

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

December 2003

**Doubletree Hotel Crystal City
Arlington, Virginia**

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ATTENDANCE

Board Members and Proxies:

George Lapointe
Pat White
Dennis Damon
John Nelson
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Paul Diodati,
Bill Adler
Vito Calomo
Mark Gibson
Gil Pope
Jerry Carvahlo
Eric Smith
Lance Stewart
Gordon Colvin
Brian Culhane
Pat Augustine
Bruce Freeman
Harry Mears

Robyn Burgess
Kim McKown
Richard Allen
Jeffrey Marstou
David Ben
Mark McSally
Roy Campanale
Tom Geary
Peter Brodeur
Michael Marchetti

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

ASMFC Staff:

Carrie Selberg
Vince O'Shea
Robert Beal
Toni Kerns

Members of the Public:

Bob Ross
Dan McKiernan
Ted Colburn
David Spencer
Bonnie Spinazzola
John Sorlien
Charles Lynch
Anne Lange
Bart Mansi
Edward Rodman
John German
Michael Theiler
Nick Crismale
George Doll
Rich Otterstedt

**ATLANTIC STATES MARINE FISHERIES
COMMISSION
AMERICAN LOBSTER MANAGEMENT
BOARD
Roosevelt Hotel
New York, New York
WEDNESDAY MORNING SESSION
December 17, 2003**

The meeting of the American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Terrace Room of the Roosevelt Hotel, New York, New York, on Wednesday, December 17, 2003, and was called to order at 7:30 o'clock, a.m., by Chairman George Lapointe

Approval of Agenda

CHAIRMAN GEORGE LAPOINTE: Good morning. My name is George Lapointe. I'm the chair of the Lobster Board. We are going to get started. We have a quorum. I thank everybody for getting here at 7:30. We did quite well.

For people who are in the audience, there are meeting materials that go along with the agenda topics at a table over on my left, your right. There is also a sign-up sheet that is going to be passed around the table and to the audience.

Are there changes to the agenda, board members? Paul does have a change to the agenda, and Mark.

MR. PAUL DIODATI: Actually I think you have a discussion about single-gauge sizes somewhere on this agenda. I was wondering if we could move that up a little bit because that's a carryover from the last meeting that we never got to. It might be relevant to some other discussion that will come up in this agenda. That's my request.

CHAIRMAN LAPOINTE: We can do that, Paul. I mean, we are time limited by noon and so I'll try to use the chair's prerogative to keep the discussion moving along, but if there is no objection, we will put it after 6. Is that all right? We will put it after Item 6. Mark Gibson, you had a --

MR. MARK GIBSON: Yes, I had the same recommendation as Paul. I think that the differences in gauge sizes throughout so many of the areas are relevant to talk about before Area 2 action in which the board might contemplate additional gauges.

Approval of Proceedings from August 2003

CHAIRMAN LAPOINTE: Thank you. Other changes to the agenda? Seeing none, we will move along. The next agenda item is approval of the proceedings from August 2003. The meeting record was included in the briefing package. Were there comments or changes on the meeting record? Seeing none, I'd entertain a motion for approval.

MR. PATTEN WHITE: So moved.

Advisory Panel Report

CHAIRMAN LAPOINTE: Moved by Pat White; seconded by Vito Calomo. Again, any changes or additions? Seeing none, is there objection to approval of those? Seeing none, they are approved. The next agenda item is public comment.

It is our custom at these meetings to allow a period for public comment on general issues, but people should also know that we will look for public comment under specific agenda topics as well; so if you're here for one of the other agenda topics, again, in the interest of saving time, I would encourage you to comment at the right time.

But at this point, are there general comments anybody would like to make to the board? Seeing none, we will move to the next agenda item which is the advisory panel report, Bob Baines.

MR. ROBERT BAINES: Thank you, George. The advisory panel met on November 19th in Providence. We discussed quite a few different issues. I'm going to cover a number of them now, but the addendum and necessary clauses, I'll cover when we get to those.

Carrie Selberg and Bob Glenn updated the AP on recent board and technical committee discussions regarding the stock assessment. The board has decided to delay the scheduled "turn of the crank" assessment for 2003 and schedule a benchmark assessment for 2004.

This benchmark will repeat the last assessment with new data as well as consider new models, input parameters such as natural mortality, and new reference points. I realize this board knows all this, but I just wanted to make sure they understood where the AP was.

Carrie stepped through the various technical committee subcommittee responsibilities and their

overall timeline. The stock assessment subcommittee, modeling committee and technical committee will all be involved and active in this next year working on the assessment.

The AP asked the staff to keep them informed of the meetings about the assessment. The technical committee will be asking the management board at the December meeting if they should be reconsidering the stock assessment area boundaries.

Bob Glenn indicated that the technical committee had an initial discussion about changing these boundaries at the last meeting but no firm decisions had been made. The AP discussed the potential impacts this could have on the management areas. We had no recommendation, though.

The Outer Cape Plan was discussed. Carrie Selberg updated the AP on the Outer Cape Cod Management Plan. It was a very short discussion because the AP felt that we couldn't make any recommendations on it where it was.

We had a long discussion on lobster health. The AP discussed lobster health concerns throughout the range. In Long Island Sound it was reported they are seeing lots of egg-bearing lobsters but not of the legal-size lobster.

They are concerned about the eggs on the egg-bearing lobsters and about pesticide impacts on the lobsters. Lance Stewart was also there and he outlined some concerns about pesticides and lobster health in Long Island Sound.

Area 2 AP members believe shell disease to be at the same levels as last year. In Buzzard's Bay shell disease is about 25 percent before the shed and then it goes down.

In New Hampshire it was reported that the spring run had about 25 percent shell disease but they did not seem to be of their normal lobsters because they are getting very high catches, and lobsters were harder, and this was not typical off of New Hampshire.

What they saw that wasn't normal was that the lobsters were larger than what they typically see. There was a normal run of lobsters after the spring run in New Hampshire and very little shell disease shown.

The AP discussed the false-positive test results for mercury in lobsters being sold in Europe. We understand the Lobster Institute is testing lobsters

now and sending results to the FDA. I will cover the other areas as they come up. Thank you.

CHAIRMAN LAPOINTE: Thank you, Bob. Questions for Bob Baines? Bill Adler.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. I just wanted to note, I saw that in the writing, too, about the mercury. It was lead not mercury.

MS. CARRIE SELBERG: A typo.

MR. ADLER: Okay, thank you.

MA OCC Conservation Equivalency Proposal

CHAIRMAN LAPOINTE: Good clarification. Other questions for Bob? Seeing none, thank you, Bob. The next agenda item is the Massachusetts Outer Cape Conservation Equivalency Proposal. Could you give us an overview, please.

MS. SELBERG: Paul, would you like to start?

MR. DIODATI: Would you just like a little background, Mr. Chairman?

CHAIRMAN LAPOINTE: That would be great.

MR. DIODATI: The Outer Cape Cod Management Plan is one that was delayed at the state level for about the past 18 months. The board has been very patient in terms of giving us the proper opportunity to examine how the commonwealth may be able to develop and implement an effort control plan that might be a state-wide program.

We did do that. We had seven or eight public meetings on that state-wide concept and decided not to implement the state-wide plan. We went back to work over the past six months on the Outer Cape Plan.

We have developed a modification of what was adopted in the most recent addendum for the Outer Cape. I'll explain briefly what that is, but those of us who have attended meetings relative to trap allocations and effort control plans that are modeled over this particular concept know that making initial allocations of traps in programs like this is the most difficult aspect of it.

There are significant social, economic and political constraints and concerns that make it very, very

difficult. Also, once that initial allocation is made, it's difficult to impossible to backtrack.

We'll be giving individual trap allocations to fishermen. They will be transferable. Transfers will be made, and it will be nearly impossible to go back in time once that takes place. This isn't like increasing a size limit, limiting effort by limited entry or closing a fishing area.

It's very, very much a different type of management approach and one that I have had a tremendous concern about, and that's one of the primary reasons we didn't rush in to implement this. What we have done is taken the time to determine who the actual participants in the fishery should be based on a period of time in history.

We also had to make sure that we knew what the number of traps were fished historically in that area so we'll have a baseline in order to reduce from. That time is 1998. We have developed a plan, after going to public hearings, and I've presented that plan to our Marine Advisory Commission within the state, the Massachusetts Marine Fisheries Advisory Commission, and they have approved it, so we are ready to implement this plan in January of 2004.

I actually have a motion that requests conservation equivalency for the board to consider. If you'll take that motion now, Mr. Chairman, I'll be glad to do it.

CHAIRMAN LAPOINTE: That would be a great way to start. We'll go to the technical committee and then get into discussions so that would be great.

MR. DIODATI: Thank you. Actually I believe the motion is in hand, but I will quickly read it. It says that I move that the Lobster Management Board approve the Massachusetts request for conservation equivalency for the Outer Cape Cod. This proposal is specific to Sections 2.1.7.2 and 2.1.7.3 of Addendum III.

It uses 1999 through 2001 as qualifying years to identify potential participants and allocates traps based on fishing performances during 2000 and 2002 with pounds as the qualifying parameter.

All other aspects -- and that's where it varies from the original plan -- all other aspects of the OCC Plan included in Addendum III remain the same, including the minimum gauge sizes and the 20 percent reduction in traps from the 1998 levels with the potential for an additional 5 percent in 2007 and '08

if necessary to meet lobster egg production goals and objectives after the next stock assessment.

CHAIRMAN LAPOINTE: We have a motion by Paul. Do we have a second?

MR. WHITE: Second.

CHAIRMAN LAPOINTE: Seconded by Pat White. Actually before I get into board discussion, can I ask Bob for the technical committee's review and then we'll get into board discussion.

MR. ROBERT GLENN: At our last technical committee meeting the TC looked over this plan. What we were really concerned about was with not so much how the traps were allocated but what the end result was.

The plan indicates that the end result is a 20 percent reduction and an additional 5 percent if necessary by the rebuilding date 2008. That falls in line with the original plan that was approved of a 25 percent reduction by 2008. Based on that, there was a consensus that the plan was conservationally equivalent.

CHAIRMAN LAPOINTE: Thank you, Bob. Questions for Bob? I will go to members of the board and then go to -- I know there is at least one member of the audience who wants to speak to this motion. Are there board members?

Well, I mean, questions or comments about the motion? If there are questions to Bob about the technical aspects of that, that would be appropriate as well.

SENATOR DENNIS DAMON: Thank you, Mr. Chairman. The motion as was read by Mr. Diodati and that which was previously shown on the screen differed only by one word. One was "potential" of a 5 percent increase, and on the screen at least it said it was going to be a 5 percent increase, and I wonder if we could get a clarification.

CHAIRMAN LAPOINTE: I believe that relates to our discussion, which will be later on the agenda about the "if necessary" clauses in a number of proposals. The technical committee will report at that time if necessary is necessary, and so I think that's the reason for that change, is it not?

MR. DIODATI: Yes, I'm willing to drop the word "potential." It's "if necessary."

SENATOR DAMON: And that's fine, thank you.

CHAIRMAN LAPOINTE: Thank you. Other comments or questions? Pat.

MR. WHITE: Paul, in that you said you're going to have further reductions if necessary of 5 percent in 2007 and 2008. Is that 5 percent over those two years or 5 percent each year?

MR. DIODATI: No, it would be 5 percent – well, the way this reads it does suggest that it's in each year.

CHAIRMAN LAPOINTE: The intent is 5 percent total as an addition and not five and five.

MR. DIODATI: Yes. The intent was by 2008 there would be an additional 5 percent cut. I should point out that it's difficult to say what the initial number of traps allocated will be, the total number.

We won't know that until we begin the allocation. A number of fishermen may opt not to fish in the Outer Cape Cod area once they see their allocation or maybe they have changed plans since the base period when they established history in the area.

Right now if everyone that we identified that has history in the area, which there are approximately 100 fishermen, if they all get the allocation due them, we'd be looking at being 8 percent below the 1998 baseline, but we suspect that it will probably come in much lower than that because of the initial allocation, the way that works out.

CHAIRMAN LAPOINTE: Thank you, Paul. To Pat White's point about 5 percent in 2007 and 2008, I think we can correct that by changing that to 5 percent by 2008 if necessary. Is that all right with the maker and the seconder? I think that means just 5 percent total. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I'm actually at odds with my director over here because I preferred to have the Outer Cape Cod LCMT plan adopted.

One of my questions here had to do with if there is some adjustment after this, if this is approved, and there needs to be some adjustment, as long as it doesn't upset the technical committee line that they're looking at, can the state come back and seek an adjustment under conservation equivalency to even the plan that is being proposed here?

CHAIRMAN LAPOINTE: My sense is that states can propose conservation equivalency as they see fit. We've got to work that in to the meeting schedule and the technical committee work plan, so I don't think this plan is any different than any other, Bill, so the answer would be, yes, you could come for changes in the future.

MR. ADLER: Yes, thank you, because there were some things in the new plan that had a lot of the Outer Cape fishermen who had worked on the LCMT plan very upset. I understand the Division's attempt to try to accommodate as many people as possible without upsetting the apple cart.

I am going to continue on the state level to see if we can somehow rectify the differences and make it more livable for everybody. That's why I wanted to say if there was a way to fix it as long as it didn't upset the goals here, that I wanted to be sure that they could come back and make those adjustments. Thank you.

CHAIRMAN LAPOINTE: Other board questions or comments? Eric Smith.

MR. ERIC SMITH: I just want to make a brief comment that I find it frustrating from where I sit not having anything to do with the Outer Cape Area to see the discord at this late date between the agency with a valid proposal and the LCMT members, the original proponents of their plan, that they haven't come to agreement which leaves the rest of the board -- at least it leaves me in a quandary as to "the right thing to do."

I would have hoped that those kind of things would have been worked out in-state, and maybe we'll hear more for the reason for the discontent when we hear from the audience. But, this kind of situation really leaves board members from "away" with a real dilemma. Thank you.

CHAIRMAN LAPOINTE: From the chair's perspective, it's a manifestation of the role of LCMTs as advisors to the state and to the board and how the state accommodates that advice and the tension that's in all of those proposals. But, yes, it is a big awkward. Other board members. Seeing none, I'll go to the audience. Come on up, Steve, I'll get Paul and then we'll get right to you.

MR. DIODATI: Just to respond to Eric's concern, one of the differences that we tried to address in this current proposal has to do with the qualifying years. The original OCC plan had 1999 to 2000.

If you fished in that area and established history, that was the period. We added a year because we recognized that a number of other fishermen were out there, and we thought it best to encompass the entire universe and start at that point.

Also, the OCC plan was -- as far as the initial allocation of traps, it was based on what a fisherman reported to have fished for number of traps in one year, which was the year 2000.

What we did was we expanded that by looking at a three-year period, 2000 to 2002, and took their actual harvest levels and established their allocations based on that and not what they reported to have fished. Thank you.

CHAIRMAN LAPOINTE: Thanks, Paul, for that clarification. Steve Smith, please.

MR. STEVE SMITH: Thank you very much, Mr. Chairman. I appreciate the opportunity to clarify a lot of the discrepancies that seem to be going on here.

CHAIRMAN LAPOINTE: Steve, before you get started, you're a member of the Outer Cape LCMT, aren't you, just for board members who may not know?

MR. SMITH: I'm the chair of the Outer Cape Lobster Management Team.

CHAIRMAN LAPOINTE: Thank you.

MR. SMITH: I was chair of it in 1995 when we had the EMT process, and I'll make a comment on that in a moment because this is really -- you know, if you want to talk about history-based traps, we've got history-based management also.

To provide as much time for you, I won't read everything here. I only was able to get 11 of these so if anybody has this copy, if you can share it with the person next to you, it would help out but we tried to get it to each of the states.

The cover sheet basically states our position. We gave you an 18 percent reduction plan that was going to be good in 2004. In 2004 you had 18 percent reduction. That was LCMT approved -- or, excuse me, technical committee approved.

They came in with the numbers. We didn't make up the numbers. Eighteen percent in 2004 and I want to make a distinctive from the new DMF plan which is

promising you 8 percent, and then in 2008 they'll get you that final 20 percent and then maybe 5 percent more.

Keep in mind this is a five-year process to reduce fishing mortality. If you want to start in 2008 and start reducing fishing mortality, good luck. We have 18 percent. That's the cover sheet.

The next four pages are a signed petition from 32 members of the LCMT -- well, of the Outer Cape group. I won't fully read the petition but I will make the point -- well, maybe I will.

"We the undersigned support the original Outer Cape plan. The plan had a control date of '99 and 2000 for all active license holders along with license holders issued permits from the DMS waiting list."

This is an important point, the waiting list. We were told during this period of time to come up with a plan reducing traps and containing license holders. Even beyond that time period, the DMF is handing our licenses off of the waiting list. We're saying, well, when is this going to stop? How can we create a plan?

As Joe Idowine put it to us one time, he says, "We need to know how many people are in the bottle before we can tell where you've got to plan." Okay, they did that. They put out five more. We said, all right, we'll take them.

You know, we'll account for them. So we had done that. That's one step beyond what we needed to do. I'll just skip down to the end.

"Along with DMF advisors Jim Fair and Bruce Estrella, the original Outer Cape plan was crafted over countless meetings by notification to all license holders and sought as much industry support as could possibly gain under the circumstances."

Effort control, you're not going to get 100 percent. We put in a plan that said we needed two-thirds vote to get this approved, not just a simple majority. The number of meetings, I think I counted almost 30 meetings.

These are the sign-up sheets that we -- very contentious putting together an effort control plan. We did everything we could. We didn't limit it to the LCMT members. We didn't lock them off in a room and say you figure out a plan. We invited everybody. This is the sign-up sheet.

Once again, it gained an immediate 18 percent reduction. To have the latter DMF plan designated as the one for the Outer Cape seems contrary to the whole management process to reduce fishing mortality.

And what I mean is the LCMTs did their job, and they did it with good technical stuff. We did it with traps. We did it with gauge increases. That's the important part. This next page, you're going to see a list of — the top of it says "Range of Pots Fished in the OCLMA" active licenses 46.

I'm going to take Eric back a moment because he was chair of the EMT process under the New England Fishery Council when we had to put together a plan. These are numbers that came out of that plan that was stopped, not by our doing.

We were prepared to enact this plan. This was stopped by management. I want to point in that plan the total trap count was 25,800 traps. It says right here we were going to reduce it 4,000 traps.

You would have ended up with 21,000 traps in the Outer Cape Plan. Right now we're working off a base of 41,000 because we're going to give everybody their highest number and then reduce. We had it down to 21,000. It was dropped at the New England Council. ASMFC picks it up.

I don't want to take up too much time. Here are two letters here, one from myself to Jim Fair in 1998. We need to know about latent permits; how are you going to deal with them? Jim Fair's response, this is how DMF deals with latent permits, you need to be active for four out of the five years, on and on.

He closes. He says — it was all his assurances. "Be assured, we're very careful how we're letting out licenses." His closing comment is, "We should plan to meet in the near future to put the finishing touches on your plan and finalize a plan to move forward."

These are the things that we were being told. This is 1998. Next page is the DMF requirements. Now this last page is very important. Here is the chart. If you see this, this is the chart of the license holders that are now going to be qualified under the new DMF plan.

I'm only going to give you the final, well, let's see, 57 down to 99. By the way, you know, 46 license holders in '95. Now we're up to 99, doubled. Even under our plan that was going to be enacted in what, 2001, there's seventy-something. You know, you're

going to keep adding licenses as long as you don't take action.

The point I want to make, this is the new DMF plan which we didn't get to see under a public hearing. We saw another plan under a public hearing. We didn't see this poundage plan with control dates moved to 2001 and 2002.

It defies common sense why you would put out poundage plans in 2001 and 2002 that everybody is aware of and then say, okay, now report then we'll give you trap allocations. You have to set up a plan that you have a control date that no one can change the numbers. And that's what we did.

But because people were able to report and since it's the holidays, we had this plan presented to us that had approximately 57. Forty-some people that had less than 100 traps would now be allotted under the new DMF plan 4,000 traps — 4,000 trap holiday gift.

Under our plan they got 1,000, so there's 3,000 traps that had to be made up by the guys that have been in the business for 30 years, many of them, that came in with plans in '95. They came in with plans in '98, all of those years that reduced traps. Now we're going to add them.

And I'll point out to you, these traps don't get reduced until 2008. Now the statement that, you know, well, we're going to get a lot of these back because guys are going to see low numbers, and they're going to go to another area -- well, if that were the case, why wouldn't they have left in 2001 and 2002? They didn't. They continued reporting and they just reported even better. And even if they do leave, my contention is they'd leave our plan at 18 percent base.

Nobody is going to stay in just our plan and leave their plan. There's, you know, some real problems there. Basically you could see the haphazard reporting in this chart. There's two pages of it. Guys have put down their hammers.

Whatever other work they were doing, they started reporting, you know, to the tune of 3,000 extra traps. Now here's my most dramatic proof of this over-reporting.

It's the second last page. It regards divers. All of a sudden the divers came into the plan. Give them traps, too. I don't think the technical committee looked at this properly and said, well, what were the trap levels in 1998 for the divers?

But you know what the divers — I went all the way back to 1991. All of a sudden in 2002, since they knew about a poundage plan that was out there, they reported 20,000 traps, over 20,000 traps. They never had a year over 8,500.

All of a sudden there's one more license holder, also, another diver shows up in 2002. This is the problem when you come up with plans like this. You can't set a target for people and then let them shoot at it and hit the bulls eye and then call it a good plan.

And what this really does, because of these type of things, is that it takes traps out of the guys that have been in the business for so many years, put the time into the LCMT process, and did what you asked.

So, last page, this is the public document that was presented at the September public hearing. In no way does it reflect on what we were able to comment on. This new plan does not look anything like this. The control years were changed.

Eligibility, there was a misinterpretation of the Outer Cape Plan. When we looked at that plan on the Outer Cape, we looked at it to include everybody, and we said if you fished two months in '99 or 2000, count your number in 2000.

If you didn't have a 2000 number, a zero, go to '99. And Bruce Estrella did do that. He checked those numbers. Even in the new plan, there's no haul-out period. They eliminated the haul-out period.

Why would you possibly put in an effort control plan that has limited trap numbers and eliminate the January to March haul-out period? You need to get these traps out. There is opportunity to cheat.

So, basically I would just like to comment briefly at this point that the work had been done. We're giving you 18 percent in 2004. This plan is giving you 8 percent, get the rest in 2008.

And when 2008 comes along and then you say, we'll, you're not reducing fishing mortality; you've got to do a little bit more, to another 20 percent, we're going to be back saying, well, why didn't you take it at 18 percent in 2004. So, the work was done. There was no real public comment period on this latest plan. I realize I've probably taken up a lot of your time so thank you very much.

CHAIRMAN LAPOINTE: Thank you, Steve. Board members. I guess again from the Chair's perspective,

Paul, the plan you're putting forward in this motion has already been approved by the state — I don't know the exact board but your advisory board, has it not?

MR. DIODATI: Yes.

CHAIRMAN LAPOINTE: And from the technical committee's perspective, we've asked about conservation equivalency hasn't -- we didn't address the issue I think of 18 percent in 2004 compared to the reduction in 2008 because what we had asked was does it meet the target for the 10 percent egg per recruit by the end of 2008?

MR. GLENN: Yes, that's correct. The technical committee never reviewed what either the initial allocation would have been from the original Outer Cape Cod plan versus what the actual allocation would be from this most recent plan.

The bottom line is from the technical committee's perspective is what is the final product? What does the plan achieve? Both plans had mechanisms in their place to achieve a 25 percent reduction by the year 2008, and that's the critical point.

CHAIRMAN LAPOINTE: And that was consistent with the way you evaluated other plans as well?

MR. GLENN: That's correct.

CHAIRMAN LAPOINTE: Okay, thank you. Board members. Harry.

MR. HARRY MEARS: I have a question and a comment. The first question for Paul, just clarification on the 20 percent reduction language in the motion as well as the additional 5 percent if needed by 2008. The way I understand the plan, that's based upon an anticipated passive reduction in number of traps based upon a tax that comes into play once traps are transferred; is that correct?

MR. DIODATI: There would be a passive reduction as traps are transferred, but if we don't meet the 20 percent, then there would be an active reduction by 2008.

MR. MEARS: And the anticipation that the passive transfer would amount to 20 percent, is that based upon any activity in state permits and previous — I was wondering how the expectation was arrived at that would give you the confidence that it would be in the neighborhood of 20 percent?

MR. DIODATI: Well, there's no expectation. The objective calls for a 20 percent reduction. We're going to achieve an 8 percent reduction at a minimum and perhaps greater when the allocation actually takes place. And then whatever we achieve passively, whatever it is, it is. It may be 2 percent so we may require an additional act of reduction in 2008.

MR. MEARS: And then the comment, which is kind of difficult at this point and it's from a federal perspective – obviously, the Outer Cape includes both state and federal waters. And, the exact impact upon what we do on the federal level will be ultimately determined by the recommendations to the Secretary Section that the board will look at, presumably once this addendum is acted upon.

If there is no implications on the federal government, okay, but if there are, there is going to be several unknown impacts that we're going to have to look at. I'll just name two of them just so the board is aware of it.

One is we have an existing control date of September 1, '99. This plan incorporates a different control date that may only be specific to state permit holders. I don't know that, but if it's equally as relevant to federal permit holders, it's obviously an issue that we have to look at.

And, secondly, we would need to also evaluate the socio-economic impacts of any recommendation that's made that would differ from previous elements that were incorporated in the lobster plan. So, once again my comments are equally as relevant to what we ultimately discuss, for example, for Areas 2 and Area 3 as well. I'll hold any further specific comments until that time if in fact they're relevant.

CHAIRMAN LAPOINTE: Thanks, Harry. And just from a process perspective, should this motion pass and should Addendum IV pass, we would have to write a letter to the Secretary asking for implementation of those measures in federal waters so we would put the two together.

MR. MEARS: I think that decision needs to be made by the board. We've had occasions in the past on conservation equivalency that have both involved a decision by the board to do that and other times has not in terms of a need to modify federal regulations as well.

But, yes, if it is determined that for this plan to work, that it would be critical for federal permit holders to

also be governed by the same guidelines, yes, a letter to the Secretary would be necessary.

CHAIRMAN LAPOINTE: Great. Ritch White and then Bill Adler.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. I have a little concern with the additional 5 percent because if the 20 percent doesn't bring us to the egg production standpoint, then shouldn't that percentage be more open or shouldn't it be a minimum of 5 percent? Let's say we get to 2007 and we need more than 5 percent?

CHAIRMAN LAPOINTE: Well, my understanding is that when the technical committee reviewed this, I mean, the 25 percent reduction met their 10 percent egg per recruit target so that's the right level to be at based on the technical information we have now.

I mean, to the point that things may change in 2008 and we may have to make additional reductions, we're going to be talking at the end of today's agenda about a new stock assessment and where we all might need to make adjustments based on the results of that. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. First of all, I did want to say that the state has frozen the areas so that in the past you could put more than one area on your permit. Starting this year, it's going to be basically pick your area and stay there. And you can pick one with an option for Area 3 if you qualify but other than that it would be like people in Area 1 can't put Area 1 and Outer Cape. They can pick some. I think there will be some attrition out of Outer Cape because people probably will opt out of that because they either don't fish there or they're going to stay in another area.

There was also an appeals provision put into the state plan, which was good because I was hoping that might be one of the ways to adjust, as I had mentioned earlier, adjust some of these differences to make it more acceptable to more Outer Cape people.

Also, I understand that we need to do a compliance thing here, and this is like the last minute I think for the compliance factor. That was another reason for me saying that, you know, even if this motion passes and it satisfies the compliance thing, this was why I said we may have to make some more adjustments.

I just want to leave a little wiggle room to do that. And you said there was. I did have a question for Harry with regard to the federal plan, trying to keep

up with the federal plan that is running -- I don't know where it is.

In your plan have you passed the Outer Cape Plan for the federal words that is the one that was passed by this, the addendum -- which one is it? Two? Was it Addendum II I think or three? Is that already, the Outer Cape Plan, a la the first addendum, is that already in the federal words, federal plan?

CHAIRMAN LAPOINTE: Harry, please.

MR. MEARS: I believe that was Addendum III. That is currently being -- that's under development, being analyzed, for example, from a socio-economic perspective so this would obviously modify that evaluation.

MR. ADLER: All right, so you haven't actually put it into the cement mixer yet?

MR. MEARS: It is not currently in federal regulations, that's correct.

CHAIRMAN LAPOINTE: Thanks, Bill. Paul. Steve, I see you; I'm doing the board members.

MR. DIODATI: One of the primary reasons why we chose poundage to base trap allocations was that gives us the opportunity to audit a fisherman's activity. An audit program is something that we conduct on an annual basis, and it's very likely that we will audit a good deal of these participants before the allocation, so we do have the ability to do that.

And, again, I want to stress to the board, before you approve another plan like this for other areas, that you give it some very strong consideration about how difficult initial allocations really are.

I can assure you I have just as many people who don't like the original plan as those that oppose this one. That's the nature of doing these individual allocations.

CHAIRMAN LAPOINTE: Thanks, Paul. Other board members. Bruce Freeman.

MR. BRUCE FREEMAN: Thank you, George. In the document that we're looking at, there was this issue of divers, and it had numbers which really haven't changed much over time but the poundage, as indicated in this chart, went from a little over 2,000 to 20,000.

My question would be I guess to Paul, are there arrangements to control the divers, and then how do you deal with them? If primarily the emphasis of the plan is to control numbers of pots, how do you deal with the diving issue?

CHAIRMAN LAPOINTE: Paul.

MR. FREEMAN: Or is that a major issue? I just don't really know that much about it.

MR. DIODATI: Again, before we give any trap allocations to divers, they will be audited, their records. They'll have to establish the dealer receipts, for instance, for every lobster that they sold. That's Number 1.

Number 2, we do have divers that have been long-time participants in the area that have expressed concern about as they get older they'd like to stay in the lobster industry but perhaps set traps and why shouldn't they get an allocation based on their poundage. I didn't have any problems with that although I doubt that those traps will remain transferable so those are traps that will sunset with the divers.

MR. FREEMAN: If I may, Paul, will diving be allowed or that will be required -- they will be required to use the traps?

MR. DIODATI: No, if they have history as diving in that area, they'll still be allowed. But, based on their poundage history, they would also qualify for an allocation of traps at some time in the future if they are no longer able to dive because of health issues or age or whatever.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. It sounds as though the information presented has been well presented by Mr. Diodati, but in response to that Mr. Mears indicated that there may be some problems with this.

I think it does leave some doubt in the direction that we should be going. I really don't hear any new additional information being added to the discussion so I'd like to call the question, if it's appropriate, Mr. Chairman. If it's appropriate, Mr. Chairman, unless the public has some comments they'd like to make.

CHAIRMAN LAPOINTE: It's not quite appropriate because I told Steve Smith I'd give him another shot.

MR. SMITH: Thank you, Mr. Chairman. I'll try and be brief. It was interesting, Harry's comments, because that did bring something to light to me. The first comment about this tax, one of the things you've got to do when you put in effort control is you've got to get as many people that will buy into it as possible.

Now the problem with the tax -- and we asked to eliminate that tax mostly because we had 18 percent already -- is that the guys that pay the tax are the guys on the lower end. They have 200 traps, 300 traps.

You've got to encourage them to get into the system, buy into it, buy a few traps every year. You're going to tax them 10 and 20 percent. The guy with 800, he doesn't need any more traps. He's happy with what he's got. He's going to stay at the 800.

So on the bottom end you've got these guys that have to pay for the conservation measures for the guys at 800. Then in the DMF's newest plan, then they say, well, in the year 2008 we'll consider taking these guys at 800 down a little bit. It's just a poor setup.

You're creating a future clash and that's a socio-economic thing to consider. A second socio-economics thing to consider, you give out traps to people that just all of a sudden saw the opportunity because the plan was stopped and started writing in trap numbers, poundage numbers, and really that's what that diver number shows.

The 20,000 was, hey, we see the numbers, we see poundage, we're reporting poundage, we're going to get our traps, and 20,000 in that plan translates into 800 traps. So, you take traps from guys that have been in the business for 20-30 years, give them to the guys that started in as latent permits.

You know, it's a socio-economic thing. It's redistributing the trap wealth, so to speak. The appeal, be careful -- I don't know if everybody read the appeal on that plan. And, Bill, I'd like to point this out to you. The appeal in the latest plan is for clerical errors.

There is not going to be any adjustment for people that have problems under this plan. So, finally, I'll just say I urge you to accept the original 18 percent Outer Cape Plan -- it gave you the 18 percent in 2004 -- to reject the newest plan.

CHAIRMAN LAPOINTE: Thanks, Steve. One question from Pat White then I'm going to call the

question. He's skipping. Board members, do you need time to caucus? Was that a yes?

DR. LANCE STEWART: Yes.

CHAIRMAN LAPOINTE: All right, a couple minutes to caucus.
(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Board members, are we ready?

DR. STEWART: No.

CHAIRMAN LAPOINTE: No, all right. Are all the states done caucusing? They are. Oh, no, actually I have to read the motion into the record.

The motion is: I move that the Lobster Management Board approve the Massachusetts request for conservation equivalency for the Outer Cape Cod.

This proposal is specific to Section 2.1.7.2 and 2.1.7.3 of Addendum III. It uses 1999 through 2001 as qualifying years to identify potential participants and allocates traps based on fishing performance during 2000 through 2002 with pounds as the qualifying parameter.

All other aspects of the Outer Cape Plan included in Addendum III remain the same, including the minimum gauge sizes and the 20 percent reduction in traps from the 1998 levels with an additional 5 percent by 2008 if necessary to meet the lobster egg production goals and objectives after the next stock assessment.

Motion by Paul Diodati, seconded by Pat White. Board members, all those states in favor please raise your hand 4; opposed, same sign, 1; null votes; abstentions, 4 abstentions. The motion carries. Thank you.

Gauge Sizes Among Various LCMA's

Our next agenda topic is gauge sizes among lobster conservation management areas. Paul, I believe this was your issue. Do you want to get it started? Well, I'll get it started. This was an issue that Paul did ask we put on the agenda, and I believe it was --

MR. DIODATI: I'm sorry, I wasn't quite listening, George.

CHAIRMAN LAPOINTE: All right, can you get us kicked off on the gauge sizes in different LCMAs?

MR. DIODATI: As you know, Mr. Chairman, we have various gauge sizes within our state, and I understand fully how we come to have those different gauge sizes and where they're appropriate for some areas in the broad sense.

What is also very obvious, given the reports we've seen from the Law Enforcement Committee and from discussion with my own law enforcement officials within the commonwealth, is that it's a problematic enforcement issue.

It's also going to cause a fair amount of conflict between fishermen as we have in our state fishermen fishing with a fairly wide discrepancy in size limits almost side by side in some areas of the state.

What I'd like the board to discuss at the very least is a concept of common gauge sizes at least within a state, recognizing that our state is always going to be a problem because we have multiple areas. I think it's almost critical to discuss the need for at least one common gauge size within a state.

CHAIRMAN LAPOINTE: Thank you, Paul. Joe, the Law Enforcement Committee discussed this issue as well, I believe.

COLONEL JOE FESSENDEN: Yes, we have. Actually the Law Enforcement Committee supports a uniform gauge size within a state. It pretty much went on record several years ago with this committee. That's the position of law enforcement.

CHAIRMAN LAPOINTE: Other board members, comments on this idea? Mark Gibson.

MR. GIBSON: Thank you. I just wanted to support Paul's comments. We would like to see a uniform gauge size within the state. The reason I supported moving this up on the agenda is there probably will be some discussion about a potential increase in gauge sizes relative to Area 2 in the upcoming agenda item.

It's very difficult to contemplate measures for a particular area when you have a different program, for example, in Area 3 immediately outside of Area 2. It's not making any sense to me anymore.

The last agenda issue was a very, in my view, messy agenda item and action for the board when we have state agencies that can't completely endorse LCMT

proposals. We're probably unfortunately going to hear more of that as we go forward through Area 2, possibly even Area 3.

I think much of it is coming about because of the jerry-mandering that we have out in the ocean for these management areas that don't comport with stock assessment areas or the known biology of the resource, and to compound that with these differential gauges is just not making any sense to me any more.

CHAIRMAN LAPOINTE: Certainly the issue of -- I mean, we discussed at the last meeting and we've discussed at others the difficulties incumbent in management areas that aren't or don't overlay exactly with the assessment areas, and that's a decision we've made and reaffirmed.

And within the context of the discussion it is within a state's prerogative to make those adjustments based on LCMT recommendations to have a consistent gauge size within their state.

I know that's difficult but that's certainly the prerogative of the states. I mean, as we've learned, it's something I think that we all need to pay attention to as we see various proposals from industry to make sure those kind of difficulties are accommodated up front by the state as one possible solution. Other board members, questions or comments? I had Gordon and then John Nelson and Bill Adler.

MR. GORDON C. COLVIN: A question I guess for Carrie, I'm not sure. The mechanics of how the conservation equivalency provisions of the amendment work, is there something in the way we've constructed conservation equivalency in this plan that gets in the way of a state using the conservation equivalency provisions to standardize gauges across a state within different management units?

MS. SELBERG: We can't think of one at this time, no, that would prevent states from using that in that way.

MR. COLVIN: Then I guess I'm wondering why that isn't the answer to the question?

CHAIRMAN LAPOINTE: John Nelson.

MR. JOHN I. NELSON: Actually I was waiting to hear if there was an answer to Gordon. I think maybe that was a kind of a rhetorical question but probably

it was a good solution. I certainly understand what Paul is going through with his bordering, as I think his predecessor used to say, "15 ecosystems" or something like that and having multiple management zones in each one of those.

I would just want to make sure that if a state needed to deal with an area that was not contingent to it, that was not adjacent to it, that if that area went up in a higher gauge, that the state still had the flexibility of allowing that if they felt they could enforce it. So having a uniform size with the flexibility of dealing with higher gauges is still -- and I would think that's what Paul's intent of his discussion was all about.

CHAIRMAN LAPOINTE: Bill Adler and then Paul and then Jerry.

MR. ADLER: This is not for or against the idea. I just wanted to point out to the board that, first of all, the areas evolved in what their assignments were, if we can all remember back that far, because of the biological areas, that there were three stock areas and they were at different levels of health.

They were all told they had to get to the same end point, so naturally there are going to be different rules that come in. They're not all going to be the same, so it wasn't just because of fishing practices and the areas that were designated within those three different stock areas -- so that part of the history.

Also, I think we need to remember that if we look at the fishing rules that we've put forth even as recently as yesterday, the lobster rules suddenly become much easier to look at than some of the rules that I looked at yesterday on striped bass, that have been adopted on scup and fluke and the rest of them, with regard perhaps not to sizes but when, for instance, three different types of fishermen in the same port can bring in three different bag limits -- I mean, we do that for good reasons.

And so I hate to have lobster stick out and say look at how screwed up lobster is. It actually isn't, and so I wouldn't get as upset about the idea of different sizes in different areas because it's very easy to enforce.

You've got your permit. You've got your number on your permit. You've got a set of rules for that number. End of story. I wouldn't get all flustered about that. I'm not speaking for or against the idea that we're discussing here but I just wanted to bring that point out. Thank you.

CHAIRMAN LAPOINTE: Paul Diodati and then Jerry Carvalho.

MR. DIODATI: I don't think we should cloud the record because I think it's clear that the Law Enforcement Committee says that it is difficult to enforce. The Massachusetts law enforcement officials said it's extremely difficult for them to enforce so it's not an easy matter to enforce. Let's not cloud the record.

And, certainly, every state here has an opportunity to be more restrictive, to come up with a uniform size, but let's not kid ourselves that the commission, through this board, has created an entitlement in what we call the LCMTs.

The LCMTs are really dictating the direction for this board to travel in. I have seen with very little variation except for the last motion that we deviate from that direction. Furthermore, I think that this board would recognize that there are more than biological issues.

There are economic issues, there are social issues, and there are law enforcement issues when we go ahead and approve how we're going to manage a fishery. Now, it seems to me that the board is allowing a state like my own to go ahead and be extremely flexible and have rules that vary from one part of my state to the other, which are impossible.

You've already heard that they're impossible to enforce, but you're giving me the leeway to go ahead and conduct that kind of a program within my state, so that's why I think this is a board issue. Whether it be my state or some other state, this is a board issue. I don't think there's any question about that.

CHAIRMAN LAPOINTE: Jerry.

MR. GERALD CARVALHO: Thank you, Mr. Chairman. I didn't see on the agenda a law enforcement report. Are we going to have one? We're not going to have one, right?

CHAIRMAN LAPOINTE: I don't think we're going to get -- I mean, it wasn't our attention for a general law enforcement report, but we have Colonel Fessenden here because he's the Law Enforcement Committee rep on lobster so he can bring up issues as they come along.

MR. CARVALHO: Could Joe comment on the enforceability of these for the record.

CHAIRMAN LAPOINTE: I think he already has. I mean, he said that from the Law Enforcement Committee's perspective this multiple size limits makes enforcement, I don't know the exact term, but difficult.

MR. CARVALHO: Very difficult, practically impossible, how far does it go because you get extremely uncomfortable with adopting regulations that are not enforceable?

CHAIRMAN LAPOINTE: And we have that tension all the time. I guess a final comment, and then unless the board wants to take action, we'll move on to the next agenda topic. I don't see the LCMTs as providing an entitlement. I see the LCMTs as advisors.

And I think in this growing -- it's an evolutionary process. We've had Amendment III in place five years. We're growing our way into this. Certainly, there was an enthusiasm on everybody's part to try to engage this specific group of advisors in developing area-specific proposals because that's what we had as the backbone of Amendment III.

And what we have to do is to honestly respond to those folks about things we can or can't respond to. I see this as, again, not an entitlement but an evolutionary process and where we're going through the growing pains as part of that.

So I don't see this as -- it's a logical thing to come up at this time. And the manner in which we deal with it, again, is in just the growth and the evolution of the LCMT process that's part of Amendment III. Other board members? Harry.

MR. MEARS: Thank you, Mr. Chairman. Just a clarification. We've had several comments on enforceability and LCMT recommendations, and the provisions in the plan to allow a state to be more restrictive than called for.

The way I understand Mr. Diodati's remarks specifically pertains to a confirmation of the provisions in the plan that in fact says that where a state so elects it can be more conservative in terms of the regulations than would otherwise be called for.

It's not really speaking to the issue of conservation equivalency. In other words, where there is multiple gauge sizes, we're talking about being more restrictive and not less restrictive to the lower minimum size. Is that correct?

In other words, we're not talking about modifying the provisions for conservation equivalency but merely confirming the ability of a state under the plan to be more conservative or restrictive than is called for by the plan?

MR. DIODATI: Right.

Plan Review Team Reports

CHAIRMAN LAPOINTE: Board members, other issues on this? Good discussion. It's certainly something we need to take into account as we move forward. Is there any desire for board action? Seeing none, we'll move to the next agenda topic which is plan review team report, Carrie.

MS. SELBERG: The plan review team was asked by the Lobster Board or by the lobster chairman to address three issues. One was tracking effort in the lobster fishery. The second was a trap tag database and the third was the "if necessary" clauses in Addendum III.

I'm going to talk first about effort, and the plan review team chose to wrap effort and the trap tag database into one report. It's included in a briefing packet, which on the front of the packet says "Items that were not included in the briefing CD." You received it via mail last week and there are copies in the back of the room.

I'm going to start with the effort report. The Lobster Management Board at your last meeting has requested feedback from the plan review team on how the lobster management program can track effort in the lobster fishery.

At your last meeting board members were expressing concern about their ability to judge the effectiveness of management measures without more specific information on effort changes in the fishery.

A base assumption in the current management program is that effort is remaining static; and if it is increasing the lobster fishery, then the management measures currently in place are less likely to achieve the goal of F10 percent by 2008.

We have a note right at the beginning of the report about traps as a gauge of effort. We just wanted to point out to the board that often in ASMFC we use trap limits as a method for effort control and often effort is discussed with traps as the unit.

We want to reiterate what the technical committee has said in the past, which is it's difficult to truly gauge effort by simply looking at the number of traps in the water. Other gauges such as trap hauls with knowledge of soak time and location would represent a more direct measure of effort.

But because it's difficult to obtain this detailed information, typically throughout the report the PRT is going to use traps as our unit of effort. The recommendations do focus on tracking trap numbers.

We have four recommendations for the board. The way we approached this was we wanted to offer some suggestions to the board on how you can better start tracking effort in the lobster fishery. We didn't come to any conclusions about effort but instead outlined four methods to better start looking at effort.

The first is annual state report, and this was actually suggested by board members at the last meeting. The ASMFC could ask each state to include a section in their annual state report about effort in their lobster fishery.

Then each state, to the best of their ability, could indicate how they're tracking effort and include an analysis of effort trends in their state's lobster fishery. Then the PRT could compile this information for the management board in the FMP review.

We think that the value of this information would be dependent on the level of detail the states collect effort and, therefore, the level of detail they're able to provide in their analysis. The PRT recommends that the board ask each state to include an effort section in their annual report beginning in 2004.

The second suggestion has to do with the trap tag database. The last meeting the PRT was asked to look into the feasibility of putting together a trap tag database. Currently there is no central location where all trap tag information is stored.

Where all jurisdictions order their trap tags from the same vendor, this vendor doesn't compile this information. Currently states don't order the tags in a format or with enough information that the vendor can create a database with this type of information.

The PRT recommends forming a trap tag database subcommittee to recommend standardized information to be collected by the states through the trap tag order and distribution process as well as a

standardized format to provide this information to ASMFC.

We've already looked into this and the subcommittee could be comprised of an individual in each jurisdiction who is responsible for ordering trap tags. The PRT recommends that this information be stored in the lobster database. Currently the database is not designed to hold this information, but we think future versions could be designed to do so.

Our third recommendation has to do with mandatory reporting. In order to accurately track effort in the lobster fishery mandatory reporting of landings and traps fished should be collected by each state.

Currently states vary widely on the level of reporting they require of their lobster license holders and dealers. The PRT recommends that each state continue to move towards mandatory reporting to collect daily landings, trip and trap information.

Our final recommendation has to do with tracking effort through commercial data. In the absence of catch and effort reports obtained directly from the fishermen, a trap haul index could be determined indirectly from the sea sampling data.

Commercial sea sampling programs collect information on catch per haul and commercial landings divided by this catch per trap haul will provide an estimated number of trap hauls in a particular area.

We think it's important to emphasize while the numbers may not match the number of trap hauls that were actually used to make the catch, we think that this would provide important trend information. This trend information could be used by the management board to track whether effort was increasing, decreasing or remaining the same.

And the PRT recommends that the technical committee provide this information to the management board on a state-by-state or management area basis in the annual survey trend report to the management board.

CHAIRMAN LAPOINTE: Thank you, Carrie. One question, the trap tag database subcommittee, could that be done? I'm thinking of cost and time. Can that subcommittee be put together and do most of their work at little or no cost to the commission at this point?

MS. SELBERG: Yes, I think we could do it via e-mail and maybe a conference call. We actually already figured out who would be on this subcommittee, because this year we coordinated the colors of trap tags between all the different states. We contacted each state and found out who was responsible for ordering trap tags, so I already have a list of who those folks are.

CHAIRMAN LAPOINTE: Okay. Board members, questions of the PRT? Seeing none, is there objection to including a section on effort in annual reports? Bruce.

MR. FREEMAN: Yes, I would object. We don't have a tracking system for lobster in our state. We don't have any faith in the reporting that we do get. Some of it is very accurate, others is not accurate.

We've been seeing -- I think each state gets a copy of replacement tags that the federal agency gets through requests of lost traps, and it seems obvious to us in several instances that these requests seem to be extraordinary in some instances.

So from our standpoint, we really don't see much value in it. To essentially have an additional requirement would just put a burden we don't have the people to do this, and it is simply something that we couldn't comply with.

CHAIRMAN LAPOINTE: I think the intention would be, in the annual report -- and the next one is due the first of March -- is to put in what information you can. I mean, if New Jersey doesn't have any information, you can put that in there.

If in fact you've got qualitative information -- you know, the state of Maine has trouble tracking effort but we know that over time our estimates of trap numbers have gone up. It's just to try to get some information to start dealing with this issue of what's happening with effort in the fishery. Eric.

MR. SMITH: Yes, I agree. I mean, there are two ways of doing this. You can make it mandatory and a compliance measure or you can just say the technical committee has reviewed this, the board agrees, it should be done if it can be done and not make it a compliance criteria.

CHAIRMAN LAPOINTE: And I think that's exactly the intention. Carrie.

MS. SELBERG: I just want to clarify what the plan review team's recommendation was. The plan

review team's recommendation was not to make collecting effort information mandatory. The plan review team's recommendation was to report what effort information you do have in the annual report.

CHAIRMAN LAPOINTE: Other board members? Noting Bruce's comments, is it the board's intention to have this included as part of the annual report? I see head shakes generally yes.

The next recommendation is for the trap tag subcommittee. As Carrie has said, there is already membership identified in that. Are there comments or objections to that moving forward? I don't see any at this point. I would just ask that Carrie send to the states who is on that subcommittee so we could verify the person in our respective agencies as this moves forward.

The next recommendation is about mandatory reporting which stands by itself. And then, is there objection to the technical committee working on trying to track effort through commercial data? Seeing none, we will accept that recommendation as well. Thank you. Are there other PRT items?

MS. SELBERG: If necessary report.

CHAIRMAN LAPOINTE: If necessary report, please.

MS. SELBERG: This report is also in the packet, which says on the front "Briefing Materials not Included on the Briefing CD", which you got last week in the mail and is on the back table. On the front of it says "Issue Paper, if Necessary Clauses."

It's a fairly lengthy report because it has several attachments. Okay, throughout Addendum III there are clauses attached to management measures that indicate that these measures will be implemented if necessary following the next stock assessment.

However, due to this year's delay in the stock assessment, the Lobster Management Board is seeking clarification on if these measures are mandatory at this time. The plan review team was charged by the Lobster Board chair to prepare a report for the board on this issue.

We reviewed the administrative record on the clauses, and we were asked to make a recommendation to the board outlining if these measures were mandatory in absence of a stock assessment. I think it's important to note that the management measures, because of the delay in the

stock assessment, are to be triggered before the next stock assessment will be completed.

On Page 4 of the report, there is a table which outlines what the “if necessary” management measures in Addendum III are. I’m going to step through those fairly quickly.

In Area 1 it’s a rectangular vent in 2007 or two circular vents in 2007. Area 2 doesn’t have any “if necessary” clauses. Area 3 has a series of gauge increases beginning in 2005. Area 4 has maximum gauge sizes. One was triggered in 2002, and that’s already in place. In Area 5, it’s also a maximum gauge. Area 6, gauge increases beginning in 2004 as well as additional management measures.

And if you see at the bottom of that page, it outlines two different paths. I’m not going to step through those in detail but it indicates in Addendum III that the LCMT for Area 6 will choose between two possible paths beginning in 2006.

For the Outer Cape it’s a series of gauge increases. Not included in this table but up here on the screen we forgot the 5 percent reduction in traps for the Outer Cape that you discussed this morning -- right now it says 2007-2008 but based on action this morning that would be 2008.

The plan review team stepped through the administrative record, and I wanted to highlight some of those sections. The first is Addendum III. As I said before, throughout Addendum III some management measures have notes with the following statement.

And generically it’s, “Area X will implement X in year X if following an updated stock assessment it is necessary to meet the Lobster Management Plan goals and objectives.

The second piece of the administrative record is the 2001 evaluation of LCMT management proposals for American lobster. It’s the technical committee report to the board in 2001.

When the technical committee reviewed each of the LCMT proposals and evaluated whether or not they achieved the F10 percent required under Addendum III by 2008, they evaluated the proposals including all “if necessary” management measures.

The recommendations provided to the management board in this report and then at the following board meeting whether or not the proposals were projected

to include F10 percent were inclusive of all the “if necessary” clauses.

It’s important to note that the LCMT plans submitted would not have been projected to meet F10 percent rebuilding schedule without those “if necessary” clause measures.

The next piece of administrative record is the Lobster Board proceedings from July 2001. At this meeting the Lobster Board reviewed each of the LCMT proposals and the technical committee evaluation of each of those provisions. All management measures including the “if necessary” clauses were presented to the board. Areas 2, 3, 4, 5, and 6 were approved during this meeting.

Area 1 and the Outer Cape were asked to revise their plans, and they were subsequently approved at the October 2001 Lobster Board meeting. They had to go back and add additional measures because the proposals did not achieve the F10 percent required under Addendum III by 2008.

The next piece of the administrative record is a January 2002 memo from staff to the Lobster Management Board. It outlines outstanding issues in Draft Addendum III for discussion by the Lobster Management Board. This is staff’s attempt to clarify the record about the “if necessary” clauses.

The board received this memo prior to the February 2002 board meeting before Addendum III was approved. I’m going to go through just one issue that was included in there, and it’s Issue 4, if necessary provisions, and staff outlined the problem statement.

Many of the LCMT proposals which were evaluated in June and October of 2001 include “if necessary” provisions for inclusion in their respective management programs.

This language allows for flexibility in the area management programs, providing an escape mechanism for those areas that may not need additional management measures to meet F10 percent by 2008. Concern has been raised relative to how it will be determined necessary for each area to implement “if necessary” provisions as time continues.

The staff recommendation at that point was it’s important to note for the record that during the June and October 2001 technical committee review of the LCMT proposals, all proposed provisions were deemed necessary to reach F10 percent based on the

information derived from the 2000 American Lobster Stock Assessment.

As such, all area management provisions included in Addenda II and III are currently necessary to meet the revised egg rebuilding schedule. The next stock assessment is anticipated for completion in late 2003. Following the completion of the next stock assessment, the technical committee should reconvene and reassess on an area-by-area basis the necessity of "if necessary" provisions.

The final piece of the administrative record is the Lobster Board proceedings from February 2002, and there is a discussion about "if necessary" clauses. The first part is staff stepping through the memo, which I just outlined.

A couple of points that I want to raise are, "indicate right now without an extra stock assessment in front of us, it's deemed necessary. In 2003 if we have a turning of the crank, then we'll have additional information where we can say, 'yes, you have to do it' or, 'no, you don't' but at this point in time all those measures are necessary."

I just want to put that on the record in case it ever becomes unclear what the meaning of these provisions are. The Lobster Board chairman, after that, stated the "if necessary" provisions, "We may need to remind LCMT members and states and others that in fact the analysis show those are necessary just so people don't think that it's not going to happen."

The plan review team's recommendation. Based on the clear and extensive administrative record, the plan review team believes management measures marked "if necessary" in Draft Addendum III are necessary unless deemed otherwise by a future stock assessment; therefore, all the measures should be mandatory compliance measures unless at some point in time based on a stock assessment the management board deems them otherwise.

The plan review team notes that the 5-inch maximum size for Area 4 is not associated with a specific date but rather with the phrase "after the next stock assessment." The plan review team recommends that the board indicate if there is a date certain that this should be implemented.

And, finally, the plan review team is asking for clear guidance from the management board on this issue at the December 2003 board meeting in preparation for the 2004 compliance review. Thank you.

CHAIRMAN LAPOINTE: Thanks, Carrie. Board members, questions, comments? Eric Smith and then Gordon Colvin.

MR. SMITH: I don't have a question. I have a comment and I would wait for questions if there are some before I make my comment, if you will.

CHAIRMAN LAPOINTE: Go ahead, Eric.

MR. SMITH: Okay. I have a lot to say on this but time is short so I'll be as brief as I possibly can. I say all of this with no disrespect to anybody involved. When I refer to "staff", I'm really referring to a former staff member's views.

I want to say that at the outset to make sure that I don't appear to be criticizing -- I shouldn't say it that way -- not directing this necessarily at Carrie because, quite frankly, she's simply trying to consolidate and report on things which is exactly what we asked her to do so I applaud the effort. I think she has framed the issues very, very well.

But permeating all of this is what I have to call a "contorted logic" that concludes that a technical committee deeming something necessary trumps an approved management plan of this board. The management plan says an action will occur only if the stock assessment is done and it says that the if necessary measures have to be done.

The precedent-setting nature of going with the technical committee and the former staff member's interpretation from two years ago is founded on, frankly, the fact that the technical committee in 2001 did something they weren't authorized to do under the plan.

They went ahead and they evaluated state plans assuming the if necessary measures were necessary, but the plan said you don't know that until you've done the assessment so the basis of that technical committee review in 2001 I think wasn't justified.

You know, the board didn't vote for the "if necessary" provisions as an escape clause. That's the other fundamental thing that seems to come out of that interpretation. They voted for them to be done if the stock assessment says they're necessary.

So, there is a fundamental difference. The technical committee believes something is necessary so if the planned assessment isn't done, then the measures must be adopted. That's that view.

My view is what Addendum III says is that you get to the stock assessment, you see what the results are, and then you take your if necessary actions if they are necessary, and there is a very simple reason for that.

We adopted things in about 2000 that the board and the states for Area 6 believed would do the job, but we didn't know and we won't know really until we get to the assessment because it based on a lot of different things that will go on in the fishery, including the kinds of things that have happened in Long Island Sound in the last three years.

So, it's illogical to think that a technical review in 2001 could trump what we set out to do which was go for two or three years, get the assessment and make your decision at that time. I, frankly, disagree with the conclusion of this document, which tends to support what the technical committee and the former staff member had interpreted a year ago. I think the Addendum III language has to control this issue. Thank you

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: I appreciate the time Carrie put into constructing the record on this. I talked to Carrie about it a number of times, and she made a very conscientious effort to compile the background information to discuss it with the plan review team and to give us a report.

I am not convinced at the end of the day, when I look at the administrative record, that the administrative record as such is at all sufficient to support any action on the part of this board or the commission to find a state in non-compliance for not implementing one of these "if necessary" measures the way this administrative record reads.

It is not sufficient for that purpose at all. For instance, bottom line here is the quote attributed to staff member Heather Stirratt at the February '02 meeting when she says, "In 2003 if we have the turning of the crank, then we'll have additional information."

At no point does this record say what happens if we don't have the turn of the crank in 2003, and that's the critical flaw. The fact is that we didn't update the assessment in 2003.

When we constructed the Addendum III implementation plans, we told the LCMTs that we would do an assessment update in 2003, and they incorporated that assumption into their

recommendations and in some cases those assumptions that were incorporated into the LCMT process found their way into the addendum.

It certainly did in Area 6. I'm not quite sure about how it relates to all these others. That being the case, since we made the decision at the board level to defer the assessment until 2004, I see nothing that would suggest that we ought not to at the same time defer the "if necessary" implementation until then as well.

The logic was simple. We will see where we are as a result of the assessment update in 2003; and if that assessment update says we have to take some action, as we think we will, then we will and this is what we'll do. Well, we didn't do that in 2003.

To me it's a fairly simple matter of logic. Now I don't know if we need a motion to get us out of here but if we do I'll be happy to offer one. In fact, actually I think we should do some kind of a motion because that's how we got into this pickle because we didn't do one in the past.

But before I offer a motion I'd -- and I think, you know, Eric and I are pretty clear on what needs to be done in Area 6. I'm not so clear how this specific sequence of events relates to the other areas.

Carrie, can you tell me, referring to Table 1, of all these things that are listed here, how many of them were specifically based on the assumption that there would be an '03 assessment update and the "if necessities" were based on the outcome of that?

MS. SELBERG: All of these are "if necessary" management measures and they all have to do with the next stock assessment. Never does it say the next stock assessment will be in 2003.

MR. SMITH: I need to add a brief point to make sure that the record and the table and the audience are very clear on my remarks, if I may very briefly. I don't want anybody in the audience or at this table to go away from the table thinking we're not going to do anything in Long Island Sound or from the audience, "good news, we don't have to do anything in Long Island Sound."

We need to do something in Long Island Sound. The two agencies are talking about those kind of things. I'm going to be very unpopular come January of February in Connecticut, and there are Connecticut fishermen here. They may as well know it.

I don't know what we're going to propose but we need to take action to enhance the prospects for a stock recovery when natural mortality declines. That's going to be a permeating theme in the kinds of things they hear from me over the next six months. The issue for me here today on the "if necessary" clause is simply procedural. We should not have a process where we go off and do something that is inconsistent with the plan we voted for.

I had to make that point because I realized after I spoke previously I probably had left a notion in people's minds that relief is here, and that's a different arena for a different reason. We'll be saying more about that come the next two-three months.

CHAIRMAN LAPOINTE: Right. I guess from the chair's perspective, I don't think the technical committee ever said they "trumped" the board, and that's an important distinction. They're recommending actually we clarify what we mean by this. They certainly have some ideas about the recommendations, their clarification, but it's still our decision. I had Mark Gibson and then Bob Baines.

MR. GIBSON: Thank you. As I understand the technical committee's review of the past LCMT proposals, they found that they met the F10 requirement based on inclusion of these measures.

That being the case, I don't think the board would have approved the addendum we have in hand now and these programs had they not included them and had they not met the F10 overfishing definition of the day.

Now the fact that a stock assessment hasn't been updated is not necessary problematic. It simply means to me that the stock assessment of the day, the one of record, continues to govern, and that is that the resource is overfished throughout the range and we need to get to F10 and the F10 overfishing definition and these are the measures that you need to do it because those were evaluated and that was what constituted the scientific recommendation from the technical committee for those to go forward.

The board acted on that so to me I take a different interpretation. It's clear to me that what needs to be done is these gauge schedules need to be put in place as they're stated here.

CHAIRMAN LAPOINTE: Ritch White and then I'll take Gordon and then I'll get Bob.

MR. WHITE: I agree with Mark's interpretation. In the Outer Cape proposal we just passed, I didn't vote in favor of that based on having to have a stock assessment to add that 5 percent, that additional 5 percent, by 2008. My view of that, that would have to be proved that we didn't need it as opposed to proving that you need it.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: I'm glad we had the additional discussion because it does make it clear to me that from the perspective of folks in different management areas, they have a different view of the evolution of how we got to where we are, and probably the interpretation of the "if necessary" situation is going to vary based on the individual history of each management area's deliberations.

That being the case, I'd like to focus just on Area 6. First of all, I think Eric made an excellent point a few minutes ago. We certainly agree with that, and I imagine it will come up again later when we get into Addendum IV.

But, for now I just want to make it clear to the board that there was a specific aspect of the history of the development of the Area 6 proposal that bears on this issue.

And it's simply this: When we convened the LCMT to begin the development of their recommendations for the addendum, we were already experiencing the effects of the '99 die-off and a lot of people were leaving the industry.

There was a tremendous uncertainty at that time in terms of what was happening to the resource itself and to what level would the effort reduction that we have experienced, which Eric spoke to pretty specifically at the last board meeting, achieve itself an effective long-term reduction that we could not account for at that time and expected to be able to account for when the next assessment was done.

So, with that going on and that very dynamic situation in the background, the LCMT did the best they could working with the tables that they had but made that recommendation that we look at where we were in 2003 based on the assessment, understanding that effort was dropping like a stone, and it did and it has and it continues to, and that if that assessment update indicated that we still needed to act as we thought we did to reduce fishing mortality in spite of the effort reduction that was ongoing, then we would

go ahead. So this was all very specifically played out in that background.

That being the case, and because people have a different view of this issue in other areas, I would like to offer a motion as follows: that the board defer the measures in the Area 6 management program that are designated as “if necessary” for one year.

MR. SMITH: Second.

CHAIRMAN LAPOINTE: A motion has been made and seconded. Board discussion. I had Bob Baines and Harry on a bigger issue at this point, and I’ll pick them up before we go to the motion. Bob.

MR. BAINES: Thank you, Mr. Chairman. The AP discussed the recollections of the “if necessary” clause and how these clauses were interpreted in their various LCMT discussions. Area 6 members expressed their concern because they are the first to have “if necessary” clause starting in 2004.

The AP could not reach a consensus on this. There was basically two schools of thought, as I’m hearing right here, and let me read them to you.

Some AP members believe that “if necessary” clauses are necessary unless deemed otherwise by a future stock assessment and that the areas would not reach their F10 percent without these measures. They are concerned that they will not meet their conservation goals by 2008 without these measures. Therefore, in the absence of a stock assessment, these measures are necessary.

Other AP members believe that these measures should not be put in place until there is a stock assessment and it indicates that they are necessary. They believe conditions have changed from 1998 and this should be taken into account and a stock assessment should be completed before these decisions would be made.

Therefore, in the absence of a stock assessment, they do not believe these measures should be mandatory. Also, the whole AP is concerned that a stock assessment is not completed to provide the necessary information to make these very important decisions.

CHAIRMAN LAPOINTE: Thank you, Bob. Harry.

MR. MEARS: Thank you, Mr. Chairman. I also support the latter comments made recently about the recent events that are very pertinent to the “if necessary” language, one being the emergency actions this board has approved for the area south of

Cape Cod and also the relevance of the resource disaster declaration for Long Island Sound where the most recent research information tells us that commercial landings in fact continue to decline compared to the previous year and that we’re seeing very low abundance of juveniles, which is very relevant not only to the information I believe this board needs to consider but also that the public is very aware of, that in fact the resource has not improved since the time this “if necessary” language has been put in.

I believe that this was exactly the intent. I do think in a sense it may have been an escape clause, that in the event there was a totally unexpected event that the resource rebounded, perhaps it may not have been necessary to go to these continued levels of more restrictive regulations, but I think the evidence is ample that in fact there is very good cause to implement what was initially put out in the various addenda, especially considering the technical committee’s report. Thank you.

CHAIRMAN LAPOINTE: Thank you, Harry. It strikes me that what we have is the commitment to look at this — and this has been brought up — after the assessment, whether the assessment occurs in 2000 and 2004.

What people are saying is if you want to wait until the next assessment, what it really means is that we would address the issue — I’m discussing it more broadly than Area 6 — we would discuss the issue at the first meeting in 2005 because the assessment will be done next fall.

We would then look at it in the first meeting in 2005. What it means from the dates on Table 1: in Area 5 we have a 2004 date.

Well, actually there are a number of 2004 and 2005 dates so we meet in March 2005, and we would have to take up those measures that would have been implemented in 2004 and 2005. It means for Area 6 and those other areas the amount of time to adjust to 2008 would be compressed. That’s a logical progression from the discussion we’ve had this morning.

The other thing that happens and what Carrie was reminding me, should we not get the assessment done in 2004, because these things move with glacial speed, I think we would have to reach the point where we have to readdress the issue because -- I mean, this could creep on for ages and we would not in fact meet the 10 percent egg per recruit target that was put into Amendment III.

MR. SMITH: Yes, if I may, Mr. Chairman, the way that the length limit strategies are outlined in Addendum III, they occur on July 1st of a year. A one-year delay basically means we would have that meeting in March of 2005. We would have the assessment results, and this does not hinge on the assessment results.

This is a one-year delay. In March of 2005 we decide what to do. And, then the states between March and July have to adopt -- if they have to, they have to adopt. I know Connecticut now has a regulatory procedure to act that quickly. I think New York also does, too.

MR. COLVIN: We do it with legislation.

MR. SMITH: Okay.

CHAIRMAN LAPOINTE: I had Pat White and then I'll take Mark Gibson.

MR. WHITE: Just following up on what you said, Mr. Chairman, a procedural question, should this also include then Area 5 to be inclusive of things that are dated for 2004; or, are we going to go through each one of these things and have the same type of motion?

CHAIRMAN LAPOINTE: I hope we don't go through each area because we do have -- 12:00 o'clock is going to run towards us. Gordon was trying to get focused on the issue and I think we can broaden and have the same discussion. We do have the "no-date" provision in Area 4 but we can deal with that as well. Mark Gibson.

MR. GIBSON: I can't support this motion. I don't see any biological basis for delaying implementation of gauge increases in Area 6. The Connecticut Trawl Survey is at historic low levels in 2003 in both their spring and fall survey.

It's very similar to what's happening in the Rhode Island Trawl Survey. There's a very clear biological connection between at least our eastern portion of Area 6 and Area 2. If we're expecting to achieve stock rebuilding on an emergency basis in Area 2, there has to be companion and comparable measures in Area 6, so I don't support this at this time.

CHAIRMAN LAPOINTE: Other board members. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman, just a question. Based on some of the conversation around the table -- and maybe this is a question for the technical committee, but would this motion essentially mean that Area 6 would continue to not meet F10 percent -- excuse me, not F, EPR of 10 percent, which is a minimum number, correct?

MR. GLENN: Okay, to try to clarify that, in the absence of additional stock assessment information, those management measures were deemed necessary to achieve the F10 percent objective.

As Carrie outlined earlier, the technical committee judged all areas based on the assumption that those additional "if necessary" measures were necessary according to the last stock assessment, the 1998 stock assessment.

CHAIRMAN LAPOINTE: A follow-up on that, Bob. Again, I'll use Area 6 just as an example because it's with the motion. If you compress the time -- assuming that it will be necessary after the next assessment, if you compress the time for those increases in size limit and still leave 2008 as the end date, you'll still meet the 10 percent. They'll have to make bigger size limits adjustments in a shorter period of time?

MR. GLENN: Yes, that is possible. It's very difficult, though, to project what type of mortality would occur in the absence of those in the short term. But, the bottom line is, yes, it may require greater measures if you delay doing them.

CHAIRMAN LAPOINTE: Thank you. Board members. Gordon, Pat Augustine.

MR. COLVIN: Let me take my shot at answering Vince's question. The answer is we don't have a clue. Anybody who thinks they know what fishing mortality in Long Island Sound is today is just wrong. We don't know.

If they think they know what fishing mortality is even in the entire stock assessment unit, I'm wondering if they're really right. We need the assessment update to get us a handle on that, and we don't have it.

You know, we're not kidding what we said about the very significant decline in fishing effort that has occurred, a substantial portion of which, as Eric outlined at the last board meeting, is a permanent reduction in effort.

As I said before, when we made the recommendations that got incorporated into the Area 6 Management Plan in Addendum III, we knew that effort was declining. Frankly, I don't think we thought it was going to decline as much as it did.

We're simply calling for a re-evaluation and an assessment update based on that. And there is a lot of other stuff going on, and a lot of that involves natural mortality. The technical committee is looking at this natural mortality stuff and it's going to get incorporated as appropriate subject to their development of consensus about it, into the models and the assessment update.

It may make substantial changes in what we have seen in the past as fishing mortality trends. So, until we do all that, we really don't know. One way of looking at it suggests that fishing mortality rates in Long Island Sound have declined greatly, particularly if you buy the substantial increase in M.

But we could sit here and make that case to you and we're not making it because it needs to go into the assessment update. I think that's what you need to be aware of. All we're looking for here is to put another year behind us and get that update done. Our action needs to be predicated on that.

CHAIRMAN LAPOINTE: Thank you. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. My one-third of a vote will be in favor of this motion. I call your attention to Page 10 where it says that Area 6 will implement a minimum size increase beyond three and a quarter at a rate of whatever -- da, da, da, da, da -- beginning in 2004 until final is reached if following an updated stock assessment it is necessary.

Sticking to the words of the addendum, which we like to stick to religiously in most cases, this particular "if" says that we need another stock assessment, and that's right in the approved plan. So, for that reason, I will support the motion. Thank you.

CHAIRMAN LAPOINTE: John Nelson. I see members in the audience. I'll get to you in a minute.
MR. NELSON: I'll have to think about what Bill said. I want to make sure I understood that. Gordon has made a case as far as, well, what is the effort out there. Again, I would ask the technical committee did they take into account as much as possible the evidence that there has been a dramatic drop in effort in Area 6; and, therefore, if they took that into

account, do they still feel that the additional measures should go in place?

I think that's what the whole crux of the issue is about. How much of that effort reduction do they feel took place and do we still need to put those measures in place with that effort reduction?

CHAIRMAN LAPOINTE: I think the technical committee and the PRT have been pretty clear about what they think the case is. I think it's a case of the board making a decision on our commitment to what that language means. That's the question.

I mean, the technical committee and the PRT have been crystal clear. We need to say, do we wait until that next stock assessment? I think a valid question is, well, what happens if it doesn't happen next year? We'll deal with that later.

And then with the firm commitment that if we delay - - the recommendation is to go through the fall SAW/SARC for 2004, so we get the fall SAW/SARC. It comes out in December. We get it, you know, again, the first meeting in 2005.

We will act area by area on those "if necessaryes" based on that information. And, again, if those things are still necessary, I think the commitment on the board is do we then compress the timeframe to make the adjustments, understanding the technical uncertainties.

And I'll use Area 6 again; do we take those -- I don't remember -- three years of size adjustment or four and compress them into one or two? I mean, that's the question before us. And because this table mentions all seven areas, my thought would be to broaden it past Area 6.

But, again, I don't want to deal with six more motions. We've got six more lingering questions so I think we should deal with it more broadly. I'm going to take -- while the board thinks about it I had two hands up in the audience, now a bucket load of hands. Remember, right below godliness is cleanliness and right below cleanliness is brevity so please come forward. John, go ahead.

MR. JOHN GERMAN?: John German. I'm a fisherman in Long Island Sound, Area 6, have been for 38 years. I really support the motion. The only part I would like to see changed in it is what you said before, used the language that after the stock assessment is completed, otherwise you could be here next year and have these same arguments around the same table.

If you have it in there that the if necessarys kick in after the stock assessment, it will eliminate all of that problem and when it's done, it's done. It says that in the addendum. It said it all along.

I don't know why it's trying to be changed now because not on the lackadaisicalness of the lobster industry but on the manager's side is why we're in this predicament. The individual fishermen have been more than willing to go along with the plan.

Well, I ain't going to say more than willing to go along with the plan but they've gone along with the plan on the dates that have been set by the addendums and the amendment.

The only other comment I'd like to say, I heard Mr. Mears say before that the juvenile population is down in Long Island Sound.

I don't know when the last time he was on Long Island Sound but I spent eleven hours there yesterday hauling gear and I saw plenty of juveniles. Now, I mean, that's not much. It's only coming from a fisherman that sees them. Thank you very much.

CHAIRMAN LAPOINTE: Thanks, John. David.

MR. DAVID SPENCER: Thank you, Mr. Chairman. I have a question. David Spencer, chairman of the Area 3 LCMT. This motion would only pertain to Area 6 and in fact would allow the Area 3 if necessary gauge increases to go along?

CHAIRMAN LAPOINTE: I don't think that decision has been made yet.

MR. SPENCER: Okay, if it hasn't been, I would like to comment or should I wait?

CHAIRMAN LAPOINTE: Go ahead.

MR. SPENCER: Certainly, it has been and is the understanding of the Area 3 LCMT that the "if necessarys" have been necessary and are necessary. I would support letting Area 3 move along with four additional gauge — actually five additional gauge increases at a 32nd of an inch a year.

It's very important. If we stall this, Number 1, we will not meet our F10 goal before the year 2008, so I think that creates a problem without compressing gauge increase into two or three in one year, which is not very comfortable.

I've just gone through that. I don't want to get involved in another area; I just want to speak for Area 3, and whatever motion you make, please allow Area 3 to continue with their "if necessary" gauge increases. Thank you.

CHAIRMAN LAPOINTE: Thank you, David. George Dahl and then the gentleman next to him.

MR. GEORGE DAHL: I'm George Dahl. I'm an Area 6 fisherman for about 40 years. I'm the co-chairman of the Area 6 Lobster Conservation Management Team. We put that "if necessary" clause in there because we were dealing with something we were going to have to do four years in the future or three years, whenever it was.

We were assuming that we would have updated data by that time. The technical committee is going too slow for us. Things are happening. In '99 we had a big die-off but we didn't deal with that until 2000, so for that year we were dealing with lobsters that were long dead.

We do have a tremendous reduction in effort. I still don't understand what credit is given to us for reduction in effort, but we have a tremendous reduction in effort. We also have — this came into my possession. It's a study that was done in Connecticut.

This is probably a preliminary thing and it's not released yet, but the figures in this study, which go back to like 1985, most closely mirror what the fishermen have been seeing and saying all along about the lobsters in Long Island Sound.

I don't know if the technical committee has this in their possession yet, if they've looked at it, but it does not agree with the conclusions so far of the technical committee.

CHAIRMAN LAPOINTE: George, do you support them? I mean, based on your comments, do you support the motion?

MR. DAHL: I support that motion. We've got basically into this problem right now because we're dealing with what it says in Addendum III, "following a stock assessment if necessary."

Now, if you add deferring the measure until you do the next stock assessment, that would take care of that. But if you don't want to put that in there, I would support that motion just like it is.

CHAIRMAN LAPOINTE: Thank you. The other gentleman. I'm sorry, I don't know your name.

MR. NICK CRISMALE: Nick Crismale, president of Connecticut Lobsterman's Association, cochairman of the Area 6 Lobster Committee Management Team. I support the motion submitted for Area 6.

I would like to see it deferred until the stock assessment is completed for several reasons. When we sat in that meeting, a bunch of fishermen, and put together a plan, we were asked to do something and we completed and did it to the satisfaction of the technical committee.

Now you're changing the language in this whole thing, and now you're telling these fishermen that we've got to bring lawyers because of semantics. I think that's very discouraging and it undermines the effort that we put into this whole plan.

We sat there, as Gordon and Eric submitted to you today, the idea was based on a stock assessment, which you were mandated to do which you didn't do. We did the plan. You didn't do the stock assessment.

And another reason, we have a major problem in Long Island Sound, a large problem with natural mortality. As far as overfishing, I for one have been fishing since 1972. I and my partner fish 4,000 traps off our dock.

Those traps haven't seen the water for a year and a half, and it's not uncommon. There's a lot of fellows like myself in Long Island Sound who haven't fished. You talked about 3,000 traps in the Outer Cape area. Here's 4,000 traps off one dock that didn't see the water, just to give you an idea of the fishing effort that isn't there.

Also, we have an exerted effort on the part of both states and other agencies on a research project that's supposed to culminate in January and be presented in May or June. You know, we would like to see that information and what comes out of that research as far as Area 6 is concerned.

To put in this -- to include these gauge increases is going to completely devastate the fishing effort that's there now, the people financially who are there now, and it will push a lot more people out of the business.

Some of us are sitting in the wings hoping that this resource rebounds. I think if you do this, it's just going to financially devastate the rest of the industry.

CHAIRMAN LAPOINTE: Back to the board. Harry.

MR. MEARS: Thank you, Mr. Chairman, just to respond to the question raised earlier from the gentleman in the public concerning my comments on juvenile abundance. That is based upon the research project that we're funding in the state of Connecticut that has looked at larval abundance sampling between the period of May and September of '03.

And just as a point of reference, larval abundance is ranked the second lowest out of a 21-year time series based upon Connecticut data, and it's the lowest larval abundance that's been -- the second abundance was in the year 2002.

And just in final reference to the "if necessary" language, I don't believe it was ever the intent of this board to hold lobster management when needed hostage to a stock assessment.

What we have in front of us, we've heard from our technical committee that based upon their annual review -- it's not like we're basing action today upon a report they did three years ago. This is the most recent annual review by the technical committee that in fact resource conditions have not improved.

And for us to ignore the need to take additional action, especially in light of the "if necessary" clause in the current management plan, would be a disservice if we don't do so. Thank you.

CHAIRMAN LAPOINTE: Board members. Ritch, Bill Adler.

MR. WHITE: I think getting back to what the issue Bill Adler brought up is I think you need to look at the wording in Amendment III, and it clearly says that the "if necessary" in this area has a caveat that says that the stock assessment needs to be done. There are other "if necessities" in other areas that don't have that caveat. Therefore, I think this motion isn't even necessary.

CHAIRMAN LAPOINTE: I think there are if necessary following the next stock assessments for the other areas as well. Well, I've got staff telling me one thing. Do any other areas -- I mean, should we address this more broadly?

My recommendation would be yes because we'll have the same issue at the very next meeting if we just deal with it in terms of Area 6; or, is it the

intention of the board to allow the other areas to go forward with their "if necessary"?

I mean, if we don't say something either yes or no, we're going to leave ourselves in the same quandary we're in right now. So, again, my recommendation would be we broaden this to the other areas. We would make it the first meeting in 2005 because one year is December 2004 and we'll be -- I mean, post annual meeting -- and deal with it from that perspective. Gordon.

CHAIRMAN LAPOINTE: I appreciate where you're coming from, Mr. Chairman, but I'm going to be a little selfish on this and object to any amendment to this motion because I do believe there are circumstances that are unique to Area 6.

MR. COLVIN: And if there are board members who wish to offer other motions following action on this, I would be glad to consider them. Thank you.

CHAIRMAN LAPOINTE: All right, having heard that, let's call the question. Do we need time to caucus?

(Whereupon, caucus was held.)

CHAIRMAN LAPOINTE: Board members, are we ready? A couple more minutes. What time is the Hart Luncheon, Mr. Executive Director? The lunch is what time?

EXECUTIVE DIRECTOR O'SHEA: Twelve forty-five.

CHAIRMAN LAPOINTE: Twelve forty-five. While you're caucusing, we will take no breaks this morning so the chair may move in and out and other people and we will, if necessary, based on our time assessment work until about 12:30, and then we will drop the curtain.

MR. FREEMAN: George, can I ask for clarification on the motion?

CHAIRMAN LAPOINTE: You may.

MR. FREEMAN: The way the motion is stated -- and I'd defer this to Gordon or Eric -- is for one year. Now if a stock assessment is not completed in that time, how would they act? I mean, the anticipation is it is, but what happens if it isn't?

MR. COLVIN: Eric and I may both want to respond to that. We may have a slightly different take on it. I'm not comfortable asking the board for a complete

blank check on this, which is why the motion reads a year.

I understand that there might be some reason to say until the next assessment is done and that would be preferable, but I think it may be more than is reasonable to ask the board for. I'm pretty confident that whether the assessment is done or not -- and, by the way, I'm pretty confident that it will be.

There are good people working on it and we'll do what we can to make their time available to make it so but we're going to know a lot more. The process of developing the assessment is going to take us a lot farther down the road than we are today about understanding the patterns of fishing and natural mortality in several of the assessment units, including Long Island Sound.

Nick Crismale made a heck of a point when he pointed out that a lot of the research that is underway in Long Island Sound is coming due and reportable next spring. We had forgotten about that and I'm glad he got that on the record. You know, we're fairly comfortable with the one year thing even though it's not idea, and I admit that.

CHAIRMAN LAPOINTE: Ready for the question? The motion reads, I move the board defer the measures in Area 6 designated "if necessary" for one year. Moved by Mr. Colvin. Seconded by Mr. Smith. Those board members in favor, please raise your hand, four in favor, opposed, raise your hand, three; abstentions, two; null votes. The motion carries.

I'm going to try to get this issue going. Are there other areas that would like a similar motion? I'm sensitive to David's concern that Area 3 wants to go forward. For Area 1 it's 2007, so I want the assessment to go on. Are there other areas that board members would like to make a motion giving the one year on the "if necessary" clauses? Paul.

MR. DIODATI: Well, given that we just approved this motion, I don't see why we wouldn't approve a second motion that says that the board defers measures for all areas designated "if necessary" for one year.

CHAIRMAN LAPOINTE: I understand that sentiment. What about the area that wants to go forward with their size limits?

MR. DIODATI: That would be your option to be more restrictive.

CHAIRMAN LAPOINTE: Well, was that a motion to postpone consideration of “if necessary” clauses for one year?

MR. DIODATI: In all areas.

CHAIRMAN LAPOINTE: In all areas, and I’ve got a second from Mr. Carvalho. Board members, discussion. Pat White.

MR. WHITE: Well, I think of the point that someone made that it should be made clear, or I’d like it to be made clear in that motion, if you could, Paul, that Area 3 wishes to continue on with their -- can you do that?

MR. DIODATI: Let’s see, the motion should read I move to defer the measures in all areas designated “if necessary” for one year.

CHAIRMAN LAPOINTE: All areas except Area 3?

MR. DIODATI: Excuse me?

CHAIRMAN LAPOINTE: All areas except Area 3?

MR. DIODATI: For all areas except Area 3. Thank you.

CHAIRMAN LAPOINTE: John Nelson, comment then Jerry.

MR. NELSON: Mr. Chairman, I would suggest that latter language say that unless the areas wish to move ahead, so it’s not just specific to one area.

CHAIRMAN LAPOINTE: Good. Paul, is that acceptable?

MR. DIODATI: Yes.

CHAIRMAN LAPOINTE: It is acceptable. Who is the seconder? Jerry, is that acceptable?

MR. CARVALHO: Mr. Chairman, I would prefer that since they have the option to do so, I don’t see where the language is necessary. They can take a more conservative approach if they want to. I don’t think we have to include that in every action that we take.

CHAIRMAN LAPOINTE: I think we have suffered from lack of clarity and so this helps focus our attention to say --

MR. CARVALHO: Yes, Mr. Chairman, I accept it.

CHAIRMAN LAPOINTE: Thank you. Other discussion, board members. Audience members. Seeing no comments – Harry, one comment then we’re going to caucus and vote.

MR. MEARS: Thank you, Mr. Chairman. Very briefly, just for the record, I think it’s very important if I could ask the maker of the motion to explain the rationale and justification for the motion at hand. Thank you.

CHAIRMAN LAPOINTE: Paul, if you would.

MR. DIODATI: The rationale is the same that was put forth by the last maker of the previous motion, that until the next stock assessment is available, there may not be any reason to do anything to affect fishing mortality.

That was basically I think the premise of the last motion; and given that motion was approved, I think it’s appropriate for this motion to be voted on.

CHAIRMAN LAPOINTE: Carrie asked a couple questions and she said, “What happens with the dates in Table 1” and her question was does ’04 become ’05; does ’05 become ’06?” The answer is no, we just compress the timeframe.

We will have to address -- and it would be my recommendation as the soon to be past chair, that if in fact we get through the next year without an assessment and if we take the recommendation, we go into the SAW/SARC, I think that’s unlikely, we would have to address this issue again so that in fact it doesn’t just keep ticking on because the assessment is moving slowly. Gordon.

MR. COLVIN: Thank you, Mr. Chairman. I think if the intent is that this motion would result in a process by which areas will determine area by area whether their “if necessary” measures become compulsory or not, it probably -- and if the commission is to act on that, it probably needs to get at how an area’s wishes get translated and reported to the board.

I think process-wise this isn’t really clear. What’s an area? An area is not a legal entity. And what is a wish? I would ask the maker of the motion to try to pin that down just a little bit so that there’s a record established as to how that decision is actually made if there is an expectation that the commission is actually going to act on it at some point.

CHAIRMAN LAPOINTE: It’s a good question, and my thought would be that we would work with staff

and we would use the LCMTs -- they're the vehicles for discussion -- poll them in a fairly short amount of time and operate on that with that direction. I don't want to set up something too cumbersome, Gordon.

MR. COLVIN: And I'm not suggesting that we do anything after today, only that we perfect the motion so that the motion identifies the process. I think that's doable.

CHAIRMAN LAPOINTE: John, as the perfecter of the seconder of the maker of the motion.

MR. NELSON: Thank you, Mr. Chairman. Well, I was suggesting the language at the end. I think the intent was that if the LCMTs had come forward and asked the board to implement the "if necessary" measures in a timeframe that had been requested or accelerated, that the board would discuss those and vote as they so felt it was appropriate. That was the intent of what the "wish to implement" meant. I hope that helps.

CHAIRMAN LAPOINTE: Carrie has written some language, "if the LCMT asks for the "if necessary" clauses to be implemented".

MR. NELSON: To be implemented or accelerated.

CHAIRMAN LAPOINTE: Paul and then Vince.

MR. DIODATI: If the chair will allow me to perfect the motion at a later time in the meeting, I would like to take that opportunity.

CHAIRMAN LAPOINTE: I don't think we're going to have later time in the meeting. That's my concern, Paul. I mean, we're going to get into Addendum IV. I'd love to be an optimist and say that's going to take 30 minutes. It will not. Vince.

EXECUTIVE DIRECTOR OSHEA: Thank you, Mr. Chairman. Going back to a question raised earlier about the rationale for this motion, as I understood the answer in the previous motion, I thought the rationale was the extraordinary mortality in Long Island Sound along with a significant reduction in fishing effort, which I thought that was offered as the rationale for the first motion which you all passed.

As I understand the answer to the question to the rationale for this motion, it was the same rationale. I'm not really sure if the situation in Long Island Sound is occurring throughout the rest of our management areas, Mr. Chairman.

CHAIRMAN LAPOINTE: I think the rationale is the commitment made in that statement. Clearly, there is extraordinary biological underpinnings behind that in Area 6, but the commitment that was made was "if it's necessary following the next assessment."

It didn't say whether the resource is high or low. It simply said "following the next assessment." There's some of the "if necessary" that don't follow that specifically, but broadly that was the interpretation and that's how the technical committee reviewed it. Paul.

MR. DIODATI: Mr. Chairman, I was concentrating in particular on Area 2.

CHAIRMAN LAPOINTE: I suspect you were.

MR. DIODATI: Area 2 has experienced similar declines in landings, a presumed increase in total mortality, perhaps natural mortality as well as fishing mortality. An assessment is not forthcoming for Area 2 yet we have -- not following any particular addendum, we have already accelerated the minimum sizes in that area and have gone up in that area.

Area 2 shares the same stock as Area 6 so this last motion that we approved is somewhat inconsistent with what we've been doing. The intent of this motion was to try to address that. I can see that I haven't been clear. I'm willing to withdraw this motion in an attempt to move this meeting forward.

CHAIRMAN LAPOINTE: Secunder?

MR. CARVALHO: I want the motion to stand, Mr. Chairman, and the reduction in effort is the same as in Area 6. We've had a tremendous --

CHAIRMAN LAPOINTE: But, importantly, Area 2 doesn't have "if necessary" clauses. I mean, this is looking at Table 1. You've got the same kind of biological issue, but we're, again, going back to what was written in the document, and for Area 2 this doesn't pertain to Area 2. But board members, Paul is willing to withdraw. Do we want to refine and move forward? John Nelson.

MR. NELSON: Mr. Chairman, I move to table.

CHAIRMAN LAPOINTE: Until?

MR. NELSON: After the stock assessment is done, Mr. Chairman.

(Whereupon, the motion was seconded.)

CHAIRMAN LAPOINTE: We have a motion to table until after the next stock assessment which will leave it —

MR. ABBOTT: A question to the chair. I think this --

CHAIRMAN LAPOINTE: Dennis.

MR. ABBOTT: Yes, regarding tabling motions, I'd like Robert's Rules interpretation of adding the description of when you table to. I don't think that a tabling motion is to a time. I think you can postpone to a time. Tabling is what it is; it's tabling. I'd like an answer. We went through this before.

CHAIRMAN LAPOINTE: So we have a motion to table, which is not until a time certain, Mr. Parliamentarian? Thank you.

MR. ABBOTT: Mr. Chairman, I'm not a parliamentarian.

CHAIRMAN LAPOINTE: I'm just speaking loosely. You're a better parliamentarian than the chair is, but the point is that it's not until a time certain so this in essence kills this motion.

MR. ABBOTT: My understanding, my belief, that a tabling motion does not have time added to it.

CHAIRMAN LAPOINTE: And staff concurs with that so having said that, do we need time to caucus? All those in favor of the motion, raise their hand, six; opposed, one; abstentions, one; null votes. The motion carries. Dennis Abbott, please.

MR. ABBOTT: Yes, thank you, Mr. Chairman. I thought maybe this was a time for me to speak after being quiet so much of the morning. I think that all of what has gone on this morning has been a result of stock assessments.

One of the comments you made earlier, "stock assessments move at a glacial pace." Then I heard "stock assessments need to be done"; lobster management being held hostage to stock assessments."

We don't have the information to do what we want to do or what we should do. I think that we have a built-in expectation to fail, and we continue to fail meeting after meeting because we don't have the information. Maybe there's good reason for not having the information, but I think that we have to

undertake a method of obtaining stock assessments in a timely manner.

I think that the technical committee has to provide us with what they need and how they need to get there in a given amount of time to provide a stock assessment so that we can go about our job. That's what I see as a layman sitting here. I don't know if anyone agrees with me, but I sure look at things that way. Thank you.

CHAIRMAN LAPOINTE: All right, I had Mark Gibson and then Gordon Colvin.

MR. GIBSON: I agree very much with the comments that have been made by the National Marine Fisheries Service. I don't think we need to wait for these elaborate time-consuming stock assessments to take management action when there's clear evidence on the table of problems, and they have been summarized before for Area 2 and Area 6.

The fact that we're not acting more aggressively I find very troubling. We don't need elaborate stock assessment models to tell us that precautionary management is warranted when there's great stock declines that are exhibited in multiple life history monitoring programs, and so I disagree with the prior comments and agree with the position the Service has staked out.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: I'd like to comment on the issue that Dennis raised with respect to the timing of the stock assessment and the timeliness of its completion. We need to accept responsibility for that here. That's our job as managers to assemble the resources that are needed to develop the assessment.

We must hold ourselves accountable for that and not regard the technical committee or the stock assessment subcommittee or the modeling committee as somehow deficient for not getting the job done because that's not the case.

They do a great job. Those individuals who work on those committees work for all of us, and we give them their assignments, and we give them the resources. If we put too much on their plate or we don't give them the support they need, then they can't get this done.

Now I'm going to blow my own horn here for a minute and I'm going to tell you ahead of time that I'm doing this, but it's illustrative and that's why I'm doing it.

One of the reasons that we got held up on this stock assessment update is that from the time the last stock assessment was completed -- and it had a recommendation that we endorsed strongly, that we revisit all the modeling that was the underlying underpinnings of the assessment before we do a new one and we created a modeling subcommittee to do that -- for a considerable period of time, more than a year, maybe more than two years, we couldn't get anybody to agree to chair the modeling committee and take over the process of managing it, working with Heather and then later with Carrie. It didn't happen. It just didn't get started.

Thanks to all the stuff that happened in New York and with the federal money that we received, we were able to promote Kim McKown into a new section head position and make her available to chair that committee.

That finally got the process started, somebody to begin to pull people together and work with them. So the fact that we didn't make any progress in all this up until now is not the fault of the technical committee.

It's not the fault of the stock assessment subcommittee. It's all of our fault around this table for not keeping our fingers on track of what's holding things up and not managing the process and not making it move. And if we don't get done a year from now, it will be our fault, not our technical advisors. We need to bear that in mind, Mr. Chairman.

I'm sorry to get a little animated about this but as a former chairman of the board, one of the frustrations that I have had is that the board members need to understand the process of making a stock assessment as complex as this happen and the extraordinary amount of effort that the technical committee, the stock assessment subcommittee, and now the modeling committee has to put in to make that happen. Thank you.

CHAIRMAN LAPOINTE: Thank you. Mr. Carvalho.

MR. CARVALHO: For the record, from the fishermen's point of view, what he sees, we have a gauge increase in Area 2 to address the problem that we all know exists in that stock area, which includes Area 6 and Area 2.

That gauge increase has Rhode Island fishermen returning lobsters that can be harvested by Area 6 people, and they are. It's the same stock. The landings from Area 6 have increased this year. We don't have a stock assessment to tell us that. What have is dealers that buy, dealers in Point Judith that buy from area 6 fishermen that say, wow, they're bringing in a ton of lobsters.

CHAIRMAN LAPOINTE: Jerry, in the interest of time, we were discussing "if necessary" and not the stock assessment again. Area 2 has no "if necessary" clause, so I'm going to cut you off because I want to get back to the "if necessary" and move this meeting on. Pat White.

MR. WHITE: Mr. Chairman, I'd like to make a motion that all other "if necessary" are necessary unless deemed otherwise by the board.

CHAIRMAN LAPOINTE: I have a motion. A second to that motion? Was that a second, Mr. White? Seconded by Ritch White. Board discussion. Seeing none, any audience comments? Bruce, back to the board.

MR. FREEMAN: Pat read that very quickly and the motion is not up there. Would you do that again, read that again, Pat. Read your motion.

MR. WHITE: I move the "if necessary" clauses are deemed necessary -- all "if necessary" clauses are deemed necessary unless otherwise declared by the board.

CHAIRMAN LAPOINTE: And so it is saying that we will move forward with the other provisions for Areas 1 -- not Area 2 -- 3, 4, 5 and Outer Cape. Bill Adler.

MR. ADLER: On their schedule or immediately?

CHAIRMAN LAPOINTE: On the schedule that is contained in Table 1.

MR. ADLER: With the wording that is in the addendum?

CHAIRMAN LAPOINTE: That would be correct.

MR. ADLER: I mean, because, okay, we all understand that given the snapshot picture right now or when the LCMTs worked and the stock assessment that was, they were all necessary. I understand that.

But they did put in the part about, okay, but we're going to kick this one in but we want a more up-to-date stock assessment before we do this so would this affect this at all? Would this just confirm that?

CHAIRMAN LAPOINTE: These will move forward on this scheduled based on the information we have now. They are necessary.

MR. ADLER: But does that negate the wording in the addendum that says they will move forward on that date "if."

CHAIRMAN LAPOINTE: It clarifies. I mean, what we've been doing, again, is we've had this uncertainty and what it says is that it is the board's decision that we will move forward with those measures in those areas on the schedule contained in the addendum.

MR. ADLER: Does that contradict the one motion that was made earlier?

CHAIRMAN LAPOINTE: There was a specific motion made on Area 6 that we passed.

MR. ADLER: Right.

CHAIRMAN LAPOINTE: And we have lack of clarity on the other areas. This is trying to clarify because the language in the addendum is --

MR. ADLER: Okay, so this does not pertain to Area 6?

CHAIRMAN LAPOINTE: That's correct because we've already dealt with that. The question has been called. Time to caucus. Are there states that need more time? I see no states saying they need more time.

I'll read the motion into the record. The motion says I move that all other "if necessary" clauses are deemed necessary unless otherwise declared by the board. Motion by Pat White, seconded by Ritch White.

Those board members in favor, please raise your hand, five in favor; those board members opposed, like sign, none opposed; abstentions, four abstentions; any null votes? The motion carries. Thank you very much for your patience.

I will tell you Bob Baines said "Are we going to take a break", and I said a while ago no, so if you need to

do what you need to do, go ahead and we're going to carry on with the meeting.

Draft Addendum IV

Our next agenda topic is -- this will be a piece of cake -- Draft Addendum IV. What Carrie is going to do to focus our attention, which the last discussion shows is a good thing to do, we're going to step through Addendum IV issue by issue.

We have vent sizes, most restrictive rule, the Area 3 proposal, the Area 2 proposal, and then final action with some clarification on each one of those issues. Carrie will give an overview.

She will describe public comment based on the public hearings. We will ask for audience comment as well. We will have an AP recommendation, a Law Enforcement Committee recommendation.

Carrie will give a report from the Committee on Economic and Social Sciences, and then we will take action, again, piece by piece and then we'll take final action on Addendum IV as a package. Carrie, please.

MS. SELBERG: Okay, we're going to go ahead and start with vent sizes. As you've heard, the technical committee recommended changes in the vent sizes based on a vent selectivity study from Massachusetts.

On this chart the numbers highlighted in yellow highlight the proposed changes. The first proposed change is for the circular vent size that is associated with the minimum gauge size of 3-3/8. The proposed change is to go from 2-1/2 to 2-5/8.

The reasoning behind this proposed change is that the 2-5/8 is like the rectangular vent that's already in place. The 2-1/2 doesn't have the same selectivity as the rectangular vent that's in place right now.

So in order to make those vents equitable, then there needs to be an increase of an eighth of an inch from 2-1/2 to 2-5/8. The second proposed change in this section is -- it's not a proposed change, it's an addition -- is to outline what the vent sizes should be for minimum gauge sizes of 3-1/2.

Currently there are no vent sizes outlined for those areas going to 3-1/2 because when Addendum III was passed there was not enough information to outline the vent sizes. Now we have enough information and this is the technical committee's recommendation.

The public comment that came in on the vents. It was fairly limited public comment that came in on the proposed changes. There was some support outlined. The concerns that were raised, there were some concerns raised about having to switch out their current circular vents for those who have already gone to 3- 3/8.

There was concern that the sizes would allow legal lobsters to escape and concern that the vents for 3-3/8 just went into place in some areas.

There was more support for the vents at the 3-1/2 and fewer concerns raised I think simply because it's not a change. It's simply providing them the information they need in order to put those vents in place.

MR. WHITE: Can we get the AP recommendations?

MR. BAINES: The AP reviewed the vent size section of Draft Addendum IV, reviewed preliminary public comment, discussed the proposed changes. Overall the AP recommends adopting the proposed changes.

MR. WHITE: Thank you, Bob. Law Enforcement Committee.

COLONEL FESSENDEN: Yes, the committee reviewed the addendum and actually drafted a three-page memo to Carrie dated 11/25. You may want to refer to that.

As far as vent sizes go, it's important to train the officers. We have enforced vents right along so training is an issue, new measures for the officers. Two important issues -- and this goes through whole addendum -- is the fact that the trap tags need to have the area on the tags.

A second issue is the license should indicate the area, the requirement of the area be on the license. In addition we'd like to have the number of trap tags or pots allocated to that vessel.

CHAIRMAN LAPOINTE: Joe, was there any comment specifically about the vent size increase?

COLONEL FESSENDEN: Well, it's enforceable based with those types of provisions added.

CHAIRMAN LAPOINTE: Okay, good, thank you. Pat.

MR. WHITE: Well, Mr. Chairman, I'm willing to make a motion for the purpose of discussion.

CHAIRMAN LAPOINTE: The Committee on Economic and Social Sciences had no comments on this?

MS. SELBERG: Correct.

CHAIRMAN LAPOINTE: We'll have a motion and then we'll go to the public.

MR. WHITE: I would move to accept the proposed vent changes in Addendum IV.

CHAIRMAN LAPOINTE: We have a motion to accept the portion of Addendum IV that deals with vent size increases. Do we have a second? Bruce Freeman, thank you. Board comment. Bill Adler.

MR. ADLER: Thank you, MR. Chairman. I have no problem with the proposal for the adjusting the circular vent sizes except one. My only problem is that the Area 2 fishermen were told they had to go and put, I believe it was a 2-1/2 circular vent in, and they did.

Now there is "oops" we made a mistake. I am concerned that we're going to have to tell them that they have to rip them all out again. They just put them in. They did what they were told to do, and they've got to change them.

I have nothing against the sizes that are listed here, but I would like some consideration given for the Area 2 fishermen, perhaps in a delay or not, because this is expensive. They already did it. They just did it.

They're the only ones apparently that have jumped that fast, but I'd like some consideration for the Area 2 fishermen in changing or re-changing something they just did. I don't know how to do that, but I'd like to see some consideration for them. Thank you.

CHAIRMAN LAPOINTE: To Bill's comment and what we need in the motion is a date by which it would be effective, do we not? We don't have to have it in the motion, Carrie says, but we need to make a decision on it. Other comments. Public comments on the increase in vent size.

MR. PETER BROEDER: Peter Broeder, Area 2 fisherman, one of those somewhat affected by what Bill just suggested there that a lot of the guys did put them in and now have to change them. But, my comments are directed more towards the data side of this.

I understand that a vent study was done. I did briefly read some of that vent study, and it seemed to reflect that it was done with a one-night set over, and that's, needless to say, not the way we fish. We leave our gear there for a number of days, and they have a little longer chance to find their way out and whatnot.

Much of the vent increases are focused on letting the lobsters go. We made a change from cleaning the traps to a regulatory tool here somewhere along the line unbeknownst to many of the fishermen, or maybe some of us feel like the wool was pulled over our eyes.

There is currently a test or a study going on in Narraganset Bay in cooperation with one of the scientific people from Woods Hole and one of the fishermen on what I would consider a much more data-controlled, informative vent study.

Until we get better data like we've been screaming for here quite often, I feel like we're pushing a little farther ahead than we should without having good data to back up what we're doing. Thank you.

CHAIRMAN LAPOINTE: Thank you. Board members, did I see a hand? Eric Smith.

MR. SMITH: Yes, Mr. Chairman, you were quite right, and I found in the document that we do have to decide when to do this. And, of course, it's just like cod-end mesh changes in a trawl fishery, you have to leave some time for implementation.

The document says we have to decide when to implement it in 2004. I guess if we're bound by that, I would say by December 31, 2004. If we can roll it farther, then we might actually do it for the 2005 fishing season. That would be my feeling.

CHAIRMAN LAPOINTE: We do need a date and Carrie just said we don't have to make it as part of the motion. We can deal with it at the end, but hold that thought for later. Other comments on the motion?

Seeing none, do board members need time to caucus? I see nobody saying yes. All those members in favor of the motion, please raise their hand, eight in favor; any opposed; I see none in opposition; abstentions; null votes. The motion carries.

Carrie, All right, now we'll do the date. Eric Smith has suggested December 31, 2004 or January 1, 2005.

MR. WHITE: I make that as a motion.

CHAIRMAN LAPOINTE: Pat White made that as a motion.

MR. SMITH: Second.

CHAIRMAN LAPOINTE: Seconded by Eric Smith. Comments from the board. The proposed date was December 31, 2004?

MR. SMITH: Well, my view was if we were bound by the document that said "in 2004", then I would push it as late as we could. Realistically, what you want to do is have it in effect for the 2005 fishing season, so December 31, '04 is as good as any other date for that purpose.

CHAIRMAN LAPOINTE: All right, that's great. John Nelson, you had a question or a comment.

MR. NELSON: Yes, I guess I just needed to have a clarification. Aren't most of our regulations calling for July of the -- in this case it would be July of '04, and that, obviously, gives people plenty of time, six months-seven months, to make the changes, obtain them and make the changes.

That would be more in keeping with what our regulatory process calls for in the plan, so why not use July, Eric, of '04, just to be consistent. I would recommend that.

CHAIRMAN LAPOINTE: Maker and seconder of the motion?

MR. SMITH: If I may to Mr. Nelson's comment, my view is stretch it out for the implementation of trying to put it in place, get the things, switch your pots over. We're in January effectively already now, and I just thought giving more time is appropriate.

This also says, you know, you don't do it until your size limit is up to the point that tracks the table that Carrie had put up. In a lot of cases Areas won't be at those sizes so it's a moot point. They don't have to do the vent until they get to the carapace size.

CHAIRMAN LAPOINTE: I'm going to take a clarification from Carrie on how this would be put in place.

MS. SELBERG: I just wanted to clarify. For those areas going to 3-1/2, the vents would be put in place when they go to 3-1/2. So, if you're not scheduled to go to 3-1/2 until 2007, then it would be similar to the rest, July 1 of that particular year.

What we're talking about in this motion is my understanding is those areas who have already gone to 3-3/8, when in 2004 do they need to have the new circular vent in place?

MR. WHITE: I'd like to concur a little bit with where we're going, where John is going with this actually, because I think if you do it for July 1st it is consistent with our other measures and people are bringing in their traps and taking out their traps.

If you do it in January, we're going to be right into the same thing where they aren't going to want to implement it because their gear is in the water until the following June, so I would change my motion to July 1st.

CHAIRMAN LAPOINTE: So that's a friendly amendment to July 1st. Secunder of the motion? He's all right with it. Other board members. Bill Adler.

MR. ADLER: When would Area 2 fishermen have to change their circular vents again?

CHAIRMAN LAPOINTE: July 1st, 2004.

MR. ADLER: Not enough time.

CHAIRMAN LAPOINTE: Other board members. Members of the audience, any comments? Seeing none, we'll go back to the board. Seeing no other comments, do we need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are we ready? All right, the motion reads move to require the vent changes to be put in place by July 1, 2004. Made by Pat White, seconded by Eric Smith.

Those members in favor of this motion, please raise your hand, four; members opposed, same sign, five; abstentions; null votes. The motion fails. Eric Smith.

MR. SMITH: I move that the implementation date be December 31, 2004.

MR. WHITE: Second.

CHAIRMAN LAPOINTE: Made by Eric Smith; seconded by Pat White. I don't think we need any other discussion unless somebody tells me otherwise. Do states need time to caucus? Seeing none, all those

members in favor raise their hand, five; members opposed, two; abstentions, one; null votes, none. The motion carries. So, Carrie, we now to go the most restrictive rule.

MS. SELBERG: The next section of the document has to do with the most restrictive rule. The proposed changes to the most restrictive rule originated from a joint advisory panel/board subcommittee.

It's a proposal to change the interpretation of the most restrictive rule for multi-area fishermen who have a limited history in an area.

For example, if you're an Area 2/3 fisherman or an Area 1/3 fisherman and through historical participation you qualify for 300 traps in Area 3 and through the flat-cap in Area 2, you qualify for 800 traps. Under status quo the fisherman will be limited to 300 traps, but under the proposed changes you would be limited to 800 traps, 300 of which could be fished in Area 3.

The public comment that came in on the most restrictive rule was generally in support of the proposed changes. There was one request by a fisherman at the New Jersey public hearing to address their particular situation, which is that they traditionally fish in two history-based systems at the same time, and this particular proposal doesn't get at their concerns.

Also, during the AP meeting, one AP member asked how this would impact the New Hampshire conservation equivalency proposal. I went back and looked at the language of the New Hampshire conservation equivalency proposal.

As you will recall, in 1999 the board approved conservation equivalency for New Hampshire which allows a portion of their Area 1 fishermen 1,200 traps and the rest 600 traps. But when we looked at the language, we don't think this proposal affects the conservation equivalency in any way.

If, for example, you're a New Hampshire multi-area fisherman under the 1,200 cap, and you have 300 traps in a history-based system in Area 3, you would be allocated those 1,200 traps, 300 of which could be fished in Area 3.

The same example for 600 traps -- if you were allocated 600 traps, you'd be bound by the 600. 300 of which could be fished in Area 3.

CHAIRMAN LAPOINTE: Thank you, Carrie. You went into public comment. Committee on Economic and Social Sciences, any comments?

MS. SELBERG: Yes. That committee indicated that the proposed changes to the most restrictive rule are expected to give multi-area fishermen more flexibility and, therefore, lead to added efficiency.

It's also expected to lead to an increase in the number of traps compared to the existing interpretation of the most restrictive rule, but not in comparison to the number of traps actually fished.

The actual number of traps affected by this change is not known. They also indicated that the existing interpretation of the most restrictive rule so status quo would have severely disrupted multi-area fishermen who qualify for a small number of traps in the areas that are moving toward historical allocations.

CHAIRMAN LAPOINTE: Thank you. Bob, advisory panel comments.

MR. BAINES: The AP reviewed the most restrictive rule section of the Draft Addendum IV, reviewed the public comment and discussed the proposed changes.

The AP discussed public comment made at a New Jersey public hearing about an individual fishing in two history-based systems simultaneously. The AP recommends further thought and review about this particular concern. Overall the AP recommends adopting the proposed changes.

CHAIRMAN LAPOINTE: Thank you. Carrie, you missed one comment?

MS. SELBERG: Yes, during the public comment, I wanted to highlight some NOAA Fisheries comments as I went through and I forgot to the that for the most restrictive rule.

I just wanted to note in their comments to the board that they did indicate that this ran counter to previous federal EIS evaluations and it may lead to an increase in traps; and because lobster are overfished, implementation may go against their resource mandates. They also have concerns about marine mammal and sea turtle interactions.

CHAIRMAN LAPOINTE: Thank you. Joe, was their Law Enforcement Committee comments?

COLONEL FESSENDEN: Yes. The Law Enforcement Committee is concerned about not having enough resources to enforce the status quo. This certainly complicates their role. We'd urge the board to, again, require the trap tags to have the area on them and the permit to have the number of tags that the harvester is allowed to fish.

CHAIRMAN LAPOINTE: Thank you. Board member comments or questions. Harry.

MR. MEARS: Thank you, Mr. Chairman. I'd just like to reinforce the comments which Carrie briefly summarized. We did submit, by the way, a three-page letter -- I believe only two pages of the letter are in the handout -- showing the public comments.

But just as a point of reference, such a recommendation to the Secretary would be a very intuitively troublesome recommendation because a lot of our justification and impacts on the resource and socio-economic impacts of historical participation were predicated in large degree on continuing implementation of the most restrictive rule.

So any recommendation that would conceivably result in an increased number of lines in the water would be very difficult, perhaps not impossible but very, very difficult to move forward in terms of minimizing impacts, for example, on sea turtles and marine mammals. Thank you.

CHAIRMAN LAPOINTE: Thank you, Harry. Other board members. Pat and then Paul Diodati.

MR. WHITE: I want to make a motion.

MR. DIODATI: I just want to bring to the board's attention that in the state of Massachusetts we are trying to pass rules that optimize area management. In area management, in my view, at least what we've done here, the concept is to develop individual plans based on specific biological objectives in each area.

So, the rules that we adopt should create incentives to fish in as few of those areas as possible. Otherwise, if there's tremendous flexibility to move from area to area, then area management doesn't exist.

So, with that I think that the status quo rule is going to be the one that most likely forces fishermen to choose one area more so than the other, so I'm certain that's the way I'm going to go on this.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: I really strongly disagree with that because what we were trying to do, as we move forward with this, was not to change substantially the history and traditional practices of the fishermen. With that said, I would make a motion to accept the proposed changes to the most restrictive rule.

CHAIRMAN LAPOINTE: We have a motion to accept the proposed language in Addendum IV in regarding the most restrictive rule. Do we have a second? Was that a second, Bruce?

MR. FREEMAN: No.

CHAIRMAN LAPOINTE: Do we have a second for the motion? Bill Adler, thank you. Questions or comments. Bruce.

MR. FREEMAN: It was mentioned by Carrie that an issue was raised at our public hearing relative to an oversight on this particular aspect, and I would ask for her to just quickly explain to the board what that was.

MS. SELBERG: I can provide a little bit more detail. This particular fisherman fished two history-based systems at the same time. I believe it was Area 4 and Area 5. Their history is split between the two areas. I don't remember the exact numbers, but I'll substitute numbers for the sake of the example.

For example, they fished 700, they would be allocated 700 traps in Area 4 and 700 traps in Area 5. By the most restrictive rule, they would be limited to 700 traps in total while people who had the same history but it was all in one area would be allocated 1,400 traps.

This proposed changes to the most restrictive rule doesn't get at that particular individual's concern about having their history split between two history-based systems. Is that enough detail, Bruce?

MR. FREEMAN: Yes.

CHAIRMAN LAPOINTE: Other board members, questions or comments. Audience members. George, please.

MR. DAHL: George Dahl, Area 6 fisherman. This does not apply to me too much, but this whole thing was based on history. If a fellow is fishing in a particular area and you come along and draw a line right through that, that's not his problem. Well, it is his problem now but that's not his fault.

So, if you're dealing with history, this is where a guy fished. He shouldn't have to move. Moving to a different area causes big problems that some of you people are aware of, some of you are not. So, this does not allow any more traps into the water or any more lines or whatever. It just lets everybody keep fishing where they're fishing.

CHAIRMAN LAPOINTE: Thank you. Back to the board. I had Bill Adler and then I'll get Pat.

MR. ADLER: Yes, we discussed this over and over. First of all, this only applies to traps situations. I think everybody understands that. It also was never intended that -- and I'll pick a very simple thing, the 800 to 200.

The whole scenario here was that the guy who qualifies for 200 in a history area and is allowed 800 in the other area, he doesn't automatically can only fish 200 in any area. That wasn't the intent.

It was as described. I think it's a logical way to fix this problem which arose because most restrictive rule, everybody agrees with the most restrictive rule but they did not intend it to mean traps. This is a logical way to fix this problem.

CHAIRMAN LAPOINTE: Thank you, Bill. Pat.

MR. WHITE: Yes, and to pick up on where George was and Bill, we weren't intending to change but there are some significant differences now that fishermen are going to have to choose on, i.e., gauges and other things that are being implemented by different areas.

It is going to reduce traps which is contrary to what we had intended, but this is only for traps. And I think it would -- it just wasn't what we all had intended when we wrote this regulation, and this is supposed to just bring us back to clarification again.

CHAIRMAN LAPOINTE: Any comment? Paul.

MR. DIODATI: Has the technical committee offered an opinion on how this proposed change from status quo impacts on the concept of area management?

CHAIRMAN LAPOINTE: I don't believe they have commented on this. Is that correct?

MR. DIODATI: That they have not?

CHAIRMAN LAPOINTE: That's correct, they did not. Are we ready for the question? Do we need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are we ready? I see general concurrence. Do you want me to read the motion? We have the motion. All those states in favor of the motion on most restrictive please raise your hand, six; opposed, like sign; abstentions; two abstentions; null votes. The motion carries. Thank you very much. The next issue is the Area 3 proposal. Carrie, please. Ritch White.

MR. WHITE: When is this effective?

CHAIRMAN LAPOINTE: I would think that -- I mean, because it is an interpretation, would it be effective now? We've got two areas. We've got different systems in them. And because we've had this quandary, I would think we would put it in place upon passage of Addendum IV, if it passes, because it's an interpretation and not something that needs to be implemented on the water. Does that make sense to people? Pat.

MR. WHITE: I just wondered, for the point of clarification, is the history-based system for Area 3 not concluded until December 31st in which case we might want to make it for that, but I don't know.

CHAIRMAN LAPOINTE: How about a motion.

MR. WHITE: Well, can I get an answer to my question? Isn't the determination of the qualification period for history-based December 31st?

MR. MEARS: It is but, more importantly, I would disagree that it's interpretation. It's essentially, from my opinion, a waiver, an exception from the more restrictive rule and would have to be accommodated by federal rulemaking via a recommendation to the Secretary.

MR. WHITE: Well, having heard that, I would still move that it be effective January 1, 2004.

CHAIRMAN LAPOINTE: Do we have a second to make it effective January 1, 2004? Ritch White seconded. Board questions or comments. Anybody in the audience? Do we need time to caucus? Bill.

MR. ADLER: What was the motion?

CHAIRMAN LAPOINTE: The motion is to make this effective January 1st, 2004, which means that we would move into the interpretation essentially with passage of Addendum IV. Other board member questions or comments. John Nelson.

MR. NELSON: Thank you, Mr. Chairman. My memory is really failing me, so does the federal system have anything in place regarding the more restrictive rule? Then the second part of that question is if they do, can we really move ahead and have something contrary to what they already have in place?

CHAIRMAN LAPOINTE: I guess from the chair's perspective, we get caught in this "chicken-and-egg" situation. The board needs to make a decision in federal waters that wouldn't go into effect until they considered it; and if it went to the regulatory process; and from the states' perspective as well, I know for the state of Maine, when the next year's round of trap tags come out, we would want to have it in place. So it strikes me that it's an appropriate motion.

MR. NELSON: Well, I just need a clarification. If the feds already have something in place that doesn't allow this, then I think we need to just recognize that and deal with it because then folks could be detained or be illegal in the federal zone, and I don't think that's what we want, being allowed by the state and yet illegal in the federal zone, so I just need that clarification.

CHAIRMAN LAPOINTE: Harry.

MR. MEARS: Yes, what's in place is you are governed by the more restrictive. That was the basis for the New Hampshire request for conservation equivalency. So, yes, in fact it is in place and it would take us some period of time to consider, analyze and subject this for public comment under federal rule-making procedures.

CHAIRMAN LAPOINTE: Thank you. Board members, ready for the question? I see nobody saying no. All those in favor, please raise your hand -- was that a question?

MR. ADLER: Do you have a second?

CHAIRMAN LAPOINTE: We do have a second. In favor, five; opposed, one opposed; abstentions, two; null votes. The motion carries. Our next issue is the Area 3 proposal. Carrie, please.

MS. SELBERG: The Area 3 proposal is a proposal from the Area 3 LCMT. It's in addition to the current management measures that are in place for Area 3 right now. It contains two components. The first component is an active trap reduction, which is 10 percent active trap reduction, 5 percent in 2007 and 5 percent in 2008.

It also has a transferable trap proposal. I'm going to step through some of the key elements of the transferable trap proposal. The first is that all transfers would need to be a minimum of 50 traps. Trap tag transfers may occur only within the Area 3 boundaries.

There is an anti-monopoly clause which, as it went out in Addendum IV, was no individual or company may have more than 10 permits. There is a conservation tax. At public hearings sometimes folks got confused with the word "tax", so I can use conservation reduction, which is a reduction in the number of traps.

If the individual who is receiving the traps is going to end up with between 2,200 and 2,600 traps, the trap reduction is 50 percent. Up to 2,200 the conservation reduction is 10 percent. And then a sale of an operation would be taxed at 10 percent as well.

Public comments that came in on Area 3, some of the voices in support were that they liked the flexibility. It allowed an avenue for people to enter the Area 3 fishery who didn't qualify for traps in Area 3.

Some of the concerns that were raised, through public hearings we heard concerns about the overall trap cap of 2,600. Some folks thought that was too high. There was also concern about the anti-monopoly clause of 10 permits being too high and also concern that allowed larger businesses to grow.

Towards the end of the public comment period, we did get a postcard campaign with many individuals supporting the trap cap of 2,600. I know that we have comments from the AP, the LEC but we also are going to hear from the Area 3 LCMT about some proposed changes they have based on public comment.

One more public comment. The NOAA Fisheries public comment, they had public overall about transferability programs that applied to both Area 2 and Area 3. They stressed that transferability programs should be standardized across areas.

They also expressed concern that transfers that allow new entrants into the Area 3 fishery may run counter

to current NOAA Fisheries permitting procedures. There was a suggestion if transferability programs do take place, that there be some avenue for communication between those jurisdictions what would be monitoring this program about how that would be done.

CHAIRMAN LAPOINTE: Thank you. Bob, advisory panel recommendations.

MR. BAINES: The advisory panel reviewed the Area 3 section of Draft Amendment IV, reviewed preliminary public comment and discussed the proposed changes. Some AP members were concerned about the timing of the proposal because Area 3 is currently going through the allocation process.

Area 3 AP members indicated that because of the delay between ASMFC approval and NOAA fisheries implementation, they wanted to make this proposal now, and that there would be further public hearings through NOAA Fisheries. The AP supports the LCMT process and, therefore, supports this proposal.

CHAIRMAN LAPOINTE: Thank you. Questions for Bob. Carrie missed the Committee on Economic and Social Sciences so can you pick that up?

MS. SELBERG: This subcommittee reviewed the proposed changes in Area 3 and had several comments. First of all, they indicated that conservation taxes in general are expected to inhibit transfers of traps, but they didn't have enough information to judge whether or not the taxes that were outlined in the Area 3 proposal would or would not inhibit transfers.

They just wanted to raise that for board consideration. Also, they indicated that they believed it was beneficial to have both the passive and the active reductions as outlined in the proposal so that if the taxes would inhibit transfers, that you would still get reduction in traps through the active reductions.

They indicated support that it would allow people into the Area 3 fishery who do not initially qualify for traps. They also said it means that the number of boats allowed to fish traps in Area 3 is not limited by regulation.

And if the 2,600 trap cap on individual fishermen is not unduly restrictive, then lobster trap fishing operations in Area 3 should seek the most efficient scale of operations.

However, if this individual cap is set too low, then it will increase the incentives for non-compliance, and the most efficient scale of operation under a management system based on traps may not be optimum, but transferability of traps would move the system towards that optimum.

Finally, they indicated that compliance and enforcement of this new program are especially important to ensure that it performs as intended. The commission and the industry need to discuss ways to assure that fishermen, that there is in fact a high level of compliance, and it needs to be done on an ongoing basis.

Finally, the subcommittee recommended monitoring this program closely to evaluate implementation and effectiveness of the program and that modifications may be needed to ensure efficiency. In addition, if other areas decide to pursue transferability, there may be things to learn from this particular example.

CHAIRMAN LAPOINTE: Thank you. Joe, law enforcement, do they have comments on this?

COLONEL FESSENDEN: Yes, we did. First of all, the committee felt it was an enforceable management measure. A couple caveats with that, though. We think it should be allowed only once a year.

The transfer of tags shouldn't be done multiple times during a fishing season or a fishing year. And, we'd like to have it take place at the beginning of the season, if possible. It's very important that the trap tags are assigned to vessels. That should be very clear in everybody's plan.

We have another question about trap tag enforcement in Area 3. Most of the states are trying to enforce the trap tag programs within their state waters and within most area management plans with the exception of Area 3.

We're talking about traps in very deep water, very heavy traps, and you need a very, very large vessel to inspect that gears. You're talking probably a 90- to 100-foot vessel to go out there and haul gear efficiently and safely.

That's not being done. None of the states are doing that. The Coast Guard is not doing that. And really to enforce this provision and to get some compliance, we need to get out there and inspect some gear. We really do.

Area 3 is really being overlooked by enforcement as far as trap tags. The only issue we've got is probably

transfer from shore out to Area 3, but inspecting gear out there is not happening. We really need to build into the plan some mechanism where some money is put into enforcement of the trap tag program out in Area 3. Thank you.

CHAIRMAN LAPOINTE: Thank you, Joe. David Spencer, I believe you've got LCMT 3 comments, and then I'll go to the board.

MR. SPENCER: Thank you, Mr. Chairman. David Spencer, Area 3 LCMT chairman. On November 25th the Area 3 LCMT met to discuss and address the comments heard at public hearings regarding the Area 3 transferability plan included in Addendum IV.

We proposed two revisions to the previous LCMT plan, which we believe are consistent with the comments we heard at public hearing. Those two revisions -- and these are the only two revisions. Everything else stands as before, the active trap reductions stand, which are in addition to our sliding scale reductions.

I will outline the two revisions. The first is to reduce the maximum trap allocation in the plan from 2,600 to 2,200. Just to revisit that a little, our initial plan had a two-tier tax structure.

One was a 10 percent tax on transfers up to 2,100 and a 50 percent tax on transfers from 2,100 to 2,600. Our revision is a 10 percent tax on transfers up to 1,800 and a 50 percent tax on transfers between 1,800 and 2,200, so essentially we dropped our maximum trap cap down to 2,200.

The second revision is in the anti-monopoly clause. Previously we had 10 as the maximum number of permits somebody could own. We dropped that to 5 and would grandfather in anybody above that number. So, essentially we came out with a more restrictive plan based on public comments, and I would recommend that the board adopt these. Thank you.

CHAIRMAN LAPOINTE: Thank you, David. Questions, comments. Before we go, I talked to Bob Beal and we have the ability to go more restrictive. We don't have the requirement like the feds do of being tied to exactly what was in a public hearing document although there has got to be justification for that and we can't go too far off.

We couldn't make the 2,600 1,600 or something like that, but that's something the board needs to consider

as we move forward with this issue. Board members, do we have a motion?

CHAIRMAN LAPOINTE: Pardon me, do you want a clarification?

MR. DIODATI: Actually I had a motion. I'd like to offer a motion that the Lobster Management Board approve the Area 3 LCMT Plan, including an additional 10 percent active trap reduction along with a modified trap transferability plan, which is reflective of comments that were heard at recent Addendum IV public hearings and recommend this plan to the National Marine Fisheries Service for inclusion in the federal process.

CHAIRMAN LAPOINTE: Do we have a second to that motion? Bruce Freeman. Paul, what does it mean? You know, we have what was published in the Addendum IV document. We have recommendations from LCMT 3. How does your motion differ from that?

MR. DIODATI: I think it's consistent with the LCMT 3 recommendation that was just talked about.

CHAIRMAN LAPOINTE: Again for clarification I'm going to ask the question -- I can argue a lot of things are consistent -- is it essentially implementing what the LCMT 3 was looking for?

MR. DIODATI: Yes, and I'd be willing to --

CHAIRMAN LAPOINTE: No, that's fine. That was just a clarification. I was just trying to keep it straight, so we have a motion and a second. Comments. Pat, Eric Smith, Ritch White, Bill Adler.

MR. WHITE: Well, I would like further clarification, if we could, please, because I don't understand how this gets to the same point of getting down to a 2,200 trap cap and reducing the number of boats per or the maximum number of boats to five.

CHAIRMAN LAPOINTE: Permits per. Inherent in your motion is the reduction in the overall cap to 2,200 and the maximum number of permits to be acquired to five?

MR. DIODATI: Yes, that was inherent in this motion, with their modified plan --

CHAIRMAN LAPOINTE: Thank you. Good clarification.

MR. DIODATI: -- that was just presented.

CHAIRMAN LAPOINTE: Yes. Eric Smith.

MR. SMITH: Thank you. We might want to have the motion changed where it says "which is reflective of comments that were heard at Addendum IV", if we just simply change that to say "that embodies the measures that are in the revised Area 3 document that was submitted in the briefing documents" because that has all of those things. There are lots of comments there.

CHAIRMAN LAPOINTE: And the maker of the motion I think is affirming that. Who was the seconder? Bruce, is that all right with you as well?

MR. FREEMAN: Yes.

CHAIRMAN LAPOINTE: Thank you. Comments. Ritch White and then Bill Adler.

MR. WHITE: I'd just like to commend the Area 3 LCMT for making changes after hearing public input. I don't know that we've seen an LCMT react quite like this one and I think they need a compliment.

CHAIRMAN LAPOINTE: Thank you. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I applaud Area 3 for listening to the public and trying to make things better. I do agree with what they're saying. I do have to go on record with concern with regard to the commission's policy apparently that they can go more restrictive. I don't think that's fair.

To take out the most restrictive measure and then decide that you're going to be even more restrictive, I don't think is fair so I just want to go on record. I have no problem with this, which is more restrictive, but I would have hoped it would have been done another way.

I do notice the grandfather clause -- I didn't see the grandfather clause. I didn't know if that had been dropped. I know it was in the Area 3 original plan. I didn't see it in this one, and I don't know what happened to that so I would like to -- I just want to go on record with those things. I am concerned, very concerned, though, about the more restrictive part and what that could lead to. Thank you.

CHAIRMAN LAPOINTE: Thank you, Bill. And my assumption, based on what Paul has said, is that the Area 3 recommendations on grandfathering are inherent in this motion as well, and he is shaking his

head yes so that's good. Harry and then back to Ritch White.

MR. MEARS: Thank you, Mr. Chairman. We're talking right now specifically about the Area 3 plan. We have others yet to be discussed. Our comments are already a matter of record, but once again I'd like to stress the importance of what we need to face from a federal perspective whenever we receive these TTP proposals; namely, that they be consistent and standardized to the extent possible, including the timing during the year when transfers are made, and also indicate that one very important issue we would have to analyze would be how this impacts upon our current ongoing historical participation decisions.

The Addendum -- what addendum is this -- IV public hearing document did include an attachment that this was an item for further discussion, exactly how we would deal with this, but I just wanted to bring that to the board's attention. Thank you.

CHAIRMAN LAPOINTE: Thank you, Harry. I had Jerry.

MR. CARVALHO: Thank you, Mr. Chairman, I'll be brief. This proposal, it's predicated on the idea that we're going to manage the resource by limited entry and now by a limited number of pots to fish.

In effect it will make the pots or the number of traps or the traps that are tagged will create value. And, in the process of taxing or reducing the total number of traps, we, at that same time, will concentrate that value into lesser and lesser entities.

In effect we're going to get a concentration of wealth into a limited group of people by their ability to purchase the trap tags available. Now this has profound social and economic effects on the lobster fishery. I'm not prepared to go that way, and I don't know if everybody else is.

The other problem I have is based on the idea that these trap tags aren't enforceable. We've heard time and time again, at this meeting, at the last meeting, that the Coast Guard doesn't have the ability to do this.

Why are we going down the road of adopting a regulation that we cannot enforce? I've spoken to rank and file people that fish out there, and they say that there are lots of people that are not adhering to what the restrictions are.

It seems crazy to me to go forward with this when we haven't corrected those problems. There are so many problems we have in managing this fishery. We add to the problems when we take additional regulations that we can't enforce.

I don't know what the economic impact is going to be. I haven't seen any economic impact statement. We're going to move ahead on this, and yet we don't know what the profound economic impact it's going to have.

For just those reasons alone and the two above, and the final one is the rank and file, when we do something like this, we have a group -- and Dave's group has certainly done their work and they have a legitimate proposal.

I admire them for the work that they've done and what they've accomplished, but I would feel much more comfortable if the limited number of participants in Area 3, the rank and file were able -- if this were socially acceptable, that those people were able to vote this up and down on the voting process because it's more democratic to me to see them do that.

They're the ones that are going to be affected by this if it's acceptable socially. For those reasons I can't support this Area 3 management measure. Thank you

CHAIRMAN LAPOINTE: The issue of enforceability is one that I think the Law Enforcement Committee said is something we need to look at in Area 3 regardless of this proposal being accepted or not.

MR. CARVALHO: In response to that, Mr. Chairman, I don't see how we can move ahead until enforcement says, yes, we have a handle on this, yes, we can enforce it and, yes, this is acceptable.

CHAIRMAN LAPOINTE: Thank you. Board members, comments. Ritch White.

MR. WHITE: I'd like to see a little more discussion on law enforcement's recommendation that the transfer only be allowed once a year. I guess I'd like to see that included in the motion.

CHAIRMAN LAPOINTE: I think that's probably in the motion. And one of the things, to Harry's comments about different transferability programs in different jurisdictions, it's staff's recommendation that the states and the federal agencies get together to

in fact standardize to the degree you can so there is consistency among areas.

MS. SELBERG: Ritchie White, I just wanted to point out there is -- in the LCMT 3 plan, there is a statement that says, "Transfers and new trap allocations will become effective with the issuance of new trap tags at the beginning of the upcoming fishing year." I think that probably gets that.

CHAIRMAN LAPOINTE: Other board comments. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman, back to Joe's idea. He had mentioned something which might help in the enforcement part, and that had to do with the areas on the tags and the number of traps allowed put on the permit. Is that not done now?

CHAIRMAN LAPOINTE: Joe, please.

COLONEL FESSENDEN: Well, we're in the process. I believe most jurisdictions will have the area on the tags beginning this 2004 season, I believe. The number of tags on the permits is something we haven't gone there yet, but I think down the road for enforcement, to enhance enforcement I think we're going to have to have that on the permits, the number of tags they're eligible for.

MR. ADLER: All right, is that something that can be done outside of this decision? I do think that something like that might help the situation since he doesn't have the \$2 million for his 160-foot boat.

CHAIRMAN LAPOINTE: Nor is he going to get it any time soon because he deals with the same legislature I do. I think that's a good suggestion. Other board comments. I know I saw David's hand; I'm checking with the board first. Seeing none, public comments. I see David Spencer. Are there others? I see two hands up in the back. I'll get you in a minute.

MR. SPENCER: Thank you, Mr. Chairman. David Spencer, chairman, Area 3 LCMT. In regard to Harry's statement, certainly Area 3 is more than willing to work with other states, NMFS and other areas to be as uniform as possible in any transferability plan that may be proposed.

I want to point out that if the board finds it appropriate to approve this plan today, this is just the first step in another four or five year process through the federal process, that we have many more public hearings, many more public comments and I would

say quite a bit of time to be as compatible as possible. Thank you.

CHAIRMAN LAPOINTE: Thank you, David. Roy, did I see your hand up?

MR. ROY CAMPANELLI: Yes, my name is Roy Campanelli, and I thank you for the opportunity to read this prepared statement. My father and brother started lobstering 31 years ago, and since then our families, including my two sons, have worked diligently and we now own four offshore lobster boats.

Our vessels fish only in Area 3 so all my comments pertain only to this one area. I have been an active participant in the drafting of Area 3 industry plans as I was both an EMT and an LCMT member.

I am in fully agreement with the ASMFC and the National Marine Fisheries Service that the reduction in effort is needed to sustain the lobster fishery. We support the LCMT Area 3 transferability trap plan with its 2,600 trap cap.

The transferability plan leaves intact the diverse group of fishing styles, operations and sizes of boats. The reason why I'm here today is to explain how a number of businesses are affected by a transferability trap plan that is less than 2,600 trap caps.

If the trap cap is lower than 2,600, our business with its four vessels would lose in trap numbers per vessel more than any other business in the industry. You will find that a lot of vessels lobstering in Southern New England waters traditionally fish more traps in larger boats than in other areas.

This is especially true of those boats that fish in Point Judith, Rhode Island, where some of us fish more gear and have raised boats 88 feet long. A number of us out of Point Judith have taken the largest trap reductions in the industry.

For a number of years, three of the largest vessels in Point Judith were fishing two crews. Our largest vessel, which can fish in just about any weather, fished nearly 6,000 traps with two crews and was out to sea as many as 300 days a year.

We have all acknowledged and accepted to rebuild the resource these days are gone. We always supported the newly implemented historical-based plan. The number of traps fished per vessel means as much to us as the maximum gauge of five inches

means to lobstermen who fish to the east with fewer traps but bigger traps on bigger lobsters.

If you were today trying to regulate the resource to a five-inch maximum gauge, you would have those fishermen on lobsters over five inches complaining, but instead we are here using trap numbers to reduce effort.

I am not concerned or complaining about the reduction in traps we must take. I am complaining about after taking these trap reductions and a new proposed transferability plan is put in place, that we will not be allowed to increase back up to our original trap allocations as those in the transferability plan can, as others in the transferability plan can.

This is where the problem lies. I would like to make one thing perfectly clear so everybody understands. Once the historical trap plan is fully implemented, you have capped the amount of traps the industry as a whole can fish and under no scenario can it ever increase.

So putting in an individual vessel trap cap in a transferability plan has absolutely no, I repeat no resource effort reduction benefit.

Under the default measure that allows us to fish only 1,800 traps, we have had substantial losses two out of the last three years.

Please, do not pass regulations that just control people's businesses and does nothing to rebuild the resource, the resource such as the trap cap below 2,600 in the transferability plan. Leave it up to the individual as to the best way to run their business.

The highest allocation first issued for the newly implemented historical-based plan is 2,656 traps. I believe the 2,600 trap cap should not be changed because under the proposed transferable plan, it allows all vessels, which wish to do so, maintain its historical allocation instead of only those vessels with the lower allocation.

In my estimation, 80 percent of the Area 3 vessels would be given an allocation of 2,218 traps or below. It would not be fair or equitable to allow 80 percent of the industry to be able to maintain or even increase their own effort through transferability while at the same time making those with allocations over 2,200 reduce to this level without the possibility of maintaining its effort for profitability.

It has already been established on the history-based trap plan that there are large differences in fishing practices, vessels, and operations. To continue to penalize those with the largest allocation is simply wrong and only disrupts the socio-economics of the industry.

To those regulators or other lobstermen who say the largest operators take too much out of the resource and who want to keep on cutting back on just the trap cap, I'd like to remind them that there are many more smaller operations that take a lot more out of the resource than the few large operations.

I don't want to have part of my business taken away because of perception, the perception being that when somebody in Area 3 increases his gear through transferability above 2,200 traps, say to 2600, it has increased the effort in the resource. It does not.

It will reduce the effort by 50 percent due to conservation tax and keep our business profitable. Letting those of us who want to increase our gear up to 2,600 through transferability also has added benefits. With a 50 percent conservation tax, it would mean less gear in the water with reduced marine mammal entanglements, as well as mobile gear and fixed gear conflicts.

We can't see why any government agency would allow such a large percentage of operations to adjust, grow and prosper under a transferability plan and at the same time single out and jeopardize the largest vessels or operation's survival by lowering the vessel trap cap which has no biological gain or resource effort reduction.

Does the lobster know whether it was harvested by a lobsterman who through transferability increased his trap allocation from 1,400 to 2,200 and assessed the 10 percent tax or by a lobsterman who increased his traps from 2,200 to 2,600 with a 50 percent conservation tax? As far as I know he can't tell the difference.

The only thing that is affected by the lower trap cap is the socio-economics of the industry, and I believe the regulatory agencies are charged with rebuilding the resource with as little effect as possible on the socio-economics of the industry.

By allowing those vessels with allocations between 2,200 and 2,600 traps to maintain their historical allocations through transferability, you will also reduce the effort on the resource five times more than

those below the 2,200 that was also allowed to increase the effort beyond the historical levels.

I estimate only 20 percent of the vessels in the fishery may be allocated over the 2,218 traps each. Just because we are a minority, it doesn't give the right to the other 80 percent in the industry to out-voice or out-vote us and reduce the size of our business.

Doesn't the rest of us all over 2,218 traps have some sort of right to protection? Just because they don't want to fish over 2,200 traps doesn't give them the right to change the makeup of the industry and make us fish only the same amount of traps as they want to. Once again, the trap cap has no reduction in effort or resource conservation benefit. Thank you. I'd like to answer anybody's questions.

CHAIRMAN LAPOINTE: Any questions for Roy? Not yet, Roy. Thank you. Were there other hands up in the audience? Gentleman on the back of the left.

MR. MARK MCSALLY: Thank you, Mr. Chairman. My name is Mark McSally, and that's M-c-S-a-l-l-y. I'm an attorney from Narragansett, Rhode Island. I represent Roy's company which owns four vessels, but also the Handrigan family which owns two offshore vessels operating out of Point Judith.

Both of those vessels we anticipate will qualify for some of the higher trap allocations as well Roy's vessels, so they're the six that are going to be the most impacted or will be very impacted if this change is implemented by this commission.

I have two basic comments to make. One relates to the issue of the process. I think there is a question of fundamental fairness given how we've gotten to where we are today. The Addendum IV that was put out to public comment was a product of, I believe, an initial recommendation from the LCMT for Area 3.

It came before this board. It was reviewed by the various committees or subcommittees, approved for public hearing or public notice and put out on the street for comment with numbers that were 2,600 as the upper end of the transferability program.

That's what the public was told was going to be reviewed. That's what the public was commenting on. It's now days before or it was actually days before the close of the public comment period that we have a change by the LCMT based upon their perception of the public comments that occurred at the hearings that took place in October and November.

I would submit to you that the sudden change, if you were to adopt it, is unfair to those that either didn't come because they saw it was in the Addendum IV and were happy with it or those that didn't comment because they didn't feel they needed to at that point in time.

I would think that if you're going to reduce the allocation that is possible through transferability, that you should put the matter back out for public comment and get fair comment up and down the coast from anyone that's impacted.

I'll guarantee you in Point Judith or in Rhode Island there would have been many more people there commenting at that hearing. You can see that by the number of written postcard comments which is the best that could be done on the short notice when we realized there was a change coming about.

Now in terms of the actual volume of comments, I took a quick look in the hours before we got to this issue. In the summary it appears there are about 58 comments in favor in writing. One of them is mine. The others are postcards.

There are about six or seven in writing against it. As far as the actual oral testimony, a quick review of the public hearings indicates that there were six or seven individuals that spoke against 2,600, asking for a different allocation.

There were also five or six individuals that spoke in favor of the program. They didn't comment on the numbers but spoke in favor of the Area 3 program, including its transferability. So there is no groundswell of opposition that arose out of the public comments that I see from the summaries.

Granted, I wasn't there. But based upon what's in the record, I don't think there was an overwhelming number of people speaking against it. Given that fact, I don't see the need now to suddenly change without going back out for more comment by the public and by the individuals that are most impacted. The second area I wanted to comment on -- and it's touched upon in my letter, but there are issues that are going to be impacted relative to the National Standards if in fact you make this change.

I believe National Standards 2, 4 and 8 are impacted; 2 because you need scientific information. I would submit to you there is no scientific information to support a change between 2,600 to 2,200.

As Roy indicated, once the Area 3 historic participation numbers are set, that's the maximum number of traps that can exist in the area. All you're doing by transferability is shifting them between entities, so there can't be a scientific basis to support a reduction in the cap from 2,600 to 2,200.

The National Standard dealing with fairness and equitability on allocations, I would submit to you that at least these six entities -- and there are probably others -- are being cut out of transferability provisions.

They can never increase up to a higher level than what they're going to get. They can't participate in the program by this change. They could minimally under the 2,600, but now they're being precluded.

The last issue is the socio-economic requirements under National Standard 8. I don't think that has been touched upon as it relates to the change, and I think you'd have to look at those or at least National Marine Fisheries Service is going to have to look at those if it gets to that level. I would entertain any questions. I thank you for your time.

CHAIRMAN LAPOINTE: Thank you. Questions, comments? Other members of the audience, any comments? Seeing none, it goes back to the board. Bruce Freeman.

MR. FREEMAN: George, I had a question of David Spencer, if he would return. David, I'm very much interested in the anti-monopoly clause which indicates no more than 10 qualified federal permits could be owned by a single individual or company.

It's a very brief statement. I think the intention is clear, but my concern is was there discussion by LCMT Area 3 as to the control of only ten qualified people? Anybody can start a corporation. A corporation could get up to 10 permits, and owners of corporations can vary considerably. I'm just curious how you intended on controlling that.

MR. SPENCER: Two things. I think the revision is that five is the maximum number with a grandfather. The second thing is, as I stated earlier, if the board approves this plan, this is only the beginning of an additional four or five year process.

It goes through the federal process, and I would assume that they have better language than we do. We showed the intent and I'm assuming that NMFS will put the language in to follow up with that intent, if that answers your question.

MR. FREEMAN: Okay. Well, I would also direct a question to Harry relative to this issue, what the position of the Service is and how you feel you could control this if in fact this were approved?

MR. MEARS: Bruce, we really have no position at this point. We would begin analyzing it at such time it would become a recommendation to the Secretary.

CHAIRMAN LAPOINTE: John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I had another question for David, if I could. David, you've probably covered this and I was out on a phone call, so I apologize for having you repeat it for me, but I'm under the assumption that the LCMT is still comprised of a wide range of participants in the Area 3, and that you folks have had the discussion, as I've heard previously, on the pros and cons of how that affects various members.

So the modifications that you have suggested, I'd just like to hear again that folks that are going to be impacted had an opportunity to provide input or did not. Which way was that?

MR. SPENCER: Well, yes, they did at the LCMT level, and it was an overwhelming vote. I think the vote was six to one. I'm not going to say that there wasn't dissent. There was. I think in any LCMT meeting when anything meaningful is on the table, there is dissent, but it was a six to one vote in favor of the revision.

MR. NELSON: And it was a good, healthy discussion, I would imagine, as you normally have.

MR. SPENCER: It always is.

MR. NELSON: Yes, it always is. Okay, thank you very much.

CHAIRMAN LAPOINTE: Jerry Carvalho and then Bill Adler.

MR. CARVALHO: Mr. Chairman, my question is for David. My expressed concern for the concentration of wealth in this fishery, was any consideration or discussion given to the idea of owner-operator regarding Area 3?

MR. SPENCER: No is the short answer. I think it is not a popular concept offshore. I think one thing that I think needs to be recognized is from the very inception of the offshore fishery, fleets were a part of

the offshore lobster fishery. You had Prelude, Deep Deep Western Ocean, and so owner-operator may be something that's appropriate and valued in an inshore fishery. I would say that in Area 3 it is not a popular concept.

CHAIRMAN LAPOINTE: Thanks, David. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. In respect to all these comments, a way through this would be to approve the existing as-worded document you've got here, because then as was explained, it sends a message to the National Marine Fisheries Service to do what they have to do, which is set up their own plan with their own hearings, which could in fact incorporate these new -- and ones I applaud, actually -- the new changes.

But, they could put it in. That gives the public hearing over to the NMFS process. It also would maintain the credibility of this commission in that my concerns about putting something more restrictive in, and I call your attention to 4.1 of this document, the dark print, which basically says if we don't adopt what we've got right here, the old one applies. And that's what you said right there.

And I will ask Harry -- I do want to ask Harry would it be possible that when the National Marine Fisheries Service starts their process, which they always do after we approve something here to get going, could you not put into your document, that has to go to public hearing, these changes because, after all, this is in your world anyway, not in ours here.

These changes that were put here, but we missed them, could you then put them into the federal document even though the ASMFC document has the old numbers? Can you do that?

CHAIRMAN LAPOINTE: Harry, before you answer, I think we need to have a complete ASMFC process and not rely on the federal agencies to do our work for us. A potential alternative is to modify the motion to leave everything as is, change the 2,200 to 2,600 and agree to go out to an additional ASMFC comment period just about the difference between 2,200 and 2,600.

We would move everything else forward and we would just bring that -- because that question has been raised and it was a little bit unclear going out to an -- I'm calling it "abbreviated." I don't know what that means yet, but a short comment period and then bring it back before the board.

Everything else would carry on as proposed in the motion. That's an alternative for us to consider. Ms. Spinazzola, you've been remarkably silent today, come forward.

MS. BONNIE SPINEZOLA: Thank you. Bonnie Spinazzola. The Area 3 LCMT is very supportive of the transferability plan moving forward so that it can be put into the federal process.

If the board would like to look at specific trap numbers later, that would be acceptable. If it's acceptable to NMFS that there doesn't have to be a trap number moved forward from the commission, that would be acceptable to us as well.

We understand that there probably will be two to three or more federal public hearings on this so that can establish a trap number at a later date, but we would like to see it move forward. Thank you.

CHAIRMAN LAPOINTE: Thanks, Bonnie. Board members. John Nelson.

MR. NELSON: Well, Mr. Chairman, I think there was a lot of discussion at our hearings on trap numbers, and there was a lot of support of a lower number. I think that the LCMT certainly has taken that to heart and therefore come up with lower numbers. However, if it would help, I would move your suggestion that we hold additional hearings on the lower number of traps cap but --

CHAIRMAN LAPOINTE: It would be a motion to I guess modify Paul's motion, amend Paul's motion to accept the 2,600 cap now and to go to public hearing to discuss the differences between 2,600 and 2,200.

MR. NELSON: Better said than I, Mr. Chairman. That's a friendly, obviously, a friendly amendment.

CHAIRMAN LAPOINTE: Paul says yes. I guess if it's a friendly amendment we would go to that, but comment, Ritch White and then Bill Adler.

MR. WHITE: I guess I have a concern going in this direction. We've gone to public hearing. We got input. The LCMT reacted to that input and recommended to this board, and I guess I have a problem changing that at the eleventh hour. We've gone through the process.

The process has worked. They provided us with information, and I think we ought to be acting on that information. It's like saying -- it's like backing up

and saying, well, okay, we're not going to really listen to you, LCMT 3. We're going to go back again. Tell us again.

CHAIRMAN LAPOINTE: Thank you. Bill Adler.

MR. ADLER: The first response to that is no. It's a matter of the process. We do listen to the LCMTs and I think that this whole idea is addressing the LCMT's revision. Are you including not only those trap numbers in your consideration going out but also those other little reductions that they had mentioned in their revision, the ten down to five? Is that intended to --

CHAIRMAN LAPOINTE: That is not part of this motion because we weren't discussing that and other people haven't.

MR. ADLER: So it's only the two trap number changes?

CHAIRMAN LAPOINTE: That's correct. Other board members, questions or comments. Seeing none, are we ready for the question? Do we need time to caucus?

MR. WHITE: What will the timing be going back out to public hearing and then action by this board? What would all that timeline look like?

CHAIRMAN LAPOINTE: Bob, can you outline what the timing could be, or Carrie?

MS. SELBERG: I would need to draft an addendum, and then I would need to have that addendum approved by the board to go to public hearing. Then we'd need to conduct public hearings, so I'm not sure if we can do that via fax or if I need another meeting to do that.

CHAIRMAN LAPOINTE: Bob, please.

MR. BEAL: Yes, I think this is a relatively straightforward issue, considering alternate maximum trap numbers. We can develop this. I envision this being a three- or four-page document. It doesn't have to be too complex.

I think the discussion today is pretty clear on the direction the board would like to go and see included in this document, so I think this is something we could pass through a fax poll.

We could probably do that in mid-January sometime with public comment prior to the March meeting, and

the board can take final action on this issue at the March meeting, the second week of March.

CHAIRMAN LAPOINTE: Is there opposition from board members to that? I see no heads saying there is opposition. Do we have the motion change?

The motion now reads: I move the Lobster Management Board approve the Area 3 LCMT plan, including an additional 10 percent active trap reduction along with a modified trap transferability plan that embodies the language included in the modified Area 3 LCMT proposal included in the briefing packet (except the maximum number of traps will be 2,600/2,200) as outlined in the public hearing draft of Addendum IV, and recommend this plan to NMFS for inclusion in the federal process. ASMFC will initiate a new addendum to solicit public comment on alternative maximum trap numbers. Moved by Mr. Diodati; seconded by Mr. Freeman. Bruce.

MR. FREEMAN: Just a clarification, if this motion passed, all the provisions we talked about will actually be sent on to the service. The only additional issue that needs to go out for re-public hearing would be the 2,600 versus 2,200 traps; is that correct?

CHAIRMAN LAPOINTE: That is correct. You may ask one question.

MS. SELBERG: I'm assuming it's 26/22, and the changes in the conservation taxes, where the cutoff is between the 50 percent and the 10 percent is accompanied in this -- okay, thank you. I'm seeing nods.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: Okay, and I'd like to see -- you will notice that there is the 2,100 to 1,800, the 2,600 to 2,200, and then there is the conservation tax, and I think there was this drop in the ownership to five from ten. Is that all going to be in this one motion?

CHAIRMAN LAPOINTE: The switch from five to ten would be accepted as part of this motion. What would go back out to public hearing is the different maximum cap, and I guess as part of that is where the conservation tax cutoff from 10 to 50 percent would be as well.

I see heads shaking yes. Do we need time to caucus? I see nobody saying yes. All those members in favor, please raise your hand, six; opposed, like sign, one

opposed; abstentions, two; null votes. The motion carries.

Now we'll get to the easy stuff, Area 2. Carrie, please do an overview and then a summary of the public comments.

MS. SELBERG: We'll move on to the Area 2 section of Addendum IV. The first part of Addendum IV includes -- Area 2 section of Addendum IV includes a proposed goal. It is composed of both an abundance target and threshold.

It also has a total allowable landings, and it has language in there indicating that the total allowable landings is intended to be an annual benchmark so the board can judge how management measures are doing in achieving that total of allowable landings.

The TC recommendation of 1.14 million pounds from earlier this year has been updated, and Bob Glenn will be updating you on that figure a little bit later in the meeting.

The first part of the management measure sections in Addendum IV focuses on effort. There are three different effort control options in Addendum IV. The first is the 2002 LCMT proposal. Allocation is based on history. It's a BIN system and it does include a transferability component.

The second effort option is the 2003 LCMT proposal and it has qualification criteria for trap allocation. It has trap reductions with permit and trap transfers. It has the ability to include a transferability component as well.

The third effort control option is a uniform allocation. It has the option to or not to include transferability. The technical committee recommendation for uniform allocation in order to stay with the TAL of 1.14 would be for 240 traps.

The other management measure options included in the document, the first is a quota. As discussed at the last board meeting, the allocation scheme for the quota would be determined by the board if this option were chosen.

The next is a closed season. With the 1.14 TAL, the technical committee's recommendation was a closed season of one month. Then there were two traditional management measure options included.

The first was for annual gauge increases of 1/16 or 1/32 of an inch. The second option was for a

maximum size. And, finally, there were measures included for non-trap fishermen. Based on the TAL of 1.14, it would be 30 lobsters per day and 150 per trip.

Public comment on this section. There was considerable public comment on this section of the draft addendum, and I'm going to hit some of the comments that we heard the most often. There's more extensive comments included in your briefing materials.

First, there was concern expressed about the TAL, both about the overall concept of including a total allowable landings as well as a specific number of 1.14 million pounds. We heard the most support for the 2003 LCMT proposal. Many members of the public stressed that they supported it as submitted by the LCMT.

There wasn't support for closed seasons, and there was limited support for quotas. There was mixed support for traditional management measures, and the majority of the public was against additional increases.

NOAA Fisheries, I want to reiterate their comment before, that if transferability programs are adopted, that they be standardized across areas. They also expressed concern about the control date. They have already set one for September 1, 1999.

I also have a comment that I want to outline from the Area 2 LCMT. Because I don't believe their chairman is there, I'm going to step through their meeting summary which was included in your briefing packet and outline some messages they wanted to send to the board and some motions that they passed at their last meeting.

We highlighted some concerns for the LCMT to address specifically. One of them was for the vessel upgrade limit of 15 percent. NOAA Fisheries had expressed some concern about their ability to implement that.

The LCMT discussed this and decided that they weren't going to recommend any changes, and they still would like that included in the document.

There were a couple of sections that the board asked to be changed from the LCMT proposal at the last meeting, including that the no new endorsements for Area 2 would be both for federal and for state, not just for federal license holders. The LCMT was fine with that change.

There was also an addition of the 50-trap minimum for transfers, and the LCMT was comfortable with that addition in the public hearing draft.

They passed several motions. The first was that the Area 2 LCMT does not support the 2002 Area 2 LCMT proposal, and that motion did pass.

Another one was that the Area 2 LCMT does not support TALs, TACs or quotas and that the option that they presented in August of 2003 was developed as an alternative to TALs, TACs and quotas. And, again, that motion passed.

The next motion was if further measures are deemed necessary for the Lobster Management Board, the LCMT recommends a v-notch program for legal egg-bearing females after completion of the North Cape Oil Spill Restoration Project and a restrictive protective definition of a v-notch.

And, finally, there was a motion that the Area 2 LCMT does not believe an emergency or collapse exists in Area 2 and recommends that the Lobster Management Board not renew the emergency action and consider revoking the current emergency action.

I also have comments from the socio-economic subcommittee. One overall comment from the Lobster Socio-Economic Subcommittee was that the uncertainty surrounding each option makes it difficult for the subcommittee to compare the impact of the various proposals, and they believe that the public would have the same problem in testifying on the options because there is no way of knowing whether, in their final form, they will reflect the scientific advice or not.

Then they had some specific comments on the two effort control efforts, both LCMT Options 1 from 2002 and one from 2003. For the 2002 effort control option, which is Number 1, it indicates that the LCMT proposal outlines a process for determining a total allowable trap number for Area 2.

They think it's beneficial to have that total allowable traps. It will begin to address latent effort in the fishery and would allow each state ability to allocate that total allowable traps.

They think that the banking of trap certificates adds conservation and flexibility to the program. They think that the creation of maximum allowable trap limits on individual fishermen will likely not promote economic efficiency in the harvest and use of the

lobster resource, so they either support no overall cap on trap numbers or the 800 trap level.

For the more recent LCMT proposal from 2003, they indicate that while transferable traps allow flexibility and create value, the restrictions and disincentives associated with this proposal are expected to lower the market value of traps and therefore lower the value of businesses.

They think that the 20 percent conservation tax and the 50 percent reduction in permit transfers may create a strong disincentive for transfers, leading to very few transfers. With no active trap reductions to compensate for the lack of reduction through the passive means, very little overall reduction will take place.

They also believe that it formalizes much of the latent effort in the lobster fishery in this area, because many of the license holders who currently fish less than 800 traps will be allocated 800 traps to either fish themselves or to sell. This latent effort will take many years to remove from the fishery.

They had some general comments about quotas, closed seasons and traditional management measures. Because the measures outlined in Draft Addendum IV were quite vague, the subcommittee would call the board's attention to a previous document they provided which is the Socio-Economic Implications of Management Measures.

They did want to say in particular that the difference between competitive quotas, individual quotas and group quotas are important to the outcomes associated with quota management, so if the board chooses to go with that option, they ask you to take that into consideration.

Finally, their last comment was that none of the effort control plans included a mechanism for paying back a catch that exceeded the TAL in the same way that options for addressing an overage were presented for the quota.

CHAIRMAN LAPOINTE: Thank you. Bob Baines.

MR. BAINES: The AP spent the lion's share of our meeting discussing the Area 2 issue, and this is the condensed version of what we came up with. The advisory panel reviewed the Area 2 section of Draft Addendum IV, reviewed preliminary public comment and discussed the proposed changes.

The AP has several concerns with this section of the addendum. First, the AP is concerned about the italicized statements throughout the document that indicate that the TAL and management measure may change. They believe it is difficult to comment on a measure that may change.

Second, the AP strongly supports the LCMT process and is concerned that the document includes options not developed by the LCMT. However, the AP does believe that the LCMT needs to develop proposals that meet the conservation goals outlined for the area.

Therefore, the AP recommends that the board delay action on this section of Addendum IV, not the other three sections, though. The LCMT and board should continue to work together to develop a management program for Area 2.

The board should more clearly define the goals for Area 2 and the LCMT should submit a proposal which meets these goals by a deadline in the near term defined by the board.

CHAIRMAN LAPOINTE: Thank you, Bob. Joe, did the Law Enforcement Committee have comments? They did not. Bob Glenn, technical committee recommendations.

MR. GLENN: Okay, the technical committee, at their last meeting, was charged by the Lobster Board to do a couple of tasks.

The first was to review the most recent stock status indicators. Specifically, we looked at the 2003 Rhode Island Trawl Survey indices because we had initial indications that there was a slight improvement in stock conditions in Area 2.

We also were tasked with updating the LCMA 2 TAL estimate using the most recent survey data. And, finally, we were asked to review the LCMT 2 August 2003 management proposal. I'll touch briefly on the LCMA 2 stock status.

The 2003 Rhode Island Trawl Survey results indicate a modest increase in lobster relative abundance from 0.85 lobsters per tow in 2002 to 1.57 lobsters per tow in 2003. Despite the observed increase in 2003, relative abundance still remains below the median survey abundance index, 3.393, which is the suggested interim threshold for LCMA 2.

Okay, what I have up on the board here is the Rhode Island Trawl Survey indices time series. The pink line with the square dots on it is the trawl survey

index. The solid line is the medium survey abundance, which is the suggested interim threshold.

And as you can see in the last year from 2002 to 2003, you see the survey index jump up a modest amount. However, the important thing is that it still remains well below the time series median values for the trawl survey.

Based on this, the TC reiterates its concern for the poor stock conditions in this area. I would also like to just note that a comprehensive review of the LCMA 2 stock status was not performed at the last technical committee meeting simply because for the rest of the 2003 information, the fisheries-dependent from sea sampling and landings, isn't compiled yet. That information is collected up through the end of the year, so we don't have that to give a comprehensive stock status report.

Taking that updated trawl survey information, the TC updated the TAL for Area 2. Based on that 2003 index, the TAL would increase from the original that we reported last time of 1.1 million pounds up to 2.1 million pounds.

What this number represents is the level of harvest necessary based on 2003 relative abundance to achieve the suggested interim benchmark, which is the 25th percentile of relative exploitation.

As far as the review of the specifics of the LCMT 2 plan, some general comments from the TC are as follows. TC members felt that the qualification criteria of 1,000 pounds to receive an 800 trap allocation was not stringent enough and would not effectively cap or reduce fishing effort in the short term.

TC members indicated their proposal does not sufficiently address effort among current license holders and notes that the plan actually has the potential to allow an initial increase in traps over current numbers.

The TC did note the benefits of the 50 percent reduction upon initial permit transfer and also the 20 percent conservation tax applied to trap transfers. Although these measures would take -- the one issue we had with those is that they take considerable time to be realized. They're not an immediate fix.

In general, the TC believes that this plan could be a viable long-term solution to cap or reduce fishing effort; however, this level is not yet determined

because a comprehensive analysis would need to be completed. However, these measures are insufficient to address the immediate stock crisis that is occurring in this area.

Our overall findings and recommendations relative to the August 2003 LCMT plan is that there was a consensus among the TC that the 2003 LCMT 2 plan lacked conservation measures sufficient to rebuild the LCMA 2 lobster resource.

The TC felt that none of the measures suggested by the LCMT would be effective at reducing lobster harvest in the short term, which is critical to rebuilding lobster spawnings tock biomass in LCMA 2.

In light of the current poor stock conditions in LCMA 2, the TC feels that much more aggressive management actions are necessary to rebuild the LCMA 2 lobster resource. That's it for the TC.

CHAIRMAN LAPOINTE: Thank you, Bob. I want to remind board members and members of the audience we have one half-hour to do this. I'm having Vince actually check whether we can get this meeting room this evening.

If the answer to that is yes, I will make sure we go to members of the audience so they don't have to hang around all night in this fair city, and they can go where they need to. I apologize for that but we're checking. Having said that, Bill and Jerry.

MR. ADLER: Thank you, Mr. Chairman. Bob, when you were doing your calculations here, did you take into consideration what the four gauge increases in two years has added into the fishery or have we not? Are we still waiting for that information? First question.

MR. GLENN: What I believe is that those four gauge increases over the last several years would be seen or be given credit for by the increase of what we've seen in the trawl survey. After those last two gauge increases, we've seen the trawl survey index for 2003 jump up last year. As such, that increased the total allowable landings estimate by twice the amount.

MR. ADLER: I noticed you used the word "modest" and I think it was – I'd hate to see how big it would have to go before you said "good" increase instead of "modest." I did see this increase here that you just mentioned and the associated TAL change.

I just think that this plan, the option plan which you said is insufficient actually would be a good way to get rolling on this, but at the same time I think that you have to give some more time to what you already did to this area with regard to increasing the lobsters.

As you said, you just don't have the figures yet. I think that we need to know those figures beyond just this trawl survey that you just did, which I'm glad you did. I think there needs to be more before we take these guys out and finish them off, which is what we're doing here.

CHAIRMAN LAPOINTE: Jerry.

MR. CARVALHO: Yes, on the public hearing process, I don't know if Carrie mentioned these, but I had made notes during the process, and I want to express to the board that there was considerable concern expressed by the different gauge sizes affecting Area 2 management between Area 6 and Area 3 and not everyone working on the same plane, as I had spoken earlier before.

I think I had mentioned that Rhode Island lobsters were being thrown back from one area and they were being collected in another area, because we're talking about the same stock but on different management areas.

The other comment that was expressed there was that there was insufficient information available for informed consent by a lot of the fishermen. They had lots and lots of questions. I started to write questions down through this process and I got to 20 and I quit because I got lost on the questions.

I might also mention that Rhode Island Lobstermen's Association opposed any additional restrictions to the non-trap fishery. There was expressed also by some respected fishermen that they have seen more sub-legals in the last year and that we need more time before additional changes are taken.

We think we've done a great deal up until this point. And, it's not time to move with further changes because we haven't even truly evaluated the effect of the changes that have taken place. Thank you.

CHAIRMAN LAPOINTE: We have 20 minutes and we can get this room at 7:00 tonight. It would be my thought -- and I don't like night meetings any more than anybody else, but given how long it takes us to get through these difficult issues, I am reluctant to try to force this through in 20 minutes, given we have some other issues to deal with, so my thought is to

meet back at 7:00 tonight here and to complete work on the rest of the agenda.

We can actually pick up a couple other items but not to complete work on the Area 2 part of Addendum IV until this evening, because I don't want to cut off board members. I don't want to cut off members of the public because I just know in our history that 20 minutes is insufficient to get this kind of work done. Is that acceptable to board members? Pat White.

MR. WHITE: Just a question. Is there no possibility that this could be fit in tomorrow morning as an addition?

CHAIRMAN LAPOINTE: I did not ask but I think our agenda is full tomorrow morning. Winter flounder and the South Atlantic Board concurrently so, no, that won't work. Jerry and then Mark.

MR. GIBSON: I said it presents travel and accommodation problems for me. I've already checked out and have reservations to leave this afternoon.

CHAIRMAN LAPOINTE: Do you think 20 minutes is sufficient to give justice to your issues?

MR. GIBSON: No, I don't.

CHAIRMAN LAPOINTE: I agree, thank you. I mean, it creates a lot of problems for everybody, including people in the audience. I wish that was not the case but it is. Audience members, are there people who will not be here this evening who want to make comments? We've got 20 minutes. We can use that time to listen to you until 12:30 and then we'll reconvene. Dennis.

MR. ABBOTT: Thank you. We have two management boards scheduled for this afternoon. Would it not be more practical to delay one of those until the evening and continue this immediately after lunch? I think the importance of lobster and having everybody in the room right now is much more important than the other two management boards.

CHAIRMAN LAPOINTE: Which management boards are meeting?

MR. ABBOTT: I think we have menhaden at 2:00 and we have spiny dogfish at 4:00.

CHAIRMAN LAPOINTE: The difficulty is there's people expecting to come to those, and we would end up with the situation that we had yesterday where

striped bass and horseshoe crab impacted the rest of the afternoon, and I am reluctant to do that.

MR. ABBOTT: I don't want to debate that but we're all being impacted. Do you want to buy my theater tickets this evening?

CHAIRMAN LAPOINTE: David Borden.

MR. DAVID V.D. BORDEN: The Menhaden Board will be glad to give you 20 minutes of our time.

CHAIRMAN LAPOINTE: I don't think 20 minutes washes, David. I mean, we've got the stock assessment to discuss, the terms of reference. We've got the database. I mean, this is not simple, you know that. I mean, your home state is affected, and I appreciate that offer but we've got -- I mean, again, given the track record of this board, an hour of discussion to do on Area 2.

MR. TOM GARY: Get on with it.

CHAIRMAN LAPOINTE: All right, come up here and give your comments. We'll meet this evening.

MR. GARY: Tom Gary, lobsterman from Point Judith. Don't waste time, let's go, get going. You've got until 2:00. Let's go, skip lunch, let's go.

CHAIRMAN LAPOINTE: I don't have until 2:00. There is an event that people have to go to at 12:30. That's what I told people a while ago and that's what I told you a half an hour ago, so if there is a comment you want to make to the Area 2 stuff, that's what I said we would do is listen until 12:30 to people from the public.

CHAIRMAN LAPOINTE: Gentleman in the back left again.

MR. McSALLY: Thank you, Mr. Chairman, I will be brief. Again for the record it's Mark McSally. I represent RILA, Rhode Island Lobsterman's Association. I did submit public comments at the public hearing in Rhode Island.

The issues that RILA has primarily again go to process and notice. Throughout the public hearing document, there are references to a TAL as if it is going to be adopted. These are issues that I think have been already brought up this morning.

I think they need to be looked at by you before any decisions are made. RILA opposes the use of any TAL or TAC as has been made clear already. And,

again, as it is in the document, no significant comment could be made by the members of the Rhode Island Lobsterman's Association because they don't know what it is.

There is a suggestion that you were going to adopt one based upon the information that had been put forth by the technical committee a while ago. But, again, there is not indication as to what management measures would be used if that were to be adopted, what the quota might be, what the trap allocation might be.

So without having that information before them, they could not comment so I would suggest that if you are inclined to adopt some sort of TAL, that it be done first and then that be put out to public hearing for comment before it become final so we know what the management measures are.

With respect to the use of a TAL for a management tool to track the fishery, we can't prevent you from doing that. That would be the "soft TAL", as I understand it. But we are opposed to any type of hard TAL or TAC which would be imposed without a further public hearing.

Two other quick points, and I'll let somebody else speak. I know your time is short. We don't think that the current management measures or the proposals give adequate consideration to what has been done already in terms of the gauge increase. We need some time to see how they impact on the fishery.

The reports of all the fishermen are that there are a great number of increased sub-legals and there's a lot more activity than there was before, so we think it's working. We think you should look at that before you actually make any final decisions.

The issue of gauge increases between the different areas that's been brought up, it has to be dealt with in terms of the inconsistency. There also has to be some effort control, and I think the LCMT plan as proposed in August, not the old one from 2002, deserves consideration.

That's what my client supports. They'd work with anyone in terms of modifications that might be necessary to meet whatever the criteria is. And, again, given the short period of time, I'll stop at that point.

CHAIRMAN LAPOINTE: Sir, I'm sorry, I missed you a while ago.

MR. MIKE TYLER: I'd just like to clarify.

CHAIRMAN LAPOINTE: Can you please give us your name.

MR. TYLER: Mike Tyler, Area 6. I'd just like to clarify something regarding the one stock, Area 2-Area 6 theory. We in fact believe -- and it's backed up by data including the Millstone Tagging Survey -- that for the most part there is a west to east migration of lobsters.

In other words, lobsters out of Area 6 move out of Area 6 and the majority of them move out. There's some mixing in the Eastern Basin but as far as the west end goes, the lobsters don't move west. Those lobsters are moving east. So when you specifically, sir, talk about the stock moving back and forth, I believe that the data would back up the truth, which is the fact is the lobsters move out of Area 6 into Area 2.

CHAIRMAN LAPOINTE: Thank you. George.

MR. DAHL: George Dahl from Area 6. I don't like to talk about other area's plans, that's their business, but there has been discussion about that it's one stock and Area 6 should hurry up and do stuff that Area 2 is doing.

Area 2 has embraced this ASMFC process from the very beginning. They were the first to go to gauge increases. They were the first to go to trap limits. Their state then did not continue their moratorium, gave out thousands of new licenses. Everyone else got 800 traps so there were more traps in the water then there were in the very beginning.

And for all their efforts, according to the technical committee, they are in the worse shape of anyone. So, in Area 6 we were slower to embrace this stuff, and it appears to the fishermen that we are doing better then Area 2.

There's an article in this paper about it and it says, "The biggest void in Area 2 is scientific knowledge." A lot of fishermen I've spoken to there do not speak at public meetings and do not speak in the LCMT thing, which I do believe in the LCMT process, but it is their duty to go out and solicit information from fishermen because fishermen don't necessarily come to them.

And, they said they want what they have put in place so far. They want a chance for that to work. They

don't want to go to these new measures, these drastic measures. They want to see if what they have done is going to work. This slight increase in the trawl survey indicates that something is working. Thank you.

CHAIRMAN LAPOINTE: Thank you, George. Other comments.

MR. CRISMALE: Thank you, Mr. Chairman. Nick Crismale, Area 6. There's some talk about the consistency between Area 2 and Area 6, this gentleman mentioned over here. It has been determined through a lot of research that we have -- several symposiums that we have on the problem in Long Island Sound, that the lobsters in Long Island Sound are genetically different.

Unfortunately, we are lumped in the same area, a different area, but the same stock assessment as Area 2. That's unfortunate, but I don't think that we should be made to be consistent with Area 2 with the problems they have. We have our own unique problems and a different stock that we work on. And the fishermen in Area 2, and I'm sure the managers there can also verify that. Thank you.

CHAIRMAN LAPOINTE: Thank you. Other comments. Staff is discussing a possible time option so I'm going to let them do that for a moment. Ritch.

MR. WHITE: I guess looking at this agenda that it seems to me that we probably should have had more time allotted for this agenda, and I just wonder the next meeting that be looked at a little harder. I mean, none of the issues we deal with go quickly anymore. They just don't. We just have to have more time.

CHAIRMAN LAPOINTE: A well-put comment. Other comments on Area 2. Bill.

MR. ADLER: Mr. Chairman, would it be at all possible that rather than coming back tonight or something like that, that we would postpone -- and this is not a motion, I'm just thinking -- postpone the further decisions, which is only on Area 2, not to hold up the rest of the stuff, until the next meeting?

And a couple of things, instruct the LCMTs for Area 2 to meet and come back with some ideas. There were some ideas that were mentioned in the LCMT Area 2 meeting that we can't do because it wasn't in the addendum, anyway. They had some good ideas and the technical committee did suggest that they get together, so I'm just wondering if that might be a way through this.

CHAIRMAN LAPOINTE: We have through the generosity of the Menhaden Board chair -- and many of you sit on there -- he said we can have an hour from 3:00 to 4:00, and which would get away from some of the people's travel plans so my suggestion would be we come back at 3:00.

We get ready to rock and roll. I will talk to people about the implications of carving Area 2 out and leaving that until March, but my first inclination would be to meet after 6:00 again to try to get this done.

CHAIRMAN LAPOINTE: Is that amenable to board members, to meet from 3:00 to 4:00 -- that's only one extra hour -- and dive right into Area 2. I believe there are some motions that people have that they are ready to make to get right into that. I don't see any heads shaking no, so the Lobster Board will reconvene at 3:00 but we're not done yet. Can we get to the assessment in terms of reference in ten minutes?

Stock Assessment

MS. SELBERG: While we're getting this up on the computer -- it's going to take a minute due to some technical difficulties -- the draft terms of reference are in your briefing materials. It's in the packet that's titled "briefing materials included on the briefing CD," towards the end of that. It's a one-page document.

MR. GLENN: Okay, at the last technical committee meeting, the Lobster Technical Committee reviewed some potential draft terms of reference that were given to them by the board, and we supplied comments to those and refined them to hand back to the board for I guess a final decision relative to what the terms of reference would be for the next assessment.

The terms of reference, after considerable discussion about each of them, these are the terms of reference that we feel would be appropriate for the next assessment.

The first terms of reference is compile data needed for stock assessment purposes, updating the database to include the most recent information available. The second is to evaluate and revise if necessary the boundaries of the stock assessment areas as outlined in the last peer-reviewed assessment based on objective criteria.

The third is for each stock assessment area estimate the current levels and historical trends of factors such as egg production, biomass abundance and natural and fishing mortality rates.

The fourth is to address and incorporate as applicable recommendations from the 2000 American Lobster Peer Review, use input parameter estimates and models used in the last stock assessment as well as any new models and input parameter estimates developed as appropriate.

And, finally, update the current biological reference point F10 percent and develop additional biological reference points, including limits, thresholds and targets for F and biomass if feasible, as well as characterize uncertainty in stock status.

CHAIRMAN LAPOINTE: Questions for Bob. I see Eric Smith had his hand up.

MR. SMITH: I have a comment on these. It's very important in Number 5 to convey the proper emphasis to the people who do the stock assessment and then for any subsequent peer review.

I would suggest we say the same thing but we say it in reverse order; that is, "use new models and input parameter estimates as appropriate and also consider the input parameter estimates and models used in the last stock assessment for purposes of determining trends in the resource."

That I believe is more consistent with the vote we took back at our previous meeting, and it conveys to the technical group that this isn't a turn of the crank. It isn't the same old business. We had this debate before so I won't prolong it. We want a new full-blown assessment and we also want to use the old numbers for comparative purposes.

CHAIRMAN LAPOINTE: Is there objection to that proposed change? Seeing none, other questions for Bob. Bill Adler, and then I've got a question.

MR. ADLER: Do you have a ventless trap survey hidden in this that you're going to be doing too to add to the statistics? That's the first question. Secondly, is this the place where socio-economic report -- that isn't? Okay, fine. And natural mortality rates, how do you figure that? That's the big deal right now.

MR. GLENN: In regards to the natural mortality, that's addressed in the third reference point which specifically states to estimate the current levels and

historical trends of egg production biomass abundance natural and fishery mortality.

And it also is addressed by, I believe it's the fifth reference point, which says, "use input parameters and models using the last stock assessment as well as new models, input parameters"; or, whether it's amended to go in the other direction, to have the new models and input parameters first, input parameters would include natural mortality.

MR. ADLER: Okay, I would suggest it would be wise to make a big deal in your reports about that type of issue because that will be a big discussion point.

CHAIRMAN LAPOINTE: Bob, my question was -- the Maine's technical committee member was recommending some more specific questions on some of these, kind of sub-questions, and you've looked at that. Can you please just give us kind of your sense of how the technical committee would look at those kind of questions.

MR. GLENN: Yes. As George mentioned, the Maine technical committee member raised a few additional specifics relative to the six reference points that I just mentioned.

To Reference Point Number 2, they suggested to investigate the implications of changing stock boundaries, especially with considerations to the assumptions of stock exchange between areas and impacts on losses to an assessment area.

Losses to a stock area can be accomplished through fishing and natural mortality. For example, if larger lobsters migrate out of one area, assumptions regarding stock exchange may be violated and could affect estimates of F.

That's a valid point, and it's an issue that we've struggled with in all the previous assessments and also in assessing any management plans. One hurdle that I can see relative to making this a specific in terms of references, to truly answer that question it requires a lot of information of which I don't believe we have enough to do that in a comprehensive fashion.

It requires a lot of information relative to exchange rates of immigration and emigration from one area to another that we simply don't have. And in the absence of that, it's very important. That's data that we need. I don't know if that's something that the

technical committee can commit to providing you in the time period allotted.

CHAIRMAN LAPOINTE: I don't want us to slow this process up because we're now down to a short number of minutes, but it raises some long-standing questions. Are there ways to get those addressed?

If you put it in the context of the terms of reference, discussing a means of getting at those, the information you need strikes me it would be a useful thing unless it has already been done.

MR. GLENN: The technical committee could address it in a few ways. The way that I was talking about would be to specifically parameterize those immigration rates and include them into our models. That I don't think we can do. We can look at them and determine specifically what we need and make suggestions in the assessment of information that's vital to be able to refine that in the future.

CHAIRMAN LAPOINTE: Harry, you had a comment.

MR. MAERS: Yes, Bob, just one clarification on Number 5 in terms of new models. Are these new models that will already have been peer reviewed prior to the stock assessment or is the anticipation here that the stock assessment itself will generate and entertain suggestions for new models?

MR. GLENN: I believe that question is kind of up in the air right now, and I guess I would ask Carrie for some insight relative to that.

MS. SELBERG: We are looking into if we are able to peer review the models before the stock assessment takes place. That was something that was suggested by the technical committee, that once the new models are proposed by the modeling subcommittee, that there be some sort of peer review process of the models before the stock assessment takes place and then to peer review the entire stock assessment taking place later in 2004.

We're looking into budget considerations and ways that we might be able to do that in a timely way. We don't have some clear answers yet on if we're going to be able to do that.

CHAIRMAN LAPOINTE: This is a time question as well because we're running out of time. Do the terms of reference have to be finalized now or can we do that in March?

MR. GLENN: I think the sooner the better, but the bottom line is that, yes, you probably could do it in March because as long as we don't have any major changes, that this is the basic structure, we have more than enough work here to keep us going well into March.

CHAIRMAN LAPOINTE: I suspect that's the case. Is there opposition to waiting to finalize this until March?

MR. WHITE: So moved.

CHAIRMAN LAPOINTE: I don't need a motion.

MR. SMITH: Or 4:00 if we should have five minutes to spare.

CHAIRMAN LAPOINTE: Or 4:00 if God is with us, between 3:00 and 4:00. That's a good point. It's 12:30; we have to be somewhere else at 12:45. I'll take one comment from Bonnie and then we are going to not adjourn but recess until 3:00.

MS. SPINAZOLA: Quick question. With Addendum IV, since we don't know that it's finalized and I don't know if it will be finalized, has the board agreed to recommend the Area 3 plan, the transferability portion of the Area 3 plan to NMFS, whether or not you agree wholly to accept Addendum IV?

CHAIRMAN LAPOINTE: No, we have approved the Area 3 portion, the most restrictive, the vent size. At some point at this meeting, we will have to finalize Addendum IV for approval by the board, and for I assume following up recommendations to the Secretary. We have not done that yet.

MS. SPINAZOLA: Okay, thank you, so those will move forward, then.

CHAIRMAN LAPOINTE: Thank you and thank you all for your patience this morning. We'll see you back at 3:00.

(Whereupon, the meeting recessed at 12:30 o'clock p.m., December 17, 2003.)

WEDNESDAY AFTERNOON SESSION
December 17, 2003

The meeting of the American Lobster Management
Board of the Atlantic States Marine Fisheries

Commission reconvened in the Terrace Room of the Roosevelt Hotel, New York, New York, on Wednesday afternoon, December 17, 2003, and was called to order at 3:10 o'clock p.m. by Chairman George LaPointe.

Draft Addendum IV - Continued

CHAIRMAN LAPOINTE: Good afternoon. This is a continuation of the Lobster Board. Can Lobster Board members please take their seats. Can other folks please take their conversations outside. My thanks to David Borden for giving us this time this afternoon.

We stopped the meeting at 12:30 because of the Hart Luncheon. We will resume the Lobster Board. We were just beginning to discuss Area 2 management measures are a part of Addendum III.

For those folks who weren't here, we went through and approved the provisions on vent size, the provisions on most restrictive and the Area 3 measures with one issue to be sent back to public comment, so we are ready to go.

We've got enough people to call it a quorum. Actually, Mark Gibson, do you have a motion to get the Area 2 discussion kicked off?

MR. GIBSON: I have two motions, actually, although I suppose they can be combined. For the first one, move that the ASMFC Lobster Management Board adopt Option 2 under effort control measures with conservation tax Option 2 and with the 800 trap allocation criteria increase from 1,000 to 2,000 pounds.

MR. NELSON: Second.

CHAIRMAN LAPOINTE: Made by Mark Gibson, seconded by John Nelson. This is Option 2 that's on Page 24 of the addendum?

MR. GIBSON: I believe so. It was under effort control measures and it was the LCMT 2003.

CHAIRMAN LAPOINTE: We have a motion and a second. Bill Adler.

MR. ADLER: I believe once again I'm going to bring up this idea, most restrictive. Option 2 had 1,000 pounds. If you were going to try to go and raise the bar, it should have gone out to public hearing, so I've got a problem. I've got no problem

with the motion to approve Option 2. It's fine. That particular part of it I have a problem with.

CHAIRMAN LAPOINTE: Other board members. Staff is just looking at this for a moment. Comments from board members while they're looking at it. That is legitimate, Carrie says so.

Will the next part of -- I mean, your next motion will be to carve away some of those measures that we have not decided on, because we need to do that as well, I think. Board members, comments, questions. Bob, the technical committee, this is based on the LCMT 2 option.

MR. GLENN: What Mark is proposing I believe is the August 2003 LCMT plan with a slight amendment to it.

CHAIRMAN LAPOINTE: Okay, thank you. Jerry.

MR. CARVALHO: That motion has been seconded?

CHAIRMAN LAPOINTE: It has been.

MR. CARVALHO: On this motion, there is a conflict with how we deal with the trap transfer provisions in state waters. Our general assembly hasn't supported the idea of individual trap access to state waters as a property right, a transferable property right. This would conflict with state law.

In effect what the commission is saying is we're going to create a regulation or we're going to adopt a regulation that creates a property right and impose it upon the state of Rhode Island in Rhode Island state waters. I don't think the commission can do that; so in light of that I would move that the motion be amended to exclude the trap limits and trap transferabilities.

CHAIRMAN LAPOINTE: There is a motion to amend to remove trap limits?

MR. CARVALHO: No, the transferability that is associated with this Option 2.

CHAIRMAN LAPOINTE: So the transferability portions of Option 2?

MR. CARVALHO: That's correct.

CHAIRMAN LAPOINTE: Is there a second to that motion? We have a motion and we're looking for a second. Seeing no second, the motion dies.

MR. CARVALHO: Well, can I follow up on a discussion?

CHAIRMAN LAPOINTE: You may.

MR. CARVALHO: I don't know how I'm going to go back and tell the general assembly that this commission has directed that they're going to impose an establishment of private property in state waters. I don't know how we can do that and force that upon the state.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: There's another way of looking at it. As I understand it, the motion was offered by the state's executive agency responsible probably presumably under state law and the constitution for managing marine resources in the state, and I think that carries some weight in the issue.

There may be a difference of opinion within the state as to what the state's laws allow and don't and what laws may be needed or not needed but frankly any action we take -- we heard about striped bass in New Jersey the other day.

Many actions that we take may require action of state legislatures in order to carry them out; and if that's the case, that's the case. It's not a situation that's un contemplated by our process.

That's why legislators are part of our process here. And, you know, we have choices to make once actions are taken. I don't think -- I'm not quite sure I see the motion as telling the Rhode Island state legislature that they've done something wrong.

I think the motion might or might not -- I'm not even sure -- create the need for legislation to comply. That's not an uncommon situation around here.

CHAIRMAN LAPOINTE: Jerry.

MR. CARVALHO: In response to Gordon's comments, there is a clear difference between establishing a minimum size, closed seasons, and that sort of regulation. but when we established a regulation that in effect creates property, it runs in conflict with the general assembly or the state's prerogative.

It even runs in conflict with our constitution. There are constitutional questions. There is a clear difference between establishing a property right or

telling a state how many participants can participate in state waters.

If we do this in the commercial end, what's to say that we don't take an action in another fishery and dictate how many commercial fishermen can participate or how many recreational fishermen can participate? I think we're running into a problem here involving state's rights, and it's not just a biological limit or a biological conservation measure.

CHAIRMAN LAPOINTE: Mr. Colvin.

MR. COLVIN: I understand that is Mr. Carvalho's opinion. It is not mine, and I don't necessarily think it is everybody's opinion, but it is an opinion, and I think that's what's important.

CHAIRMAN LAPOINTE: Board members, discussion. Harry.

MR. MEARS: This option, as I understand it, involves anyone landing from 1 pound to 1,999 pounds would get an allocation of 100 traps, and then anyone landing over 2,000 pounds would be able to get rather than 100, an additional 700 traps, 800 traps. I mean, am I interpreting this option correctly?

MR. GIBSON: Yes.

MR. MEARS: Okay. One comment I have is that I look at that knife-edge differential as incredibly discriminatory in terms of making that decision at that specific point and allowing that differential in effort. Thank you.

CHAIRMAN LAPOINTE: Other board members. Eric Smith.

MR. SMITH: You could see this evolving over the last day, and there's a couple of ways we can deal with this. It's awkward and even undesirable in my view to overrule the major Area 2 states on these kind of things, but Gordon actually makes a very good point.

The executive agency of one of the states is calling for this, and you have to give a little weight to that. I want us to all recall that the two states and the LCMT for Area 2 asked for this consideration of the board just about two years ago.

So, another way to approach in my view what is a dilemma is to look to that area for guidance and follow their lead, and, frankly, in some respects we're

getting that. We went out to public hearing with something.

It's got a little bit of tuning, which is normal and understandable and desirable in my view. We've been at this for a couple of years. I have only been involved in two other meetings since Ernie retired, but it seems like we're paralyzed on this.

In my view, we ought to vote for what the LCMT and the state agency with the principal landings is recommending as a start and then move forward. And if you need to fix it with a subsequent action because there is something that we didn't get quite right, that's better than not doing anything.

The call was based on a resource emergency based on fishing mortality, and that's why the commission was appealed to. I think it's about time that we have to react that way.

CHAIRMAN LAPOINTE: Thank you, Eric. Other board comments. Seeing none, audience members, comments on the motion.

MR. McSALLY: Just one quick comment, if I could, Mr. Chairman, on the issue of legislation. Not to differ with Jerry but we have differed before. I believe if the authority doesn't exist already in the new Commercial Licensing Restructuring Act, I believe between the department's lobbying efforts as the chief administrative department dealing with fisheries, lobstermen's association's support of it and others, there is a fairly good chance the legislation, if it is needed, could be adopted or pushed through the general assembly. That's my only comment. I'm going to debate the legality of it but I think it is possible to do so.

CHAIRMAN LAPOINTE: Thank you. Other members of the audience. Seeing none I'll go back to the board. Board members, do we need any other discussion?

MR. WHITE: Call the question.

CHAIRMAN LAPOINTE: Seeing none, the question has been called. Time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Rhode Island, are we ready? Are you caucusing still?

MR. VITO CALOMO: Did this go out to public hearing?

CHAIRMAN LAPOINTE: Carrie is going to give you the right answer.

MS. SELBERG: This option did go out to public hearing. The change is 1,000 to 2,000 pounds. It went out to public hearing with 1,000 pounds and the motion includes increasing that to 2,000.

MR. CALOMO: So this is not the original way it went out to public hearing; that's what you're saying to me? It went out to public hearing but the poundage has changed.

MS. SELBERG: There's one change in the overall LCMT proposal, which is the 1,000 to 2,000.

MR. CALOMO: Okay, thank you very much. We're almost ready here.

CHAIRMAN LAPOINTE: I think we're ready. We have a motion. Do you want the motion read? We've got the motion; we do not need to read it. All those states in favor of the motion to adopt Option 2, please raise your hand, five in favor; those voting against, three. The motion carries. I'm sorry, abstentions or null votes. Bruce is abstaining.

MR. FREEMAN: Abstention.

CHAIRMAN LAPOINTE: When I argue with myself, I quite often null out so that's better than that. All right, other things we need to do for Area 2. Mark, you have another motion?

MR. GIBSON: Move that the ASMFC Lobster Management Board adopt Option 1 under traditional management measures so that future gauge increases for Area 2 are consistent with those required for Area 3.

MR. NELSON: Second.

CHAIRMAN LAPOINTE: Motion by Mark Gibson, seconded by John Nelson. Board members, comments, questions. Bill Adler, then Paul Diodati.

MR. ADLER: Under this particular option, we would continue to go up on the gauge in Area 2; is that correct?

CHAIRMAN LAPOINTE: Consistent with Area 3 is my understanding.

MR. GIBSON: Yes.

MR. ADLER: Okay, we're dealing here with an area that has small lobsters, and we haven't even seen what the gauge increases that have already happened to them have done. I don't think that we should continue to go up on the gauge on these people.

It's like putting a trap out there with your door open for these guys. It's not out further where the bigger lobsters are. They have a smaller lobster, and it has even been confirmed that they even mature earlier than other places.

I just don't think it's fair, without knowing what the gauge increases that you've already done, what the result is, I don't think you should keep on going off into the ozone layer with more gauges. I am definitely opposed to this at this time until we can find something else out.

CHAIRMAN LAPOINTE: Thank you, Bill. Paul Diodati.

MR. DIODATI: I also oppose this particular motion for slightly different reasons. I don't believe that moving from 3-3/8 to 3-1/2 is going to provide a significant increase in conservation. I'll rely on the technical committee to provide that. I'd like them to provide comment on that.

Furthermore, it exasperates a problem that I brought up earlier in that the Commonwealth of Massachusetts would now be faced with differential gauges where that difference will be as much as one-quarter inch between areas. We cannot enforce that.

I've already stated that we cannot enforce that. It's going to create a lot of animosity between our fishermen given that size difference.

So, as we continue to go further and further apart on these size limits, I'm going to have to stress that it would be very important for this board to consider a motion or some action that would require a single size limit per state regardless of how many areas you have.

CHAIRMAN LAPOINTE: My understanding of this is that it would make it consistent with Area 3, and I think the Outer Cape as well, so it would actually reduce your number of size limits down to two. Pat White.

MR. WHITE: Can somebody help me out here a little bit on this? I didn't know that we had gauge increases in Area 2. They were different, but you've just taking the gauge increase out of Option 1 and

putting it in this Option 2 to be commensurate with the Area 3 gauge increases?

CHAIRMAN LAPOINTE: If you go to your document, it's on Page 26. It was outside of the Option 1, Option 2 part of the plan, and so it's just taking other parts of what went out to public hearing and adding that to what was passed as a part of Option 2.

MR. WHITE: Okay.

CHAIRMAN LAPOINTE: Is that right?

MS. SELBERG: Yes, it's on Page 26, Section 5.3.4, traditional management measures, and Option 1 says increase the minimum gauge size in annual increments, and the motion is simply providing more specific guidance on what those gauge increases would need to be.

CHAIRMAN LAPOINTE: Mark Gibson.

MR. GIBSON: Yes, Carrie is right. The traditional measures specified for 2004, this would link Area 2 gauge increases to those that you've already indicated as necessary to be required for Area 3, which doesn't start until 2005.

So, it's actually less rigorous than the traditional measure option in the actual public hearing document because you're first increase wouldn't come until '05 instead of '04.

CHAIRMAN LAPOINTE: Thank you, Mark. Bill Adler.

MR. ADLER: I just want to also remind everybody that the LCMTs did -- this was one of these things that they all agreed on; don't go up on the gauge. All agreed on at public hearing; don't go up on the gauge.

There were a lot of different ideas about a lot of the other things in here, but this was one they all agreed on. So, I mean, this is just not the way to go.

CHAIRMAN LAPOINTE: In response, the dilemma the board has is that we have a resource condition that we've been asked to address. We had a number of ways of doing that. Remember, the LCMTs are advisory to us. We have the technical committee report saying that none of the LCMT plans went far enough, so it's trying to put some recovery into what we're doing for Area 2.

MR. ADLER: And didn't we already do that? We went up four times in two years. What's the result? Nobody knows. Can we at least find that out before we put the coffin down?

CHAIRMAN LAPOINTE: Mark.

MR. GIBSON: The emergency action which accelerated the gauge increases, all that did was institute the original Area 2 plan. It just did it earlier. So you reached your F10 target, which is a minimum, has been acknowledged to be a minimum egg rebuilding target and a reference point already judged by the technical committee to be inadequate, so this carries the gauge increases further. It puts more of the population off limits and in my view facilitates stock rebuilding.

CHAIRMAN LAPOINTE: Other board comments. Audience comments. Mark.

MR. McSALLEY: Again, my name is Mark McSally for the record. I just conferred with my client, president of RILA. They're going to take the position that they would oppose this increase at this point in time.

Again, as Massachusetts has indicated, we've had two, three, four gauge increases in the last year and a half of so. We have not yet had the opportunity to see how those have worked out, what the impact or affect has been.

As proposed by Mark Gibson, this motion wouldn't take effect until 2005 so we think you can wait until next year at this time to see whether the measures already in place have had any impact and then do it if necessary at that point in time. So we would be in opposition to that particular proposal. Thank you.

CHAIRMAN LAPOINTE: Thank you. Other public comments.

MR. BROEDER: Thank you for allowing me to speak again; Peter Broeder, Rhode Island lobsterman. I support the not going forward with the gauge increases. We're seeing a lot of lobsters out there for the first time in quite some time.

I think we have to let the gauge increases work that we've put into progress to this point along with the vents that have gotten a little bit larger. We've done quite a good thing. Prospects took pretty good for right now so I'd like to see it work before we jump ahead right now. Thank you.

CHAIRMAN LAPOINTE: Thank you. Other members of the audience? Seeing none, Jerry.

MR. CARVALHO: Mr. Chairman, members of the board, the purpose of this motion is to take Area 2 and move the increase in size in lock step with what takes place in Area 3 so we don't have this constant conflicting problems of two different sizes coming in. Right now we have two sizes landing in the state of Rhode Island. It's a problem that we can solve through this motion. That's what we're trying to do. There is a scheduled increase in gauge, anyway. By keeping them in lock step is to eliminate some of the problems associated with that.

CHAIRMAN LAPOINTE: Thank you. Other board comments. Seeing none, we will take the vote. Do we need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Ready? The motion before us, do we need it read? It is for Option 1 with the gauge size increases. Those states in favor of the motion, please raise your hand, five; opposed, like sign, three; abstentions, one abstention; null votes, none. The motion carries. Next issue, Mark.

MR. GIBSON: I'm getting to the end of the list. Move that the ASMFC Lobster Management Board adopt a target TAL of 2.1 million pounds for Area 2 in 2004 to be used as a management performance measure.

CHAIRMAN LAPOINTE: Motion seconded by John Nelson. This is consistent with what the technical committee did updating the TAL based on the trawl survey. Board members, questions or comments.

MR. GIBSON: Correct, this is not a hard quota, not something to be counted in real time. It's a performance measure to be examined retrospectively as to how we're doing in Area 2.

CHAIRMAN LAPOINTE: Bruce Freeman.

MR. FREEMAN: Thank you, George. Mark, relative to the reference, was there discussion of how that would be used simply to determine whether you've reached it or not reached it? I'm just unclear as to the fact it will be a target. How would that operate?

MR. GIBSON: In 2005 we would have a landings tabulation and the technical committee and/or the

plan review team would advise the board that the management program for Area 2 is either delivering the target landings that the technical committee had computed or it wasn't. I'm not specifying that there has to be some kind of specific response at this time from the board.

CHAIRMAN LAPOINTE: Other board members, comments. Seeing none, audience comments.

MR. BROEDER: Thank you again, Mr. Chairman, Peter Broeder. I'd just like to refresh people's memory that in the public hearing document records it did state there were 118 written-in people who opposed all TALs and 128 total with 10 who stood up at the public hearing and opposed TALs from the fishing community in the state of Rhode Island. Thank you.

CHAIRMAN LAPOINTE: Thank you. Other comments, sir.

MR. MARK MARCHETTI: Thank you, Mr. Chairman, Mark Marchetti, Rhode Island Lobsterman's Association. We cannot support this TAL at all without a peer review of the TAL and the science associated with it, especially with the trawl survey.

We personally have questions and I don't want to get into all that, but we definitely would like to request peer review. I think that was in our original plan through the LCMT. Thank you.

CHAIRMAN LAPOINTE: Thank you. Other comments. I'll go back to the board. Are we ready for the question? Seeing that we are, do we need to caucus?

The assumption is that the technical committee could update this number as we go forward, as requested by the board because, as Mark said, if we use it for a performance measure, its utility would be limited if we don't keep it up to date.

Are we all ready? The motion is as you see it on the board, using the TAL to update it to the 2.1 million and use it as a performance measure. All those states in favor, please signify by raising your hand, nine; opposed, like sign; abstentions; null votes. The motion carries. Pat White.

MR. WHITE: In lieu of this motion, Mr. Chairman, then I would make a further motion that originally in 5.3.5, for the non-trap sector they were talking about cutting it down to 30 and 150. Based on this new

information, I think that should be changed to 50 and 250 -- 50 lobsters per day, 250 per trip.

CHAIRMAN LAPOINTE: For the non-trap sector in Area 2?

MR. WHITE: Yes.

CHAIRMAN LAPOINTE: We have a motion to change the non-trap sector numbers to 50 a day, 250 per trip. Do we have a second to that motion? Do we have a second to that motion? Seeing none, the motion dies. Other issues before us, Carrie? John Nelson.

MR. NELSON: Well, Mr. Chairman, I guess I would like to have a very brief discussion. I don't have a motion unfortunately at this time, but we've heard about the concern from Rhode Island as far as having a uniform gauge in the state.

We've also heard from Massachusetts about how they have problems with the multiple gauges that they have and as far as enforcement. We had the discussion a little earlier today about recommending to the states to have a uniform gauge and with the understanding that if you wanted to have a higher gauge for another area, that you could do so.

I guess I need to know is this still something that is needed? I guess I'm asking Massachusetts is this something that they still need to have either formalized by the board as a recommendation to them or what's their feeling?

CHAIRMAN LAPOINTE: Paul, can you respond?

MR. DIODATI: Yes, I certainly think that this is something that's needed, and the way to address this is through a board action. Of course, it's difficult to determine what that gauge size is going to be from area to area.

CHAIRMAN LAPOINTE: I actually broke my own rule because it was an issue that's not part of Addendum IV, I apologize. I should have ruled John out of order and we'll deal with it later, so I'm going to get back to the addendum. Carrie, are there other issues that we need to still discuss?

MS. SELBERG: Yes, I'm making a list right now. My assumption is if -- there aren't any other motions about management measures? Do we need a motion to get rid of the rest of them or are we going to assume that --

CHAIRMAN LAPOINTE: The question is -- and it's just good for board discussion -- we have voted in a number of measures. There was a number of other measures in the document that we have not dealt with.

I mean, we can make the assumption that those measures are no longer part of the addendum. I mean, they die for a lack of action. Okay, I see heads shaking yes.

The next question Carrie has is by what date do we have the Area 2 measures go into effect. Clearly, with the gauge sizes there are some -- I mean, there are dates associated with those, the other portions of Option B. Mark Gibson.

MR. GIBSON: I'm thinking since Area 2 fishermen at least in Rhode Island are already making trap tag applications to the agency having their information certified with Stoeffel tags, then it would be very difficult to do something for the 2004 fishing year.

How would we would enact a potentially transferable program, cut people's allocations based on a poundage criteria when they've already been certified to Stoffel for a certain number of tags and so forth, so I would suggest it would be for the 2005 fishing year.

CHAIRMAN LAPOINTE: Which is calendar or June --

MR. GIBSON: I believe that the tags become available, is it May 1st or June 1st? I can't recall.

CHAIRMAN LAPOINTE: I think it's June 1st. John Nelson, did you have your hand up?

MR. NELSON: I think I'm in agreement with you, Mr. Chairman, as far as the tag year. I can't remember, though, I'm sorry.

CHAIRMAN LAPOINTE: So that would be June 1, 2005, for those measures. Is there opposition to that? Seeing none, it will be included in the document. Carrie is still considering in the end we will need a motion to include all those four items: Area 2, Area 3, most restrictive and vent size increases in the final addendum for approval.

MS. SELBERG: A couple other outstanding issues. One, the effort control option that you adopted has a control date of December 31, 2003, saying there shall be no new Area 2 permits after December 31, 2003.

Does that at all change with the thought that implementation wouldn't be until 2005?

CHAIRMAN LAPOINTE: Mark.

MR. GIBSON: I'd be happy to make it for June 1st of '04. I'm just not -- it's not clear to me how we would go about doing that, decertifying people that have already made application for tags under the existing program.

CHAIRMAN LAPOINTE: Paul Diodati.

MR. DIODATI: In Massachusetts we have catch reports that we would have to evaluate to determine this criteria, who qualifies, who doesn't. Even December of 2003 would be appropriate for an action that's needed in 2005, so it wouldn't be appropriate for an action in 2004.

CHAIRMAN LAPOINTE: The specific language is that there will be no new Area 2 permits after December 31, 2003. So if you already have a program to freeze permits, we're okay with this the two jurisdictions in particular. I see Rhode Island shaking their head yes, they're okay. Paul is shaking his head, yes, he's okay. Carrie, you have one more issue.

MS. SELBERG: On Pages 27 and 28 we have Section 6 and Section 7. Section 6 is recommendations for action in federal waters. Typically in previous addendums we've referred back to sections which include specific management measures that would require complementary action in federal waters.

My question to the board is do you want me to do that again? Is there anything I need to leave out?

CHAIRMAN LAPOINTE: I think we do need -- I mean, that would be consistent with what we've done in the past.

MS. SELBERG: Yes.

CHAIRMAN LAPOINTE: Is there opposition to that? No.

MS. SELBERG: The next question is in Section 7 I've already gotten dates on all the specific management measures, but I need a date by which each state will submit a report indicating how they're going to comply with this addendum.

You do already have a March 1st compliance report due so it could be included in that March 1st compliance report if any changes are needed in your management program to comply with Addendum IV.

CHAIRMAN LAPOINTE: Would the states be able to incorporate their plans to be in compliance with this addendum in time for their March 1, 2004, report to the board? Yes on the case of Rhode Island. Yes in the case of Massachusetts. Thank you.

We need a motion to adopt Addendum IV as modified today by the board.

MR. WHITE: So moved.

CHAIRMAN LAPOINTE: Moved by Pat White, seconded by Pat Augustine. This would come with a recommendation to the Secretary for complementary action in the EEZ. Board discussion. Harry.

MR. MEARS: Thank you, Mr. Chairman. One area that is unique to conservation equivalent proposals is they often do not appear in the mainstream part of the plan, for example, in the addendum we're approving. Right now we've already received a formal recommendation to implement the prior Outer Cape transferable trap plan under Addendum III.

However, reading Addendum IV, I'm unsure whether the action taken today on conservation equivalency is a visible part of the addendum or whether it is not and what the wishes of the board might be relative to any associated recommendations to the Secretary.

CHAIRMAN LAPOINTE: It would be my intention to have staff draft a letter to the Secretary that addresses Addendum IV and the Outer Cape with its conservation equivalency.

MR. MEARS: One follow-up comment. When we did implement historical participation, we also implemented the conditions under which the federal government would consider conservation equivalency proposals, so I would just recommend, from my point of view, to perhaps look at that part of the federal final rule because that is the format that we would need to consider such a proposal. Thank you.

CHAIRMAN LAPOINTE: So noted to staff. Board members, are we ready for this motion? Any public comment, actually? This is on approval of the things we've already discussed, finalizing it. Seeing none, do we need time to caucus? No.

Seeing none, no time needed to caucus, states in favor of the motion to approve Addendum IV, please raise your hand, seven; opposed, like sign; null votes; abstentions, one abstention. The motion carries. Thank you all very much.

There is one more bit of business, two more bits of business. The database update; is Geoff White here? Geoff, please give us that quickly.

Database

MR. GEOFFREY G. WHITE: Thank you, Mr. Chairman. The good news is for all the delays that I've reported to you in the past, we now have a system. The deliverables have been made by the contractor to the ASMFC.

The major tasks for January and February are going to be basically on staff to check and see that those deliverables meet the contract standards, load the data that we have, and then present that data back out to the states for verification to make sure that what they gave us and what we've translated and put in here is actually correct.

There are three outstanding data issues that I do have a promised delivery date of January 15th for all three of them. I have noted to both Massachusetts and Connecticut that these are a high priority item, and they've told me that they're working on it and should have it to me by mid-January.

CHAIRMAN LAPOINTE: Great.

MR. WHITE: That should give me time to load it.

CHAIRMAN LAPOINTE: And as you move forward between now and June or whenever it is, if you need help with individual states, you should rely on the state directors to make sure we get that information. It goes back to Gordon's comment that unless we get you information, we can't do the assessment, et cetera, et cetera, so be pushy.

MR. WHITE: I'll do that. Thank you. One point on the schedule is March, giving the data back out to the states for verification. We basically should be able by then to do everything that we can with the information we've already received. That's going to be a critical step to make sure that we have the appropriate information from each of the states before we can move forward to help the assessment.

CHAIRMAN LAPOINTE: Thank you, is that it?

MR. WHITE: Yes.

CHAIRMAN LAPOINTE: Thank you very much. The last issue we have is the stock assessment and the peer review process. I believe the recommendation -- was it a recommendation?

MS. SELBERG: Discussion.

CHAIRMAN LAPOINTE: The discussion was to use the fall SAW/SARC process for peer review of the lobster assessment. I know some people have raised concerns about making sure there are assessment people on there with some alternative views, and so that we have the chance to have input on who the people on the assessment panel will be.

I think that would be the way we would move forward unless I hear differently from the board. I don't hear differently from the board. I think the last issue is what? Vince asked about John's question that I ruled out of order on the gauge. Paul, can we do this in March? We've had some discussion but a continuation? Thank you. The last issue, Harry.

MR. MEARS: It may be your last item but one bit of unfinished business is further comment on the terms of reference for the stock assessment, and I just was wondering if perhaps we could address that and not wait until the next meeting and address it through an alternate means such as communications in the interim?

CHAIRMAN LAPOINTE: I think that's a good suggestion. We'll work on it. I will now turn the chair over to Pat White who can adjourn the meeting.

(Whereupon, Mr. Pat White assumed the chair.)

CHAIRMAN WHITE: Do we have a motion to adjourn? So moved. We're adjourned.

MR. LAPOINTE: Thanks to all the people in the audience for being patient with our needs. Thanks.

(Whereupon, the meeting adjourned at 4:00 o'clock p.m., December 17, 2003.)

INDEX OF MOTIONS

MR. DIODATI: I move that the Lobster Management Board approve the Massachusetts request for conservation equivalency for the Outer Cape Cod. This proposal is specific to Sections 2.1.7.2 and 2.1.7.3 of Addendum III.

It uses 1999 through 2001 as qualifying years to identify potential participants and allocates traps based on fishing performances during 2000 and 2002 with pounds as the qualifying parameter.

All other aspects -- and that's where it varies from the original plan -- all other aspects of the OCC Plan included in Addendum III remain the same, including the minimum gauge sizes and the 20 percent reduction in traps from the 1998 levels with the potential for an additional 5 percent in 2007 and '08 if necessary to meet lobster egg production goals and objectives after the next stock assessment. Motion carried.

That the board defer the measures in the Area 6 management program that are designated as "if necessary" for one year. Motion carried.

Motion to postpone consideration of "if necessary" clauses for one year in all areas. Motion tabled.

Motion that all other "if necessities" are necessary unless deemed otherwise by the board. Motion carried.

Move to accept the proposed vent changes in Addendum IV. Motion carried.

Motion for proposed date of December 31, 2004. Friendly amendment to change the date to July 1st on Page 66. Motion failed.

Move that the implementation date be December 31, 2004. Motion carried.

Motion to accept the proposed changes to the most restrictive rule. Motion carried.

Motion that above changes be effective January 1, 2004. Motion carried.

Motion that the Lobster Management Board approve the Area 3 LCMT Plan, including an additional 10 percent active trap reduction along with a modified trap transferability plan, which is reflective of comments that were heard at recent Addendum IV public hearings and recommend this plan to the National Marine Fisheries Service for inclusion in the federal process. Friendly amendment on Page 93: To accept the 2,600 cap now and to go to public hearing to discuss the differences between 2,600 and 2,200. Motion carried.

Move that the ASMFC Lobster Management Board adopt Option 2 under effort control measures with conservation tax Option 2 and with the 800 trap allocation criteria increase from 1,000 to 2,000 pounds. Motion carried.

Move that the ASMFC Lobster Management Board adopt Option 1 under traditional management measures so that future gauge increases for Area 2 are consistent with those required for Area 3. Motion carried.

Move that the ASMFC Lobster Management Board adopt a target TAL of 2.1 million pounds for Area 2 in 2004 to be used as a management performance measure. Motion carried.

Motion to adopt Addendum IV as modified today by the board. Motion carried.

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