not nearly to the degree of a hangup that we would have if we didn't have it for fisheries-dependent data. I think we can work around those issues fairly easily.

CHAIRMAN WHITE: Thank you, Bob, and thank you, Geoff. We have one announcement to make, but is there any other business that anybody wishes to bring up? Bill.

Other Business

MR. ADLER: Thank you, Mr. Chairman. I would like the technical committee or at least the Massachusetts and Rhode Island technical committee members to think about how would they be able to assign some credit to these Area 2 issues:

First, a v-notch definition change to something similar to Area 1; 2, credit given for the North Cape v-notch project; 3, vent size updated information as to whether any additional credit was available following some type of a study on their escape vent situation; and whether there could be any credit developed, assigned, found, whatever, for the attrition factor that is going on in Area 2.

Now, I'm just doing this as please could you look into how would you do that, because I feel that the industry down there may be requesting that, and I just wanted to give you a heads up. So, thank you very much, Mr. Chairman, for that.

CHAIRMAN WHITE: We were concerned about a previous request for the TC, and this is quite a large request. I think we need input from the rest of the Board again as to if this can be done in a timely manner and where the preference is of the Board. Bill.

MR. ADLER: Mr. Chairman, this was just think about how you would do it, not do it. I mean, I know they're hard pressed, but they might be asked to do something like this, so I'm just saying how would you do that if you were asked to? Maybe they know that within two minutes, I don't know.

CHAIRMAN WHITE: Do you want to comment or leave it? Does the Board wish to continue discussion on this topic at this point? Anybody's feelings? Eric.

MR. SMITH: Only to ensure that it doesn't get in the way of the assessment.

CHAIRMAN WHITE: I guess I have concern, and I need direction from the Board as to what they want to do with this, to Eric's point. I think it's really important at this point that they move forward on this assessment. And, even to answer Bill's question on how we go about this could require a fair amount of time. Gordon.

MR. COLVIN: Correct me if I'm wrong, but I thought Bill focused his request on the Massachusetts and Rhode Island members of the technical committee. That being the case, I have nothing to say.

CHAIRMAN WHITE: I didn't understand that. Well, I'm going to go back. We've got to resolve this. Anybody else to this point? John.

MR. NELSON: I think Eric pretty much summed it up. There is a need to move ahead with the stock assessment on the time line that we have and not have it slip. That has your priority.

If you have time to address or think about something else, such as what Bill has provided or other aspects associated with this, that's great. But, the priority is to achieve the stock assessment as it has already been defined, the measures that need to be in place to do that.

CHAIRMAN WHITE: Bob.

MR. GLENN: What I need to be clarified for me is whether or not I'm going to be asked or required to report at some later date relative to this request. Even if it is to Massachusetts or Rhode Island, I would need to know specifically if there is a time line and whether or not this is in fact a specific request of the Board.

CHAIRMAN WHITE: Well, unless I hear from others on the Board, I would put it as a delayed request because I think it is going to take an inordinate amount of time on it. Paul, to this point.

MR. DIODATI: Yes, again, I agree with John and Eric that the stock assessment is the priority for you, Bob. And, certainly, I think a lot of the affects of actions that Bill raises may in fact be looked at as a part of the assessment.

I think you're going to be looking at effort in the fishery or the attrition in Area 2. You may be looking at the North Cape project and other things that Bill raised, so I think as information becomes available, it can certainly report to us outside of the assessment.

CHAIRMAN WHITE: I think our answer as a Board to you, Bob, is at this point in time we would urge you to move forward with the assessment, and we'll hold off and some of these questions may be answered and some may not.

I don't know who the state biologist is in Massachusetts, but if they want to work on him, they can get him to come up with something. The next person, now I had Harry.

MR. MEARS: Thank you, Mr. Chairman. Going back to the discussion and report from the transferability work group, I believe there was a general endorsement or at least implication from the Board that that group should continue to meet to address the unresolved issues and further specifics on how such systems should work and hopefully be consistent between Area 2, Outer Cape and Area 3.

I think the record should be clarified in that regard, that there is encouragement for that group to continue to meet to address the unfinished business.

CHAIRMAN WHITE: That's exactly what my understanding was, Harry, so I think that will move forward. Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. I raise this issue because of problems we are

having in New Jersey with our permit system and the now new federal permit system.

We put in place and have had in place for several years criteria for our permits, both in state and federal waters, our fishermen fishing in both state and federal waters, and now there are differences in dates relative to the qualifying dates between the federal and state system.

In most case, almost all cases the pot numbers are more restrictive in the federal system than in ours. Well, in every case we continue to have the two systems. The fishermen are always required to fish under the most restrictive rules.

We presently have six categories of lobster permits in the state, four of which are commercial -- I'm sorry, four of which involve the EEZ fishery and two of which involve the state fishery.

We would like to void our permit categories that overlap with the federal permits, primarily, well, entirely people fishing in the EEZ. And what we'll do is essentially have New Jersey, we'll revert to the Fisheries Service system in the federal zone.

We plan to keep our two permit categories in state waters, as I indicated, and this involves 12 commercial permits and 43 recreational permits, and what we'd like to do is work both with the Fisheries Service, with Harry's group, as they phase in the system that they're putting in place now -- I'm trying to resolve some differences -- and also with Commission staff to make sure there is no hiatus so that no one falls through the system and no one can take advantage of increasing their effort.

But, this will simplify life for fishermen certainly in New Jersey. And, as I indicated, actually it will eliminate a number of our commercial permits that we do have simply because of the way that we initiated the system in our state as opposed to what now occurs in federal waters.

So, again, we'd like to make this transition. We're doing it in order to avoid confusion

between the two systems, but it will result in fewer pots being fished, certainly, in federal waters.

I spoke to Carrie about this. Her preliminary examination of it is it probably could be accomplished. I talked to Harry, and we certainly want to avoid confusion, but we'd work with both to make sure this transition occurs, and, again, that there is no one taking advantage of either system.

I'd just like to let everybody know we'll be working to do this. And before we make any transition, we'll notify the Board to make sure everybody is comfortable with what we propose doing.

CHAIRMAN WHITE: I think that's great, Bruce. And if you can keep us informed on that, it just sounds like agencies catching up with agencies, so I would urge you to move forward with that. Harry, you have a comment to that point?

MR. MEARS: Very briefly. I support Mr. Freeman's intent and request here. In fact, when New Jersey's proposal for historical participation came before the Board as a conservation equivalency item for consideration, it was approved and it was framed in the context that this was an interim program pending implementation of the federal regs for historical participation in Areas 4 and 5. So, to me it's in complete accordance with what the original intent was when that proposal was approved.

CHAIRMAN WHITE: Good job, Bruce, move forward. I had Dennis.

MR. ABBOTT: Thank you, Mr. Chairman, two things. I'm sure that the law enforcement committee will meet prior to us meeting in August, so that the results of their study of the transferability program will be presented to us.

CHAIRMAN WHITE: Next issue. Any other business to come before the Board? Bob Beal, do you have an announcement?

MR. BEAL: Sure, just wanted to remind folks

that at 6:00 o'clock Heather Stirratt from the National Marine Fisheries Service is going to come in and give a briefing on Amendment 2 to the Highly Migratory Species Plan dealing with swordfish, billfish, tunas and large sharks, so 6:00 to 7:00 Heather will be here updating you on that.

Nan Redmond

CHAIRMAN WHITE: Thank you, Bob. Any other issues?

MR. AUGUSTINE: I make a motion we adjourn.

CHAIRMAN WHITE: This meeting is adjourned.

(Whereupon, the meeting was adjourned at 5:10 o'clock p.m., May 26, 2004.)

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INDEX OF MOTIONS

Move that the Lobster Management Board recommend to the ISFMP Policy Board that the state of Maine be found out of compliance with the American Lobster FMP in that it has not implemented the most restrictive rule, including minimum sizes for all LCMAs.

The most restrictive rule provisions are necessary to control fishing mortality and maintain the rebuilding schedule contained in the FMP. In order to come back into compliance, the state must implement the most restrictive rule.

If by March 10th, 2005, the state has not implemented the appropriate measures, notification of this non-compliance finding will be forwarded to the Policy Board. Motion carried.

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