

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

**August 26, 2002**  
**Swissotel Washington, The Watergate**  
**Washington, D.C.**

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## ATTENDANCE

Washington, DC  
August 26, 2002

<i><b>BOARD MEMBER</b></i>	<i><b>AFFILIATION</b></i>	<i><b>PRESENT/PROXY</b></i>
George Lapointe	Maine	P
Pat White		P
David Etnier		P
John Nelson	New Hampshire	A
Ritchie White		P
Mary Anne Blanchard		Dennis Abbott (P)
Rep. Anthony Verga	Massachusetts	Vito Calomo (A)
William Adler		P
Paul Diodati		P
Rep. Eileen Naughton	Rhode Island	Jerry Carvahlo (P)
Mark Gibson		P
Gil Pope		P
Sen. George Gunther	Connecticut	P
Ernest Beckwith, Jr.		Eric Smith (P)
Lance Stewart		A
Sen. Owen H. Johnson	New York	Brian Culhane (A)
Pat Augustine		P
Gordon Colvin		P
Assemb. Robert J. Smith	New Jersey	A
Tom Fote		A
Bruce Freeman		P
Roy Miller	Delaware	A
Timothy Target		A
Rep. John Schroeder		A
Eric Schwaab	Maryland	P
William Goldsborough		A
Sen. Richard Colburn		A
Jack Travelstead	Virginia	A
Catherine Davenport		A
Sen. John Chichester		A
Preston Pate	North Carolina	A
Damon Tatem		A
Rep. David Redwine		Melvin Shepard (A)
Harry Mears	NMFS	P
Bob Baines	AP Rep.	P
Carl Wilson	TC Rep.	P
Joe Fessenden	LEC Rep.	P

Others in Attendance:  
Heather Stirratt, ASMFC  
Tina Berger, ASMFC  
Vince O'Shea, ASMFC  
Bob Glenn, MA DMF  
Bob Ross, NMFS  
Thomas Fletcher, NMFS  
Paul Perra, NMFS  
Tom Meyer, NMFS  
Anne Lange, NMFS  
David Borden, RI DEM

Byron Young, NY DEC  
Matt Cieri, ME DMR  
Terry Stockwell, ME DMR  
Dan McKiernan, MA DMR  
Christine Hamm, Clark University  
Janice Plante, Commercial Fisheries News  
Sherman Baynard, CCA MD  
Bonnie Spinazzola, AOLA  
Doug Soper, Recreational Diver  
John German, Lobsterman  
James Fox, Lobsterman  
George Doll, Lobsterman  
John Davi, Lobsterman  
Ed Boagaert, Lobsterman  
Dick Allen, Lobsterman  
John Sorlein, Lobsterman

# PROCEEDINGS

## ATLANTIC STATES MARINE FISHERIES COMMISSION

### AMERICAN LOBSTER MANAGEMENT BOARD

Swissotel Washington, The Watergate

August 26, 2002

## MOTIONS

1. **Move to refer the Massachusetts recreational trap tag issue to the law enforcement committee for evaluation and reporting back to the Board by the November 2002 meeting.**

Motion by Mr. R. White, second by Mr. Augustine;  
Motion carries.

2. **Move that the Board recommend to the ISFMP Policy Board and Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum I to Amendment 3 to the American Lobster FMP if it has failed to implement and enforce the required trap tag program for noncommercial fishers by July 1, 2003.**

Motion by Mr. P. White, second by Mr. R. White; Motion carries (MA  
opposed, NMFS abstained).

3. **Move that the Board recommend to the ISFMP Policy Board and Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce the zero tolerance definition of v-notching for its waters of Area 1. This measure is required to ensure that the egg rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, the Commonwealth must fully implement and enforce the zero tolerance definition of v-notching in its waters of Area 1 (i.e., any**

**female lobster bearing a v-shaped notch of any size).**

Motion by Mr. P. White, second by Mr. Abbott;  
Motion carries (4 in favor, 3 opposed, 2 abstentions)

4. **Move to take the issue of state *de minimis* status off the table for discussion (May 2002).**

Motion by Mr. Augustine, second by Mr. P. White;  
Motion carries.

Washington, D.C.

5. **Original Motion from May 2002: Move that the States of Delaware, Maryland, Virginia and North Carolina be granted *de minimis* status for 2002.**

Motion by Mr. Nelson, second by Mr. P. White.

6. **Move to amend: Beginning in December 2003 the *de minimis* states shall begin to implement the minimum and maximum gauge sizes that are required in the adjacent lobster management areas subject to a schedule that will be approved by the Lobster Management Board.**

Motion by Mr. Freeman, second by Mr. Carvahlo;  
Motion carries.

7. **Amended motion: Move that the States of Delaware, Maryland, Virginia and North Carolina be granted *de minimis* status for 2002. Beginning in December 2003 the *de minimis* states shall begin to implement the minimum and maximum gauge sizes that are required in the adjacent lobster management areas subject to a schedule that will be approved by the Lobster Management Board.**

Motion by Mr. Nelson, second by Mr. P. White;  
Motion carries.

8. **Move approval of Technical Addendum 1 to Addendum III to Amendment 3 to the Lobster FMP.**

Motion by Mr. Colvin, second by Mr. Freeman;  
Motion carries.

9. **Move that the Board indefinitely table Amendment 4.**

Motion by Rep. Etnier, second by Mr. Adler; Motion carries (6 in favor, 3 opposed).

**10. Move to approve the Technical Committee recommendation on the use of the model for evaluation and performance criteria for v-notching.**

Motion by Mr. Diodati, second by Mr. R. White;  
Motion tabled.

**11. Move to table discussion of Technical Committee recommendation on the use of the model for evaluation and performance criteria for v-notching until the next Board meeting.**

Motion by Mr. P. White, second by Mr. Colvin;  
Motion carries.

**12. Move to nominate Pat White as the Vice-Chair of the Lobster Management Board.**

Motion by Mr. Adler, second by Mr. Augustine;  
motion carries unanimously.

## **VERBATIM MINUTES**

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Monticello Room of The Swissotel Washington, The Watergate, Washington, D.C., Monday afternoon, August 26, 2002, and was called to order at 2:00 o'clock p.m. by Chairman George LaPointe.

CHAIRMAN GEORGE LAPOINTE: Good afternoon. My name is George Lapointe. I'm the chair of the Lobster Board. The Lobster Board is scheduled to meet from two to six this afternoon. Materials for the meeting are on the back table; agendas and meeting materials that have been provided prior to this board meeting and there may be a couple other items that have come up that we don't have copies of. Before I start, Bob Beal wants to make an announcement.

MR. ROBERT E. BEAL: Yes, just real quick. We're trying out something new. There's little name tents back on this table, if everyone can just kind of put them in front of them, so theoretically everybody will know who they're talking to and they can get everyone's background together. And the other thing is that we've put some power strips inside the little circle here for folks to plug in their laptops. If you can't reach one, let us know and we'll see if we can get something

set up for you.

CHAIRMAN LAPOINTE: I will tell you right from the start I'm on the lower end of the age curve for a lot of board members, and the writing is too small on the name tags, so make them big and bold in the future.

MR. BEAL: You've got it.

CHAIRMAN LAPOINTE: Thank you. Paul.

MR. PAUL DIODATI: What do you want us to do with these name tags at the end of the meeting; just leave them here?

MR. BEAL: You can either carry them around with you or leave them on the table and staff will put them on the back table for the next meeting.

CHAIRMAN LAPOINTE: You have to put it on your lapel for a name tag for the rest of the meeting. There is an agenda that was provided to board members on the CD-rom. Has it changed? No change, Heather tells me. Are there any changes that are needed for the agenda at this point? Seeing no change, we'll accept the agenda. We need now approval of the proceedings from the May 20th meeting.  
William.

MR. WILLIAM A. ADLER: I move they be accepted as printed.

CHAIRMAN LAPOINTE: Moved by Bill Adler, seconded by Pat White. Is there objection to the acceptance or any changes to the proceedings? Seeing no changes, we will accept those for the board. At this point in our agenda, there's a spot for public comment. Members of the public are welcome to make comments to the board. At this point, though, or at any other points in the agenda, if there are points that relate to a specific agenda item, they're probably going to be better remembered if you give them at that point. But are there any members of the public who want to make comments now? I have Dick Allen and then John German. Good afternoon, Dick.

MR. DICK ALLEN: Good afternoon and thanks for the opportunity to speak, I just want to express my concern that the way the lobster management program is set up now, it seems like it is

put in place, and then it kind of just goes on. And until there's some terrible problem that somehow raises itself up, there's no change. I see a situation in Area 2 where the fishery seems to be going downhill, and yet there's no real mechanism to respond to that. I just raise that as a concern, it seems like either a control rule or some way to respond to a decline in the fishery rather than just letting that decline run its course and then figuring out somewhere out down the road, gee, things have gotten so terrible, what do we do now. I just offer that as a concern that I have. Thanks.

CHAIRMAN LAPOINTE: You're the only guy who would say what we've done in the last four years is nothing. I mean, we've been pretty busy. I will talk to Heather about that issue and the technical committee, and if they've got ideas, present those to the board at the next meeting. John German.

MR. JOHN GERMAN: Yes, my name is John German. I'm from New York. I'm president of the Long Island Sound Lobstermen's Association. I noticed in the last technical committee's meeting that they made a recommendation not to rely on fishermen's data, more on logbooks, but not on the data from observation programs and other things because the fishers of Long Island Sound have not been cooperating with the DEC and their lobster observation program. I would like to point out that the fishermen in the past have always cooperated with the DEC and have been involved in this process right from the beginning. The DEC, in the state of New York, decided last year to not involve us in the process and made special management zones or attempt to make special management zones in the state of New York because they lost a lawsuit and are making laws on their own through special management areas and including lobster management in it. They bypassed the complete ASMFC process, including the LCMT's, the lobstermen themselves, the Lobster Board, and the management board. None of them has gone through this in trying to pass regulations concerning lobsters and bypassing that whole system. It's a political question right there now, and we feel that it comes between managers in New York state not wanting to express your opinion because it is politics and the fishermen are taking the brunt of it. We have decided not to cooperate with them because they have not cooperated with us in the system that we've set up cooperatively through this board all along, and that's the reason the fishermen have not been cooperating with them. We have always in the past and would be glad to

in the future if this was resolved. But as to fishermen's data, we've always taken them out and that's where 99 percent of their data always came from. Thank you very much.

CHAIRMAN LAPOINTE: Thank you, John. Other comments from the public? Our next agenda topic is the Plan Review Team report. Heather.

MS. HEATHER STIRRATT: I've prepared a short presentation which basically summarizes the very brief update on state compliance, which was included on your CD-ROM and in the handout materials at the back of the room. You are also receiving at the table a memorandum that was drafted by Paul Diodati from the Commonwealth of Massachusetts. I just received that today, so I apologize for not giving that out to you in advance of this meeting. Nonetheless, you should have it in front of you and with the presentation that follows, you should have enough time to at least briefly review that memorandum as well. To start off, the Plan Review Team convened earlier this summer following the July 1, 2002, deadline for Addendum III implementation to assess how the states were doing with compliance in those requirements. Basically, I have prepared a state-by-state evaluation of the Plan Review Team's findings on those issues. I would like to start with the state of Maine. We reviewed the state of Maine's current regulations as of July 1 to ensure that they had in fact adopted all of the requirements for Area 1 that were found under Addendum III. In fact, they had, and no areas of concern nor compliance issues were identified for the state of Maine. New Hampshire also submitted updated regulations and many of the requirements that they were required to implement under Addendum III had in fact been addressed. The Plan Review Team did note one compliance item relative to the New Hampshire regulations, and that was that New Hampshire had implemented a v-notch definition which did not in fact speak to a mark of any size. Therefore, comparing the original Amendment 3 definition of v-notch versus the new definition for Area 1, which would be a zero tolerance definition, we could find no difference. Therefore, the Plan Review Team recommends that action be taken on New Hampshire's non-compliance with Addendum III requirements for the zero tolerance definition of v-notching. Massachusetts regulations were also reviewed as of July 1.

CHAIRMAN LAPOINTE: Heather, let's see

if New Hampshire wants to comment.

MS. STIRRATT: That's fine.

CHAIRMAN LAPOINTE: Rich or Dennis.

MR. RITCHIE WHITE: Thank you, Mr. Chairman. We implemented these rules in 1988, and at that time the intention was that this was a zero tolerance rule. The fishermen view it as zero tolerance. The state views it as zero tolerance. Law enforcement does and they've been successful in the courts as zero tolerance. I guess we take exception with the PRT's reading of this and we believe it is zero tolerance. The first line says: "No person shall possess any v-notch female American lobster." And that has been successful in the courts meaning any.

MS. STIRRATT: To respond to that, Ritchie, we had to use a standard criteria for evaluating all of the reports and we wanted to do it in a fair and equitable manner. The key words that we were looking for were pulled directly from Addendum III, which reads: "V-notch female lobster means any female lobster bearing a V-shaped notch of any size." We could not find reference in the definition to a v-shaped notch of any size. There was some terminology in the New Hampshire definition, which I do have in front of me and can gather for the record to read here, but it does speak specifically to a v-shaped notch of a quarter inch, not to exceed one half inch. There were no specifics relative to a definition that would speak to anything less than a quarter inch.

MR. WHITE: Well, let me read the rule: "No person shall possess any v-notched female American lobster. For the purpose of this paragraph, v-notched lobster means any female lobster marked with a v-notch in the right flipper, next to the middle flipper, or any female lobster which is mutilated in a manner which could hide or obliterate the mark." And, you know, our feeling is that covers that. I mean, we certainly will implement the other rule, but I guess we would ask that the amount of hearings and rulemakings that we have to go through, and this has been working as a no tolerance, I guess we would ask that it be viewed as no tolerance.

CHAIRMAN LAPOINTE: Dennis Abbott and then Vince O'Shea.

MR. DENNIS ABBOTT: Thank you, Mr.

Chairman. The reference to the quarter inch or not greater than a half an inch is how we mark the lobsters, the kind of v-notch that we have to place, and I think that our language is very clear. Any is any and just ask a neutral party. I had my wife read these statements and she thought that any or of any size is redundant. Any is any.

CHAIRMAN LAPOINTE: Vince O'Shea and then Bruce Freeman.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you. I think the issue here is we tasked the technical committee to go look at regulations, and they used a certain set of criteria and Heather has outlined that. The state of New Hampshire has come back and said what their application is, and, frankly, I think it's going to be up to the board to say, yes, this wording is lacking, but is that significant in obtaining what the intent is. I suspect as we go through the other states we'll have a similar type of discussion. So I would say focus on -- keep in mind what these people are doing. They're reporting back to us what they found in the state regulations, and then it's going to be up to the board to decide whether or not that's significant. Thank you.

CHAIRMAN LAPOINTE: Bruce Freeman and then Pat Augustine.

MR. BRUCE FREEMAN: As reported by New Hampshire, the fact that if there was any question, this went to court and the courts interpreted this as essentially no tolerance. I would be perfectly happy to move that New Hampshire's wording is tantamount to what is required in the plan. I really see this as not an issue. If the motion is necessary, I'll move that the wording in New Hampshire's regulations satisfies the requirements of the zero tolerance for v-notching.

CHAIRMAN LAPOINTE: Moved by Bruce Freeman; seconded by Dave Etnier. Pat Augustine.

MR. PAT AUGUSTINE: My question was whether or not we really needed a motion for this and whether or not we can indeed take their interpretation. If it has held up in court on several occasions, it seems rather ludicrous that we have a play on words of a quarter inch or a half an inch, and that it definitely meets the definition in spirit of the law or regulation which we are trying to put forward. So if in fact we



need a motion, it's been seconded, I call the question if it's necessary.

CHAIRMAN LAPOINTE: We have a motion and a second in regard to New Hampshire's v-notch definition. We'll have the wording in a moment. Are there other comments from board members? Gordon Colvin and then Pat White.

MR. GORDON C. COLVIN: Just as a point of procedure, Mr. Chairman, would it be our ordinary practice to have a motion to determine that a state's program is in compliance or only to have motions if we're going to take the opposite view?

CHAIRMAN LAPOINTE: Bob Beal, practice? The former ISFMP director should know, too.

MR. BEAL: Thanks, George. I think the discussions in the last few minutes have captured the fact that the board interprets what New Hampshire apparently has on their books as adequate to satisfy the zero tolerance for v-notching. I don't think we have to go through the motion.

CHAIRMAN LAPOINTE: You don't think a motion is necessary? I mean, we've already got a motion and a second.

MR. BEAL: Right. No, I don't think a motion is necessary to deal with it. You know, if the board interprets it, that's it.

CHAIRMAN LAPOINTE: Is that the consensus of the board?

MR. FREEMAN: George, I would be happy to withdraw the motion if that's the position of the board.

CHAIRMAN LAPOINTE: Okay, then it will be the sense of the board that New Hampshire's language in regard to zero tolerance on v-notching meets the compliance requirements of the lobster plan. Heather, next state, please.

MS. STIRRATT: Okay, moving right along, the state of Massachusetts. We also reviewed their regulations, which were submitted after July 1. The Plan Review Team noted one area of concern, and that was that the state of Massachusetts proposed an

alternative marking strategy for the recreational fishery.

This proposal will exempt recreational permit holders from the trap tag requirements under Addendum I. This is an area of concern because up until this point all of the states have been required to implement a trap tag program for both the recreational and their commercial lobster permit holders. So it's my understanding -- and I could be wrong and perhaps Paul will need to clarify -- that hadn't been implemented yet. At least it hadn't been implemented when the Plan Review Team had conducted its review. Things may have changed, but we noted it as an area of concern because we thought nothing had yet been implemented. If in fact it has been implemented, then it definitely would fall under the topic as a compliance concern, given that Addendum I is very clear in its specifications. In addition to that, we also noted that there were three compliance issues relative to the state of Massachusetts regulations, the first of which deals with Addendum III requirements for a gauge size increase in Areas 2 and the Outer Cape Cod. This was required as of July 1. Many of you may recall that there were some compliance concerns that were raised at the last meeting. That was based upon the gauge size increase that was required as of December 31 of last year. That has since that time been resolved. They did implement that one thirty-seconds of an inch gauge size increase by July 1. Unfortunately, the very date that they implemented that gauge size increase, there was another deadline for Addendum III gauge size increase, and so the very day that they came into compliance with Addendum II was the same date that they raised a new compliance issue with Addendum III. In addition to that one issue, the Commonwealth of Massachusetts has decided not to implement a zero tolerance definition of v-notch, and also there was a provision in Addendum III which called for the Outer Cape Cod's trap reduction schedule, which as you may recall did contain a provision for trap transferability. Neither of those issues has been addressed by the state, so the PRT recommends that action be taken on Massachusetts non-compliance with Addendum III requirements at this time.

CHAIRMAN LAPOINTE: Thank you, Heather. Paul, do you want to respond and then we'll get the board discussion?

MR. DIODATI: Yes. Actually, George, I did prepare a memorandum to save the board some time, but apparently we didn't get it out until just today. I'll just roughly run through these items, if that's what you

would like.

CHAIRMAN LAPOINTE: Why don't we just give board members a couple of minutes to read that and then you can --

MR. DIODATI: Okay, and then I'll answer any questions?

CHAIRMAN LAPOINTE: Well, no, and then you can explain it a little bit, but just give them a little bit of time to absorb the information. Eric Smith.

MR. ERIC SMITH: Mr. Chairman, could I ask a dumb question as the new kid on the block? Does the commission now consider zero tolerance to mean no vestige of a mark whatsoever or does it mean if it has any kind of a mark you can't take it?

CHAIRMAN LAPOINTE: A mark of any kind.

MR. SMITH: A mark of any kind. Thank you.

CHAIRMAN LAPOINTE: Have people had sufficient time to read through that? Yes? No? Not yet, all right. Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, I'm wondering if Mr. Diodati or Dr. Diodati could answer the question --

CHAIRMAN LAPOINTE: Okay, hold on. If you don't mind, we were giving people time to read it, and then I was going to give Paul a chance to explain the text of it. The reason I did it in that manner was it took me a couple reads through, and I wanted to give people a chance to think about it. So slow down, Pat. I see some restlessness in board members, so I will let Paul explain the text of his memo and then we'll get into a discussion.

MR. DIODATI: I tried to just provide or address specifically the three areas that the PRT identified as non-compliance issues and the one area of concern. I think dealing with the size limits are probably the easiest. We did have a legislative action that was required at the state level in order for us to make any size changes in American lobster. We didn't have that in 2001. We did receive it this past spring. So in 2001 we were certainly out of step with the plan;

and since the LCMT's were very keen on phasing in the size limits, we felt it was appropriate to try to do that as best possible by implementing a one thirty-second this past July, another one thirty-second for this December, and the third one is planned prior to July of 2003, which would bring us completely in step with the addendum. Nevertheless, we're not in step with it right now, but that's my explanation, and we're moving to come into compliance with that.

As far as the Outer Cape Cod's plan to adopt a trap transfer program, I thought -- well, there was a couple of issues here. You know, certainly I sense that some board members must have questions about how trap transferability works in the real world and that's why we had a workshop today. So given that, I thought it would be valuable for Massachusetts to at least be accommodated the benefit of today's workshop and the outcome of the workshop before we go any further with this. In addition, when this particular plan was brought to public hearing in the state, we received tremendous negative comment relative to how the program was assembled, both verbally and in writing. And when I brought it to my marine fisheries commission, they also had a problem with it. To address some of the concerns, I thought it would be valuable, for our state at least, to have a trap -- well, let's call it an effort control program that will resemble what OCC has put forward, and we're working on development of such a program right now.

I hope to have a plan to go to our public with later this winter and propose it for adoption for, again, July of 2003. Since it will be a plan that would be adopted in all areas of Massachusetts, I think that not only would we achieve the conservation benefits for OCC, but I think we'll do more than offset whatever perceived loss of conservation benefits that we're currently experiencing by not implementing the zero tolerance v-notch definition in Area 1, which is another issue that was raised by the PRT. Lastly, the issue about non-commercial traps being tagged, we did actually provide tags in 2001. It was an expensive proposition because, unlike our commercial fishery, the tag manufacturer would not provide the tags directly to the fishermen because they're such a small number. So the state had to purchase all the tags and come up with a distribution system to get them out there. We were not able to afford to do that this year, and we have no mechanism in place where that the state could unilaterally increase the cost of running that program by assigning some kind of tax to the user. Although we're looking at that, it's not something we can do rather quickly and

unilaterally. So, as an alternative, we did develop a strategy to mark the buoys of the non-commercial lobstermen with a numbering system, and so that's what we've proposed. We actually went to hearing with it. It was approved and I think we're implementing that right now. So that's it.

CHAIRMAN LAPOINTE: Bill Adler and then other board members.

MR. ADLER: Thank you, Mr. Chairman. Back on the gauge thing, I just did want to call your attention to page 10 of the addendum. Back when the state adopted the gauge increases, it did put the regulations in place, regulations to implement all of the gauge increases that would do, the four that would do. The regulations were put in on July for those gauge increases that Paul mentioned, and as well as that also put in the gauge increase wording for the next two years. So at page 10 of the Addendum III, Regulations to Implement, we did do that by July 1.

CHAIRMAN LAPOINTE: My sense is that, yes, you may have done that through regulations by July 1, but the key is implementation by the compliance date, not when the regulation goes in place, Bill.

MR. ADLER: I didn't see that.

CHAIRMAN LAPOINTE: Other board members? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I just have one question. Why does Massachusetts lump together v-notching with gauge increases? I thought they could be treated as two separate items by themselves, in view of the fact you had to go to the state legislature in order to get the gauge sizes approved as they were increased. But why bundle that together with v-notching? It seems like v-notching has been a stand-alone item and I just wondered what your rationale for that was.

CHAIRMAN LAPOINTE: Paul Diodati, would you respond?

MR. DIODATI: Yes, we're not bundling it with the minimum size increases. What we've done is simply maintained our existing definition for a v-notch, which we find is quite enforceable, and trying to maintain some consistency within state waters

throughout the whole state. What we are bundling it with is our plan to develop an effort control program, which would take place not only in the Outer Cape in Area 2 of Massachusetts, but it would also take place in Area 1, and I think it would make the point of zero tolerance for Massachusetts in that area a moot point once we do that.

CHAIRMAN LAPOINTE: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. But do you have an idea about what the poundage landed is for those lobsters that aren't v-notched, whether it's Area 1 or OCC? I'm not trying to get too technical about it, but if it's 60,000 pounds or 600,000 pounds, that's a pretty significant number. If we allow for another six months that amount of lobster to be taken that are legal sized lobsters, if you will, that, now in my mind, coupled with another increase in gauge size, which is not coming for six to twelve months to go to the next increment, I'm just wondering what kind of impact that might have on the biomass, and just a dumb question and maybe you can help me with that.

MR. DIODATI: Actually, I don't have the poundage figures off the top of my head, but it wouldn't be a straightforward percentage of v-notched lobsters. It would be the difference between what one would perceive to be zero tolerance and our definition of a v-notch. And in addition to that, it would just be for those lobsters captured from the Gulf of Maine stock, or those in Area 1, of which Massachusetts contributes about, you know, something on the order of about 20 percent of the total landings. I don't think it's an enormous number, but I can't tell you exact what the poundage is.

CHAIRMAN LAPOINTE: Pat White.

MR. PATTEN D. WHITE: I guess my problem is in the area management program that we have of having two different standards in one area and I think -- and don't hold me to the figures, but I saw from the state of Massachusetts a couple of years ago that the quarter-inch v-notch in the Outer Cape was like 3 percent; and if it went to the zero tolerance, it was 18 percent. So it is a fairly significant difference and I don't see how we can consider that a conservation equivalency to a trap reduction, which in its infancy doesn't have a conservation benefit to it like a v-notch does.

CHAIRMAN LAPOINTE: From the Chair's perspective, and as Heather was just reminding me, we don't have a conservation equivalency yet. That's what Paul is proposing to develop over the course of the next year. Other board members? We have a number of issues that are bundled in together into one state's report at this point. Joe, did I understand that you had a comment about the recreational tags?

MR. JOE FESSENDEN: Well, when we considered the trap tag program initially, we thought it would be important to have both commercial and non-commercial tags. But now that we've a program for three or four years, just as long as, I think, the traps can be identified and to ensure that the license number is for the current license year, I think it would be okay. That's the key to the whole program, and I think that's the case that it is an immediate item.

MS. STIRRATT: As a followup to that comment, I would simply ask for some direction from the board members as to how the Plan Review Team should be looking at this requirement in Addendum I if this exception is allowed. Are we supposed to be pretty liberal in the way that we interpret Addendum I when it says all recreational and commercial traps shall be tagged? I just need some direction because when we have to conduct these reviews, it's necessary.

CHAIRMAN LAPOINTE: Paul Diodati and then the Chair would like to make a comment from the state of Maine's perspective.

MR. DIODATI: I think the important difference between Massachusetts and the other states that have non-commercial fisheries for lobster is that, you know, we're talking something on the order of 8,000 permit holders and somewhere up over 80,000 tags and so that's why it's a costly program. I'm not sure when the board adopted that particular measure if the cost of administering such a program was considered. but those are important issues in this day and age for state agencies.

CHAIRMAN LAPOINTE: It strikes me -- I'm speaking as the Maine commissioner here -- that using the buoy marking requirement as an alternative isn't good in the long term. I recognize the fiscal problems the Commonwealth is going through and the cost of the tagging, and I don't think that I would like to

see us move forward in just saying buoy marking is okay because I don't think that's the way we want to go, but that in fact we would try to get the Commonwealth back into a tagging program, whether that be going through the legislature for cost recovery or whatever, but that's where we need to get in the long term. Pat.

MR. WHITE: Well, I'm sympathetic with where you're going with that Paul, with that sheer volume of people, but couldn't you also do that on an extended program and not every single year? Couldn't you have a three-year tag or five-year tag or whatever that would allow some of that? It would still be a tag program, it would still be something that enforcement could see and count. Because I agree with George, I just see what is happening, you know, around even in the commercial fishery and I think without a tag it's hard to --

CHAIRMAN LAPOINTE: I'm going to take Dave Etnier and then Bill Adler and then Pat Augustine and then Gordon.

REPRESENTATIVE DAVID ETNIER: Thanks. In responding to Paul's comment about the number -- and, I mean, to me, it's partly because of the sheer volume of non-commercial traps that are present in Massachusetts' waters that make it important to do the tagging. If the number was smaller, the issue wouldn't be as great, but it is a big part of your fishery, and I think therefore it even rises higher as a level of concern.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: First of all, going back to Heather's question, I think it is appropriate that any areas of concern be brought to the board as opposed to just having the PRT say, well, that's all right, on any of the issues. I think it's good that the Plan Review Team does bring it as an area of concern and let us discuss it, and that's more or less overall for anything. I think that's a good way to go.

CHAIRMAN LAPOINTE: Pat Augustine or Gordon.

MR. COLVIN: Let me just reinforce or agree with what Bill just said. I think regardless of the board's disposition of this question, it is and should be the job of the Plan Review Team to report on

implementation consistent with the letter of the FMP and its addenda. And if the board acts in a way that's not consistent with those recommendations and findings, that's the board's choice, but it doesn't reflect, unless there's some specific change in direction, to the PRT, I mean, any change in their operating rules and shouldn't regardless of what the issue is. With respect to the recreational tagging, I wondered -- Paul, I think we all face the same problem at different scales and one of the things we have to deliver to all of these people, whether there's 200 of them or 8,000 of them, is a license and whether the delivery of the license can be used as a vehicle to simultaneously co-deliver the tags.

MR. DIODATI: Yes, ideally that would be fine. The problem is when we issued the license earlier in the year, we didn't have the funds to purchase the tags to put in the envelope to go with the permit. And, again, we can't unilaterally charge for it. So that's something that we're looking at for next year, to charge for the permit and establish a program where it would be mailed out with the permit.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. One final comment on the v-notching. It would seem that if the other areas are v-notching -- I may need to stand corrected on that, but if the other areas that are interacting with that area are v-notching, it would seem appropriately that, at the very least, that we would ask Massachusetts to implement v-notching in all areas ASAP so we would have some consistency there. That in itself, I'm not sure, but I think it might be within the purview of the state to do that without legislative response. So, you know, if they can respond to that by doing that, fine. If not, I would like to make a motion to find them out of non-compliance.

CHAIRMAN LAPOINTE: If I'm not mistaken, they currently have a v-notch program throughout the Commonwealth. Area 1 went to a zero tolerance on v-notching and the rest of the state did not and that's the dilemma they're in. Paul.

MR. DIODATI: Yes, just to clarify, we do v-notching. That is mandatory for Area 1. We do v-notch the lobsters. The difference here is the way a v-notched lobster is defined in the field by a law enforcement officer.

CHAIRMAN LAPOINTE: Pleasure of the board? Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. I concur with the issue of the Plan Review Team bringing any issue they can determine varies from the plan and let the board make the determination. That's what we've heard from others. The question I have of Paul, relative to the recreational marking of pots, is it the Commonwealth's anticipation that if the fees could be increased to cover the cost of the tags, that in the near future trap tags is the desirable way to go or is the existing system one you think is adequate and should remain in effect regardless of whether you're flush with money or not?

MR. DIODATI: Since I wholeheartedly think that simpler is better, I would love to stay with this marking program. But given that the board has met on this particular issue and there's some concern for tagging of the traps, it's my intention to develop an administrative procedure to carry that out in the future. Again, this particular -- we did it in 2001. We actually did the trap tagging. This year it was just some fiscal difficulties and administrative procedure didn't allow us to do that; and rather than not do anything, we passed this regulation for marking.

MR. FREEMAN: Well, the reason I ask, Paul, is that later in this meeting week New Jersey is going to be faced with an issue relating to collecting more information on particular plans, which is going to put us in a position, because of budgetary concerns, of either doing that or not doing something else. It's gotten to the point where we cannot do more. We have manpower limitations, we have money limitations, and to require more data collecting or whatever, it's simply not going to happen. It's a reality, at least in this age, and I would feel comfortable if the Commonwealth feels that it's adequate to enforce the recreational pots, that at least in the next year or two, until they're able to get sufficient funds to get the trap tags, to allow that to occur. It just seems a practical way. In fact, it may have been in the beginning when we developed it, that may have been put in the plan and required in the recreational fishery. I suspect, Paul, you have more recreational lobstermen than the rest of the coast combined, and you can't appreciate it until you're faced with the issue. But I personally would not have any reservations of allowing the Commonwealth to continue this for the next year or two, again, so far as the

enforcement people feel it's very reasonable. It seems that there is a deviation from the plan, but to require an expenditure of time and money, I don't know what's going to be accomplished if we require you to purchase the 80,000 tags and distribute those. I don't see any advantage in enforceability at all.

CHAIRMAN LAPOINTE: Eric Smith.

MR. SMITH: Thank you, Mr. Chairman. As I see it, there are four issues here; the minimum length change, the zero tolerance, the Outer Cape, and non-commercial tags. Hearing all this, I honestly don't see anything that is worth a finding of non-compliance at this time. And the reason I say that is four points. They're phasing in the minimum length; albeit they're lagging behind, but I think Paul's memo is well justified. No one else in that mode would want to take a giant step either. So the phasing in, I'm patient. They'll get there eventually. So if it's a six-month lag, I honestly think that's progress. The zero tolerance on the Outer Cape issues are very intertwined. They have a unique problem where they have three or four different lobster management areas, and they are already deliberately trying to plan for how that gets integrated into one state plan that they'll come back and say to the board, this is our holistic plan. We think it's better conservation than the other way. You know, we're coming into the fall, where the lion's share of the fishery is done for the year. I would say give them this winter to see what that plan is going to look like and decide these things in the springtime. And the final point is the personal use lobster and that just reinforces my point. I mean, that fishery is 99 percent done for the year. You're not going to really materially affect lobster conservation or even pot marking at the end of August for a fishery in New England because the recreational fishery is going to be done in a few weeks for all intents and purposes. See what they come up with in the springtime and revisit this would be my suggestion. Thank you.

CHAIRMAN LAPOINTE: Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: With regard to the recreational fishery, I'm wondering if this would be an issue that the Law Enforcement Committee could take a look at for us; and depending on what you all decide, tie into that decision a tasking to look at those issues and come back a year from now or six months from now and tell us what the gains and what

the losses are by just marking the buoys.

CHAIRMAN LAPOINTE: Other board members on that specific proposal because I see that as substantively different than the other things in Paul's memo? I was entertaining the idea of certainly giving the Commonwealth time -- I was thinking a year and I've had two years whispered in my ear -- to go back to a tagging program, because it strikes me that the tagging of those traps is important because they're out with everybody else's traps. And I echo David Etnier's comment that because of the importance of the fishery in the Commonwealth, that we have to pay attention to the recreational fishery and its contribution to conservation. Eric.

MR. SMITH: Mr. Chairman, I agree with that point. However, when I made mine, I was concerned with the calendar, too. Nothing we do right now is going to have much effect until about next May.

CHAIRMAN LAPOINTE: And I suggested they would have a year.

MR. SMITH: Right, and that's what my suggestion was, too. In other words, don't find them out of compliance now. Find out what they're going to do for the spring of 2003, when it will have some effect. Because you're quite right, 80,000 pots that could be 100 because there's not an effective way of limiting them is a concern. But it's not an immediate concern that causes a conservation problem for the next nine months.

CHAIRMAN LAPOINTE: Dennis Abbott and Pat White.

MR. ABBOTT: Thank you, Mr. Chairman, a question. The issues of compliance and non-compliance and the actions that we are required to take, isn't that going to be a subject of the Policy Board on Thursday?

CHAIRMAN LAPOINTE: It would be a subject for the Policy Board on Thursday if we do a finding of non-compliance; and if we do not, it won't be.

MR. ABBOTT: Oh, I thought the discussion of how we dealt with compliance issues was going to be a --

CHAIRMAN LAPOINTE: Well, that may well be, but we have this issue before us as well that the board has to address today. Pat White.

MR. WHITE: Mr. Chairman, can you give me the sequence then -- it would be my understanding, if we postponed this and didn't vote them out of compliance or waited to see what happened in May, then it would be another year from May before they're out of compliance, whereas if we made some action today that required them to do something, it would begin a process.

CHAIRMAN LAPOINTE: Again, breaking out the recreational tagging issue and the other compliance issues -- on tagging, the recreational tagging?

MS. STIRRATT: Just to clarify, I originally mentioned that the recreational alternative marking strategy was, at the time that the Plan Review Team reviewed it, not being implemented. Therefore, it was only a proposal and so that's why it fell under an area of concern. Based upon Paul's description today, the state is in the process of implementing it, so it is running counter to Addendum I requirements that all recreational traps be tagged. Therefore, it is a compliance item now.

CHAIRMAN LAPOINTE: Rich White.

MR. WHITE: I make a motion that we refer the recreational tag issue to the Law Enforcement Committee to report back to us in six months and take no action further on that issue only.

CHAIRMAN LAPOINTE: So it would be a motion to -- well, we don't have a motion on non-compliance, so we don't have to table it, so to take no action on non-compliance --

MR. WHITE: Take no action on non-compliance just on the recreational tag. Refer the issue to the Law Enforcement Committee to make recommendations back to this body within six months.

CHAIRMAN LAPOINTE: It strikes me we've got two issues. One is -- and I think Heather said it -- that the Commonwealth is technically out of compliance on this particular issue, and that the board

should look at that issue and deal with the Commonwealth in that regard. Say, that we'll wait until next July to see what their plan is, to see if they're in compliance. And then the second issue is to have the Law Enforcement Committee look at the enforceability of some alternative schemes for all of us to consider, but they're two separate issues. David Etnier.

REPRESENTATIVE ETNIER: Thanks. I don't know where Ritchie's motion went, but I guess there is not a second at the moment. I mean, to me it seems fairly clear that the law, the Addendum I, as outlined here, as passed, is very clear; and to act counter to that, given the knowledge that we have today in this room, is sort of -- frankly, it makes a mockery of the process. I don't remember exactly what the time frame is, if we voted them in non-compliance today, exactly when that goes into effect. Perhaps that would give them the time to ramp up and take care of it.

MR. AUGUSTINE: Point of order, Mr. Chairman. Do we have a second on this motion?

CHAIRMAN LAPOINTE: No. The staff was just poking me in the rib. Is there a second to this motion? Seconded by Pat Augustine. David, are you done?

REPRESENTATIVE ETNIER: So, anyhow, getting back to that point, it strikes me it's important that we act on this as an issue of non-compliance now, start those wheels in motion; and perhaps given the time frame that process goes through anyhow, they will have time to react in Massachusetts and figure out a strategy to deal with it. Also, from my limited knowledge, this language has been out there for quite a while. It was discussed as this plan, this addendum was going through the works. The knowledge has been out there of the costs associated with it for Massachusetts and all the other states, and at this late date it's frankly a late date to raise it as an economic concern to the state.

CHAIRMAN LAPOINTE: The motion, again, with my comments earlier, this motion doesn't have anything to do with the compliance. It has to do with referring this to the Law Enforcement Committee to get their views on this. I would rather deal with that motion and then deal with compliance. Does that make sense? Rich.

MR. WHITE: After conferring with our

expert in law enforcement, I would like to alter the motion, if the seconder is agreeable, and to have the report back to us at the November meeting. He feels that they can take care of this by the November meeting. Then at that time, we could go further in the non-compliance if we feel that we don't get a satisfactory answer.

CHAIRMAN LAPOINTE: That's amenable to the seconder of the motion. Paul Diodati, to the motion at hand and not a potential compliance issue at this point, I hope. Thank you. Other comments on this motion? Bruce.

MR. FREEMAN: Thank you, George. Ritchie, I thought I heard, when you originally made the motion, something about the compliance, and yet it's not up here. Did I mishear you?

MR. WHITE: I was separating this issue from the other issues.

MR. FREEMAN: Right, but this issue still deals with the compliance. The fact that it's deferred may or may not affect the compliance. I thought I heard you indicating that you would defer the vote on compliance until we received the report and maybe --

MR. WHITE: Yes, my intention is that if law enforcement comes back and says that the plan they are now doing, or an alternative plan that they can implement quickly, will give us what we need, then they wouldn't be out of compliance. I'm saying to hold off on the non-compliance until we hear from law enforcement.

CHAIRMAN LAPOINTE: If I might, let's deal with this motion at hand and then deal with a motion of dealing with the compliance issue in the context of this motion next. It strikes me that at the, whenever we met last, May meeting, when we dealt with the Commonwealth, we said you would be found out of compliance after X time if you hadn't taken action and that we could have a compliance motion that dealt with that kind of spirit after we deal with this motion.

MR. FREEMAN: George, without making it two motions, this motion could be modified to indicate that the board would take no action on compliance --

CHAIRMAN LAPOINTE: We could modify it, but we could also just vote on it and then get to the compliance issue. I mean, this is a good question outside of the compliance issue to see if there are other ways of carrying on our business. Gil Pope.

MR. GIL POPE: Thank you very much. Yes, that's something that I'm hoping Thursday we'll be able to talk about because this comes up time and time again when we say, well, if they had just six months more time. We don't really want to find a person out of compliance. So maybe we can come up with some procedure for that on Thursday, like precautionary deference or something like that. I don't know. It's really something that we seem to struggle with at many meetings.

CHAIRMAN LAPOINTE: Other comments on the motion at hand? Board members? Members of the public? Seeing none, do states need time to caucus on this motion? The motion says move to refer the Massachusetts recreational trap tag issue to the Law Enforcement Committee for evaluation and reporting back to the board by the November 2002 meeting. That's the meeting of the Lobster Board. Motion made by Rich White. Seconded by Pat Augustine. Is there a need for caucuses? I hope not. Is there any opposition to this motion; any abstentions. Seeing none, the motion carries. Mr. White, I would entertain a motion to give the Commonwealth some time, but putting a date certain in for compliance on the recreational trap tag issue. Doesn't that fit with the spirit of your discussion, not that I'm trying to move this along?

MR. WHITE: It does, but I guess I don't have a sense of the timing and what time you want to see in there.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: How about a motion that would postpone this until the meeting following the November meeting, which would be January as a compliance -- whatever.

CHAIRMAN LAPOINTE: Again, recognizing what we -- Paul, actually you had a comment about this? You were going to --

MR. DIODATI: I guess if we're going to refer our strategy to the Law Enforcement Committee, that's



fine, and they may come back and say, well, this alternative meets the goals that we were hoping the tag program would do. Maybe we don't really need a motion to find out -- I mean, I don't think we need an additional motion until we hear back from the Law Enforcement Committee.

CHAIRMAN LAPOINTE: If we accept what Pat says, I mean, technically you're out of compliance. Dennis.

MR. ABBOTT: I was going to say, Mr. Chairman, that regardless of what the Law Enforcement Committee determines, they still would be out of compliance with the plan would be the bottom line. If we have them report back to us by November and if Massachusetts issues licenses for the following year starting December 31, then we wouldn't be looking for Massachusetts to be in compliance until 2004, possibly. Is that not true?

CHAIRMAN LAPOINTE: Paul.

MR. DIODATI: No, we're addressing this issue right now. In fact, our action to implement this alternative marking strategy was an attempt to remain compliant with the plan. So by July of 2003, we hope to get back to the tagging. My earlier comment was to this point, that, you know, as -- and I imagine other state resources are facing a similar trend as Massachusetts, but every year over the past three or four our resources have been shrinking at the state level, and so that makes every year has to -- it pushes us to reprioritize what we can do and what we can't do. I mean, that's just a reality.

CHAIRMAN LAPOINTE: Dennis.

MR. ABBOTT: Thank you. I'm not interested in finding Massachusetts out of compliance on this issue at this point in time or at any point in time. I just feel that the board needs assurances that by the year 2003 they are fully in compliance and what method we use to achieve that is, I think, for the board to decide.

CHAIRMAN LAPOINTE: Does it make sense -- and again thinking about the motion we had last meeting -- for the board to report to the Policy Board that the Commonwealth is out of compliance on July 1 of next year? That will give them time to

implement the new program, change the law for cost recovery if they need to and can, but put a marker in there so that the board has taken action.

MR. ABBOTT: Yes, that's what I thought the Policy Board was going to be working on, how we could not be writing letters of compliance and cost everybody a lot of money and the feds and the ASFMC a lot of effort in doing these things for no good purpose.

MR. P. WHITE: So moved, Mr. Chairman.

CHAIRMAN LAPOINTE: Second? What were you moving?

MR. WHITE: What you said about July 1, that --

CHAIRMAN LAPOINTE: That the Lobster Board would report to the ISFMP Policy Board that the Commonwealth of Massachusetts --

MR. P. WHITE: Yes, that's what I said.

CHAIRMAN LAPOINTE: Can you put -- is it a recreational or a non-commercial trap tag program? Paul, if I might, is it called a recreational or a non-commercial trap tag program?

MR. DIODATI: Non-commercial.

CHAIRMAN LAPOINTE: Non-commercial.

MR. DIODATI: Maybe non-existent.

MS. STIRRATT: Okay, this is just specific to that or is it all issues?

CHAIRMAN LAPOINTE: No, this is just for this issue specifically. Is there a second? Did we get a second to that motion? Rich White. Comments on the motion? It's moved the board recommend to the ISFMP Policy Board and Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum I to Amendment 3 to the American Lobster FMP if it has failed to implement and enforce the required trap tag program for non-commercial fishers by July 1, 2003. It was seconded by Rich White. Other board comments? Members of the public? Seeing none, board members, are we ready to vote or do we need caucus time? I see heads shaking yes. Anybody need to caucus? Seeing none, is there

opposition to this motion? The Commonwealth of Massachusetts votes against. Any abstentions, the National Marine Fisheries Service. The motion passes with Massachusetts voting against and National Marine Fisheries Service abstaining. Back to other compliance issues. We've got stage increases and zero tolerance on v-notch. The board chair will express two concerns. One is you've talked a couple times about coming up with an alternative management strategy and the date for that is slipping. Originally we were talking about sometime this year and now we're talking about July of next year and so that's just a concern that I've got. The other concern is a broad one that we're readdressing questions that have come before the board before and been approved by the board and in large part by the Commonwealth, and so it brings to mind the care with which we all have to evaluate the LCMT proposals as they come through our system. Paul.

MR. DIODATI: As far as the minimum size increases, if we can look at that one separately, we've already gone to hearing and approved a schedule of minimum size increases, so that's not something that we're thinking about doing. It's pretty much a done deal. The schedule that you see is happening. As far as Outer Cape Cod's trap transferability program, I guess I would have to question why ASMFC thought it important to have a workshop today and why wasn't Massachusetts given -- why did the board go ahead and vote for Massachusetts by itself to implement just such a program that we seem to have a lot of questions about?

CHAIRMAN LAPOINTE: I mean, I will say, in the board's defense, it was done in part because the Outer Cape Lobster Management Area had the Commonwealth involved in the drafting of that plan when it was presented to the board. I think we're now looking at the difficulties of that, but in defense of what the board has done, it strikes me as a good observation. Mark Gibson, can I put Rhode Island on the spot because what the size limit -- the proposed changes and when size limits go into effect affect your state as well, do they not?

MR. MARK GIBSON: I didn't know we were done with Massachusetts.

CHAIRMAN LAPOINTE: No, we are not.

MR. P. WHITE: Changing the focus?

CHAIRMAN LAPOINTE: Well, no, I'm just trying to get some discussion on this, and I know that in the past there was a lot of concern from your state about their not sticking to the original compliance schedule. I'm just asking for your comment on what Massachusetts is proposing, I apologize.

MR. GIBSON: Is this question specific to the gauge increase and the delayed implementation of the second increase?

CHAIRMAN LAPOINTE: That is correct.

MR. GIBSON: Well, we are in the same situation, and we had a second gauge increase scheduled for July, as the PRT report indicates. We did not put that into effect effective July 1 because we had decided we weren't going to be way out in front of the pack anymore, but we have taken -- we have public noticed that action. We took public comment on that second gauge increase last Thursday night, on the 22nd. Our marine fishery council will meet Thursday night this week to discuss that issue and render advice and opinion to our director, who, for those of you who don't know, the relative authorities of the director of DEM and our marine fisheries council have been reversed so that the DEM director now has final authority over marine fishery regulations and the council has been reduced to an advisory capacity, which formerly we held. So they will meet, discuss this, and render an opinion to the director, who will then take advice from us. The way the rule is written right now, it goes into effect no later than December 31, but it does not preclude us from putting it into effect sooner than that should there be a non-compliance finding rendered here today and our director sees fit that he needs to come into compliance faster than that December date. So we will certainly do it no later than the Massachusetts date, but possibly sooner. But as it stands, we did not do it as of July 1.

CHAIRMAN LAPOINTE: Thank you. Jerry.

MR. JERRY CARVALHO: Thank you, Mr. Chairman. Needless to say, the size of Massachusetts and its proximity to the state of Rhode Island makes it extremely difficult for Rhode Island to go up on the gauge without Massachusetts, Connecticut, and New York doing the same thing. Thank you.

CHAIRMAN LAPOINTE: The board is too quiet today. Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: It seems to me there's two issues here. Massachusetts has indicated their schedule for going up on the gauge, so the first question is is that acceptable? And then the second issue it seems to me is reflecting on your comments, Mr. Chairman, will Massachusetts stay on schedule for the subsequent gauge increases I think is what I'm hearing is the two issues here.

CHAIRMAN LAPOINTE: And from the understanding of what Paul and Bill said earlier, that in fact the regulations which have been passed have at the least the July 2003 gauge increase already built into them. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Yes, that's true. In other words, the 2003 gauge increase and the 2004 gauge increase are right with everybody else. The only difference was that we're sliding an extra gauge increase in this year to sort of get us back right on schedule, and those regulations are already approved. So it's going to happen.

CHAIRMAN LAPOINTE: Board members, compliance on this size limit? Is there any sense that -- Paul.

MR. DIODATI: Just to correct the record, we've adopted a regulation that approved the schedule through December of 2002, but we'll go to hearing with the July or the next -- January, I'm sorry. We'll do that one next. The 2003 one we haven't gone to hearing yet. Sorry about that.

CHAIRMAN LAPOINTE: Pat White and then Rich White.

MR. WHITE: But as long as that's already scheduled for this calendar year, is he still then in compliance? He's not out of compliance with the 2003 one until July 1. In January they're going to do the hearing. He's not going to implement the increase in January. He's going to implement it in July, he said. He's going to do one before the end of this year, which would keep him in compliance with this plan. Is that correct, Heather?

MS. STIRRATT: If Paul decides or if the Commonwealth of Massachusetts implements a one thirty-seconds of a gauge size increase by December 31 of this year, that will, in effect, bring them into compliance with Addendum III at that point. And provided that they implement another gauge size increase by July 1 of next year, then that will keep them in compliance with Addendum III.

MR. WHITE: And if I understand what Paul said, you have that already through your legislature or through rulemaking or whatever you did, that's already in there. So they aren't out of compliance with --

CHAIRMAN LAPOINTE: Technically they are because the date they were supposed to implement the one thirty-seconds was July 1 of this year.

MR. WHITE: Oh, not just this year?

CHAIRMAN LAPOINTE: Rich White.

MR. WHITE: Well, just to follow up on what Pat says, what do we have to gain, really, on this issue to find them out of compliance? What are we going to gain?

CHAIRMAN LAPOINTE: I don't know what there is to gain, but we have to act on it as a board and that's what we're trying to tease through this process. Gordon Colvin.

MR. COLVIN: You know, another thing that we're going to talk about at the Policy Board meeting is the issue of the timeliness of implementation of compliance measures, and I just point out to the Lobster Board that none of our management programs presently specifically address the issue of delayed implementation. What they address is non-implementation, and the only recourse that the commission and its partners have under ACFCMA is to compel implementation, not to compel it retroactively. So we do have some unfinished business to do generically throughout the ISFMP with this issue. I see nothing that needs to be done here with respect to the timing of the implementation. In fact, personally I was glad to hear that the action that Massachusetts has taken was in fact taken and that the next gauge increase, that one has been done, and the next one is in place for the end of the year. I think that's substantially farther along than we might of thought we would be at our last

meeting. I see no reason for the board to take any action with respect to the issue of the gauge at this time.

CHAIRMAN LAPOINTE: Other board members? Vince.

EXECUTIVE DIRECTOR O'SHEA: Correct me if I'm wrong, Mr. Chairman and Heather, but Massachusetts was supposed to go up on July 1 with a gauge and they have not done that.

MS. STIRRATT: That's correct.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: Well, then, I'll make a motion that we find the state of Massachusetts out of compliance January 1 if they haven't come into compliance with their regulation, as they stated, before December 31.

CHAIRMAN LAPOINTE: But they already have.

MR. WHITE: Implementation, they haven't implemented.

CHAIRMAN LAPOINTE: No, but they have it -- I mean, the reg has passed and it's going to go into effect the last day of the year or the first day of next year, at year's end. So they've taken that action. The action they haven't taken and so it -- from the sense of the board, I'm going to call it substantial compliance with the plan, they've already taken that action. The question would be what they're going to do next July because that's not gone through the regulatory process yet. Well, I mean what they've done is they've just said we're going to -- they passed the regulation that goes into effect the 31st of December rather than the first of July. It does go into effect. I mean if in fact the board rescinds the regulation, we could then, in our first meeting of next year, find them out of compliance. I don't see that -- I guess the sense of the board is that's not necessary.

MR. WHITE: All right, then I withdraw my motion.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. To elaborate upon the point that Gordon very carefully walked around is a mine field because we're going to have some problem when we get to the New York report. We talked about not implementing a plan according to the plan and we talked about maybe there should be a payback. And here's another typical case where you've got an area -- and I'm not picking on Massachusetts, but you have an area where you have two or three different sizes within a very limited area and some folks are going to be able to take lobsters that are a different size than somebody else fishing right next to them, so to speak. The question is no payback. What is the impact on the biomass? That was a question I asked earlier and I wasn't flip about it. I was rather serious, and I know we don't have that information, George, but as just a case in point here that somewhere along the line, I think we have to start talking seriously about payback when a plan has not been put in place according to the take. Thank you.

CHAIRMAN LAPOINTE: I mean, on that issue specifically, and drawing back to biology classes and analysis I haven't done for a decade and a half, looking at individual measures and how they relate to meeting our mortality targets, it is difficult, at best, and we work with an equilibrium model that takes twenty years to go out to equilibrium. So trying to get them to pay back something now based on an individual measure doesn't make any sense unless it's five lobsters they have to send to the Commissioner of Marine Resources in Maine.

MR. AUGUSTINE: I'll take them, George.

CHAIRMAN LAPOINTE: Bob Beal or Vince O'Shea, with the discussion of the board that in fact Massachusetts has made substantial progress toward -- I mean, they've got the regulation in place to come into compliance on the 31st of December; is that sufficient to jump to our next issue after this board discussion? I thank everybody for their tolerance. Joe, the answer was yes, an emphatic yes. The remaining issue on Massachusetts' compliance, the PRT report in regard to the Commonwealth of Massachusetts has to do with zero tolerance on v-notching in Area 1 and the trap tag transferability issue for the Outer Cape. The Commonwealth has said they are going to come up with an alternative management strategy by next July and so that's where we are. Board discussion? Pat White.

MR. WHITE: On this one, I would move that the state of Massachusetts be found out of compliance on the v-notch issue.

CHAIRMAN LAPOINTE: Commonwealth.

MR. WHITE: Commonwealth, excuse me.

CHAIRMAN LAPOINTE: Seconded by Dennis Abbott and we do need -- I mean, when we do a motion of non-compliance, we have to state what part of the plan they're out of compliance with and what they have to do to come back into compliance. Staff is shaking their head yes.

MS. STIRRATT: According to Addendum III, the Commonwealth would need to implement a zero tolerance definition of v-notching in order to come back into compliance with the addendum. And this would be, again, a v-notched female lobster means any female lobster bearing a v-shaped notch of any size.

CHAIRMAN LAPOINTE: Motion by Pat White, seconded by Dennis Abbott. Do you want that read into the record? It's still being perfected. Discussion while the motion is being perfected. Pat White and then Gordon Colvin.

MR. WHITE: My reasons for this I think have been clear. We've been over this a lot of times. I think it's really unfair to Maine and New Hampshire that our doing the zero tolerance v-notch to have the nearest neighbor not doing it. I'm really concerned about the effects of v-notching. Although an egg-bearing female is sacred, without following through with this type of a notching program, we're not going to get the benefits. The model says that with zero tolerance we're getting only two years' credit out of that animal, and virtually we get nothing if we go back to the quarter inch. I'm concerned about where it then puts in the model, so I think it has a lot of ramifications just beyond politics.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: Just for the record, I wanted to make it clear that the zero tolerance definition is applicable in Area 1.

CHAIRMAN LAPOINTE: That's a good

clarification, Gordon.

MR. COLVIN: And I wonder if that ought not to be made clear in the motion.

CHAIRMAN LAPOINTE: Yes. Eric Smith.

MR. SMITH: Technically speaking, I can't disagree with this motion because technically they're out of compliance. Pragmatically speaking, I think the judgement of the board is to decide whether we think this rises to the level of something that we absolutely have to go through our process and the fisheries service has to go through their process, and what do we accomplish if we do that. There's a huge difference between Maine and Area 1 and New Hampshire and Area 1 and Massachusetts and Area 1 because they have Area 1 and 3 and Outer Cape and Area 2. They've already said they're working on a comprehensive plan to try and address all of these things. The v-notch and the Outer Cape issues are very intertwined with not only what their own other fishermen do who don't fish Outer Cape or Area 1, but also the citizens of other states that adjoin, which we do not, by the way. I just think we don't harm lobster management if we wait to see what their plan is come next spring and maybe we leave ourselves in a position, as in the previous motion, where if the board meeting in the spring of '03 isn't satisfied with what they've come up with, then you find them out of compliance July 1, 2003. I just think that's a more prudent way of dealing with it than to go at it right now. Thank you.

CHAIRMAN LAPOINTE: Paul Diodati and then Joe Fessenden.

MR. DIODATI: Just for clarification here, we are v-notching in Area 1, and the issue here is how our enforcement officials define what a v-notch lobster is in the catch.

And as I stated earlier, the Commonwealth, in Area 1 we can attribute only about 20 percent of the Gulf of Maine total catch to Massachusetts fishermen in Area 1. I think it's questionable how much we're actually contributing to the conservation measure of the v-notch itself by not going to a zero tolerance definition. In addition, although I don't have a report from the Law Enforcement Committee, I do have one for the Socioeconomic Committee where they stated that clear definitions of v-notch are required for effective enforcement. That's been a concern that I've heard from

my enforcement officials, and that's why we've got a v-notch definition that's been in place for about the last decade, approved by the New England Fisheries Management Council and this body, the Atlantic States Marine Fisheries Commission. So by adopting a second definition in a portion of our state is not only going to lead to confusion, but I think jeopardize the ability for our law enforcement officials to make valid cases in the courtroom.

CHAIRMAN LAPOINTE: Joe Fessenden and then Mark Gibson.

MR. FESSENDEN: I just want to talk about the enforcement of the v-notch law. Anecdotally, I want to talk about a case that the National Marine Fisheries and the state of Maine and the state of New Hampshire developed last spring where they caught a boat with 148 v-notched lobsters on board the boat. 25 percent of those lobsters would not have come under the quarter inch v-notch definition, so 25 percent would have been legal in Massachusetts landed. The boat typically had gone into Massachusetts, but for some reason made a trip into Portsmouth that day and got busted. As far as the zero tolerance standard, I've been in law enforcement 27 years, marine law enforcement. We've been operating under that standard in Maine. I know New Hampshire has it and has for a number of years. Ten or fifteen years New Hampshire has had it, and it's really much easier for law enforcement, I believe, to operate with a zero tolerance. I just talked to Chris Shotmyer a few minutes ago during a break. He agreed with me as far as federal perspective, you know, as an agent's perspective. I'm not talking for the agency, but I asked him what he thought about it. So in my opinion zero tolerance is easier to enforce. And as far as this being an issue that's kind of gone by for this season, you've got to remember the fall up in Maine, New Hampshire, Outer Cape Massachusetts, the v-notched lobsters are loaded. I mean, this is when they catch lobsters up that way. As a matter of a fact, I remember reading in "Commercial Fisheries News" just a couple years ago, when this v-notch thing was going on, that some Outer Cape fishermen reported, Massachusetts fishermen reported up to 80 percent of their lobsters landed in the fall are v-notched lobsters, are female v-notched lobsters. Now where do they come from? They come from Maine, New Hampshire, and now we've got Massachusetts notching lobsters and throwing them back overboard. So this is a fall issue, a big issue. September, October, November is big lobster

landings in those states. Thank you.

CHAIRMAN LAPOINTE: Mark.

MR. GIBSON: Yes. I'm wondering does Item 9, the technical committee's report, bear on this? Do we need to hear from them before we take action on this particular motion? Isn't there a technical committee report coming up on use of observer observations on v-notching to judge efficacy of the v-notching program, and does that intertwine with this decision in any way?

CHAIRMAN LAPOINTE: Carl.

MR. CARL WILSON: I think it's more tangential, Mark. In the past, the technical committee has expressed concern with competing measures within the same area.

Then there's also been the technical recommendation of how a v-notched, egg-bearing lobster is treated within the model. I think this goes more to the point of in the egg-per-recruit model it's assumed if an egg-bearing lobster is v-notched, she is protected for two molts. A study conducted by the Maine Department of Marine Resources in the early 90's estimated that approximately 90 percent of lobsters that were v-notched under the technical quarter inch nosidal hairs would then become legal upon the first molting. I think that really gets at the issue, is that the v-notching is supposed to allow that protection to extend beyond the time of carrying eggs. So I don't think the v-notching model, which we'll be talking about later today, necessarily involves that because I think Massachusetts could be v-notching 100 percent of the egg-bearing lobsters with a quarter-inch V, and we could be observing that as well.

CHAIRMAN LAPOINTE: Paul Diodati.

MR. DIODATI: Mr. Chairman, just for the record, I would really prefer that information about percentage of v-notched lobsters in anyone's catch come from the technical committee or even my technical representatives, who are here today, and not from law enforcement giving anecdotal information about 80 percent of the v-notched lobsters in Massachusetts. That is irresponsible. I don't know where those numbers are coming from. I have some numbers right in front of them, nothing that resembles that high a rate. I think it's very misleading for the board to hear that kind of information. Furthermore, I would rather hear from the Law Enforcement Committee on the zero tolerance versus the existing

definition that's been in place for the past ten years. I think they may have reported on that in their last memo. I just don't have it here. Thank you.

CHAIRMAN LAPOINTE: Thanks, Paul. Other board comments on this motion? Members of the public? Sorry, I'll get to you. I ignored Bob Baines, the chair of our advisory panel, the new chair of our advisory panel, Bob Baines from the state of Maine.

MR. BOB BAINES: I just want to say that the v-notch in Area 1 is the cornerstone, as you've heard, of our plan. These lobsters have been v-notched and have been put back overboard and they need to remain there; and for the Commonwealth of Massachusetts to ignore this, choose to ignore it, goes against this LCMT plan and the LCMT has worked very hard on this plan. This is it. It came through. It needs to be enforced.

CHAIRMAN LAPOINTE: Comments from the public? If not, I'm going to give states five minutes to caucus so I can leave the room for a moment.

(Whereupon, a caucus is held.)

CHAIRMAN LAPOINTE: Are board members ready? Rhode Island, are you ready? Commonwealth, have you caucused? I will read it into the record in just a moment. Are we ready? I will read the motion into the record: Move that the board recommend to the ISMFP Policy Board and the Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster Fishery Management Plan in that it has failed to implement and enforce the zero tolerance definition of v-notching for its waters of Area 1. This measure is required to ensure that the egg-rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, the Commonwealth must fully implement and enforce the zero tolerance definition of v-notching in its waters of Area 1, i.e., any female lobster bearing a v-shaped notch of any size. Motion by Pat White, seconded by Dennis Abbott. We are ready. All in favor of the motion, please, the states, raise their hands; four states in favor. Opposed, same sign; three. Abstentions, two. The motion carries. The remaining agenda item with the PRT report for the Commonwealth of Massachusetts is for the Outer Cape

and the trap transferability provisions. This is for the trap reduction schedule and transferability for the Outer Cape, and the Commonwealth has said that they have raised a number of questions about how that would work, a number which were raised this morning at today's transferability workshop. This was approved by the board through our normal process as part of Addendum III, I believe. Board pleasure on this action? Paul, please.

MR. DIODATI: Again, the only thing I can offer on this is that we've identified all of the issues that were put on the board this morning; everything from the administrative cost and development and logistics of how do you carry out this type of program right down to the equity issues. What I'm suggesting is that you give us the opportunity to work on this one over the winter, and we'll offer an alternative strategy to control effort, not only in the Outer Cape, but throughout our entire state waters.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: Paul, did you vote down their request, though, for their transferability trap program? Did you not support their plan when they proposed it?

MR. DIODATI: I didn't. I can't recall. I don't know what the record shows, but my designee no longer works for me who may have supported it. I'm telling you here and now that I don't.

MR. WHITE: That was my question, you didn't support the transferability program from the Outer Cape?

MR. DIODATI: I do not support the transferability program as written and proposed and as expected for the Commonwealth to carry out, no, I don't.

CHAIRMAN LAPOINTE: And just for the record, your designee retired and didn't get the boot.

MR. DIODATI: Oh, correct.

CHAIRMAN LAPOINTE: That sounded a little harsh. Heather.

MS. STIRRATT: I just have a point of clarification. Really, there are two parts to this segment

in Addendum III, the first of which is a trap reduction schedule for the Outer Cape, which reads as follows: "Beginning in 2002 and extending through 2008, a 20 percent reduction in the total number of traps allowed to be fished will occur in the Outer Cape." That's the first part. The second part relates back to the transfer period, and this is the segment that directly applies to the trap transferability program. I just want to make sure that that's clear on the record and that everyone understands this really is a two-part segment for the Outer Cape.

CHAIRMAN LAPOINTE: And what the Commonwealth is proposing is that both of those be held in abeyance while you come up with an alternative management strategy. Bob Baines.

MR. BAINES: My question is, Paul, are you going to go back and work with the LCMT to develop a new plan or is the Commonwealth doing this on their own?

MR. DIODATI: I'll work with not only the LCMT members, but all different members of my industry that were not part of the original LCMT teams. Again, I believe in cooperative management side by side, and I appreciate all the hard work that LCMT members have given us, but I view these as recommendations and most of them have been very good. This is one that I'm going to modify before I implement it.

CHAIRMAN LAPOINTE: Board members? Paul, I have a question, if I might. I expressed a little bit of concern earlier just about the time frame upon which this is going to occur. And you did just what I would do in that case, you were a little vague about trying to push it, about giving yourself some time. Can you give us a better idea of how this would roll out?

MR. DIODATI: Yes. In house we've already developed a framework strategy for what we would like to do. Over the next several months, I plan on meeting with industry representatives and even some members of neighboring states so that everyone has a good idea of what we're proposing before we go to public hearing. And provided that we have good buy in, we will go to public hearing. and hopefully have a plan implemented by July 1 of 2003. That was my intention. If I can do it earlier, I will, but it depends on our hearing schedules and that sort of thing.

CHAIRMAN LAPOINTE: From the commission's perspective, because you are proposing alternative management strategy, there would have to be a component of that, if that's approved by the board, that gets reviewed by the technical committee for its conservation equivalency.

MR. DIODATI: Again, naturally, as soon as I have something more definitive that I feel that I'm ready to go to public hearing on, the technical committee, the plan coordinator, and yourself and other board members would have that strawman available.

CHAIRMAN LAPOINTE: Eric Schwaab.

MR. ERIC SCHWAAB: Thank you, Mr. Chairman. I thought I heard Heather say earlier, and I just want to clarify that we're talking about a conservation equivalent action. I thought I heard the statement that conservation equivalency is not provided for in the current plan or did I misunderstand?

MS. STIRRATT: No, that is not correct. A state can at any time alter or change their management program in accordance with a conservation equivalency being submitted to the commission, reviewed by the technical committee, and upon approval by this body.

CHAIRMAN LAPOINTE: On some provisions or all?

MS. STIRRATT: On any provision that's area specific.

CHAIRMAN LAPOINTE: Board members, is there opposition to letting the Commonwealth develop an alternative management strategy for the Outer Cape trap tag reduction and transferability provisions? Pat White and then Pat Augustine.

MR. WHITE: Actually, believe it or not, I'm kind of in support of that effort, George, because I think originally this plan came forward developed by a very few people and it wasn't taken out. I don't think the rest of the area out there was paying attention to what was going on. That's nobody's fault or whatever, or it is their fault. I think Paul's effort, in this particular instance, is a true effort to try and rectify that problem, and I think I would support it as long as it was within reason and time.



CHAIRMAN LAPOINTE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I fully agree with what Mr. Diodati wants to do. It seems like the right way to go and it sounds like you're taking a very aggressive approach to resolving this issue. I'm wondering if you think you might be in a position by our annual meeting to give us kind of an update, if we have a Lobster Board meeting at that point in time, as to maybe any additional information between now and then that comes to the forefront. And if it's too soon, it's too soon, but I thought I would ask that for a date certain if you could possibly do it.

MR. DIODATI: I'll try to meet that as a deadline. My only concern is presenting the information to the board and then the public perception is that I've already gone ahead and moved something along without enough participation.

CHAIRMAN LAPOINTE: Hearing no suggestions from board members, is this an issue we just want to give the Commonwealth some time on or do we want to -- I'm seeing heads shaking yes. The other alternative is a formal motion, but we wouldn't report to the Policy Board until July 2003 to put a time certain on that. Is there a preference for one way or the other? Bruce Freeman.

MR. FREEMAN: George, the comments just made was that Massachusetts anticipates having this in place on or about July 1, 2003; is that correct, Paul? With that in mind, I would suggest the board take no action until that time. If we believe that action is necessary, we could do it at our -- I guess it would be our August meeting. It would give Massachusetts time to develop it.

CHAIRMAN LAPOINTE: Is there opposition on the part of the board to that course of action? Hearing none, thank the good Lord we'll move to the next part of the Plan Review Team report.

MS. STIRRATT: Picking up after Massachusetts, we have the state of Rhode Island, and I think Mark Gibson has spoke sufficiently to the state's perspective there and would probably like to follow up, and I'll certainly give him the opportunity. The compliance issue that the Plan Review Team has pointed out is the fact that under Addendum III they were required to implement a minimum gauge size

increase of one thirty-seconds of an inch no later than July 1 of this year, and their regulations show that has not in fact occurred. The Plan Review Team recommends that the management board take action on Rhode Island's non-compliance with Addendum III requirements.

CHAIRMAN LAPOINTE: Mark Gibson, comments?

MR. GIBSON: Again, the proposed rule that we've taken comment on says no later than December 31 of this year, mindful of what we saw in the Massachusetts regulations. The earliest we could do this otherwise would probably be the end of September if we have a recommendation from our marine fisheries council, and then go forward with a recommendation to our director, which he concurs with. A twenty-day waiting period after filing would put us into late September. I'm just giving the board some insight into how fast we could do this, were we persuaded otherwise.

CHAIRMAN LAPOINTE: Given the board's action on Massachusetts, where we said that they're putting the regulation in place by December 31 was sufficient action, unless I see opposition from the board, I would recommend the same action on part of the board for the state of Rhode Island. I see a lot of heads shaking yes and none saying no, so we will move to the next state.

MS. STIRRATT: The next state is fairly simple. The Plan Review Team reviewed the state regulations for the state of Connecticut and found no compliance issues, nor any areas of concern. Unless there is any comment from the state of Connecticut, the Plan Review Team has no recommendations for action. The next state is the state of New York. There were, as you may recall, to bridge from the last meeting to this board meeting, an emergency rule was required by the state of New York to put in place the circular escape vent size that's required under Addendum I. That did occur before July 1 of this year. The Plan Review Team has noted this is an area of concern primarily because that emergency rule does have a sunset period of 90 days after implementation. Provided that the state of New York implements and approves a proposed rule which has already been published and was available for public comment, and I believe maybe still is available for public comment, then this area of concern is moot

and no longer an issue. We simply raise it because there is a sunset period and we wanted to make you aware of it. In addition, the Plan Review Team noted two compliance issues for the state of New York, the first of which is a gauge size increase for Area 4 of two thirty-seconds of an inch, and that's because they elected to not go up on the gauge last year. So to get in sync with all of the other areas, they scheduled two thirty-seconds of an inch before July 1 of this year. That did not happen by that implementation date. In addition to that, there was also a requirement under Addendum III that a maximum gauge size be established of five and a quarter inches in Area 4 before July 1 of this year, and, again, that has not yet been implemented. As a followup, again, I mentioned that New York has published and has already opened up a public comment period on a proposed rule. The proposed rule does contain provisions which would increase their gauge size up to the two thirty-seconds of an inch required in this plan, as well as establish the maximum gauge size. If in fact New York implements and adopts this proposed rule, then these compliance issues will be moot, and I would simply forward on the Plan Review Team's recommendation that because these issues are still outstanding, they are recommending that action be taken on New York's non-compliance at this time.

CHAIRMAN LAPOINTE: Gordon Colvin, comment?

MR. COLVIN: Just to give you very specific information on the status of this, Mr. Chairman, as Heather indicated, the notice of proposed rulemaking has been published. It is in the 45-day public comment period in New York now. Now we combined the lobster measures with a number of other fishery management measures, including commission-required actions on fluke, scup, sea bass, and horseshoe crabs and some other stuff into a single package. And those of you who are on the Fluke, Scup, and Sea Bass Board understand when I tell you that the length of time it took this spring to bring to closure the recreational measures for fluke and scup delayed our filing of this rule such that we couldn't conclude the comment period by July 1. Nonetheless, the public comment period does end officially September 6. Our marine resource advisory council will meet on September 17, and as required by law, deliver their recommendations, and immediately following which notice of adoption of the final rule-making package will be published. So the

expectation is that sometime towards the end of September or possibly early October the final package will be in place. Now it happens that expressed terms of this entire rule is in the briefing book. It's in there for other reasons for a later agenda item, but if any of the board members are interested, the provisions that deal with the Area 4 and the circular vent, making that rule permanent are there. You'll also note that the entire Area 4 gauge increase schedule is specified so that when this rule is adopted it, takes it right through 2004.

CHAIRMAN LAPOINTE: Board member comments? Again, with how we dealt with Massachusetts and Rhode Island, it strikes me that with this regulatory package in place, that we have New York's intention that they're going to follow through and we revisit this if in fact it gets, for some reason, turned down at our next meeting. Bruce Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. Gordon, when do you anticipate that being effective? You said October?

MR. COLVIN: Bruce, it will be sometime around the end of September or the beginning of October, depending on the actual publication date schedules of the New York State Register.

CHAIRMAN LAPOINTE: Is there board objection to allowing the New York regulatory process to continue on, assuming they'll be in compliance and we'll deal with it if they aren't come the end of September? Seeing no objection, we'll move to the next state, please.

MS. STIRRATT: The final state that the Plan Review Team has reported on is the state of New Jersey. There were some areas of concern that have been noted and will likely be addressed further in our agenda via the discussion and hopefully the approval of Technical Addendum Number I. This concern primarily deals with the fact that New Jersey reported an intention to remove the vessel upgrade provision for Area 5. This is a requirement under Addendum III. And, again, back in May now, of the last Lobster Board meeting, there was a directive to staff to begin drafting Technical Addendum I to in fact remove this and therefore it would no longer be a requirement under Addendum III. If in fact that happens, then this area of concern goes away. As far as compliance issues, there were two of them noted by the Plan Review Team, the

first of which was, again, a gauge size increase for Areas 4 and 5, which would be, again, that two thirty-seconds of an inch gauge size increase for both of those areas no later than July 1 of 2002; and then, finally, again, the maximum gauge size establishment of five and a quarter in Area 4 no later than July 1. It's my understanding that the state of New Jersey is in the process of getting some regulations on the book, and in fact I received just recently a copy of a letter from Bradley Campbell, who is the Commissioner of the state of New Jersey, noting that Governor McGreevy had wanted Commissioner Campbell to respond on behalf to the commission to let them know that they are planning on adopting the minimum gauge size increases. It's my understanding, in talking to Bruce, that they do have the intent of also establishing the maximum gauge size. If in fact this happens, then again these compliance issues will be moot. Nonetheless, since they are outstanding at this time, the Plan Review Team is recommending that some action be taken on New Jersey's non-compliance.

CHAIRMAN LAPOINTE: Thank you, Heather. Bruce.

MR. FREEMAN: We're happy to report that the legislative action has been taken to void the minimum size that we've had in place of five and a quarter. The regulation that we had hoped to be in place July 1 was delayed, but it became effective August 19. We do have the minimum size will be five and five-sixteenths. We've gone up a sixteenth. The regulations also have laid out a one thirty-second increase as required in the plan, and we also would have the five and a quarter max in Area 4.

CHAIRMAN LAPOINTE: That was three and five-sixteenths, not five and five-sixteenths?

MR. FREEMAN: Oh, I'm sorry, yes, three and five-sixteenths.

CHAIRMAN LAPOINTE: Well, you guys are making leaps and bounds.

MR. FREEMAN: Yes, well, we have big lobster in New Jersey.

CHAIRMAN LAPOINTE: That went in effect August 19?

MR. FREEMAN: Yes, and I think we'll get into some discussion later in the agenda, but we're in the process of notifying various dealers, particularly out of state, that this regulation will be possession. So any lobsters that are shipped into New Jersey will have to have that minimum size, regardless of whether they were legal wherever they were taken, including Canada. One other thing to note, and we've mentioned this, that the recreational community was very supportive of increasing the minimum size, and although the plan only requires that to occur on commercial fishing, the minimum size will apply to possession both by commercial and recreational. As those size increases occur, that will be across the board for both fisheries.

CHAIRMAN LAPOINTE: You can provide the regulation or the law to the commission staff, just for our records?

MR. FREEMAN: Yes.

CHAIRMAN LAPOINTE: Thank you. That takes that off the table. Heather, we've moved past the state compliance issues. Thanks to everybody for their -- David Spencer.

MR. DAVID SPENCER: Thank you, Mr. Chairman. David Spencer. I just wanted to express my concern, after hearing what New York and New Jersey did in their regulations, and I think it was at least the spirit of what I thought the gauge increase schedule was that they actually implemented the entire schedule, or not implemented, but put on their books, and I'm very concerned that Rhode Island and Massachusetts seems to be taking a piecemeal approach of having a public hearing before every single gauge increase that, number one, we've already had public hearings on; and number two, I think we should adhere to that schedule. I'm afraid that by doing it that way we're going to be in this position every year of having a chess game and seeing who goes first. Thank you.

CHAIRMAN LAPOINTE: Thank you, David. I believe Heather had one -- John German, go ahead and then I'll take Heather.

MR. GERMAN: Yes, John German, I have one short comment. I heard it come up tonight where the lobstermen around my area have talked about it before, and that is the use of a multi-year tag. I heard it come again today, and I would like this board

somewhere along the line to investigate it, look into it, talk about it, or something. That's what my concern was. Thank you.

CHAIRMAN LAPOINTE: Thanks, John. Heather.

MS. STIRRATT: The Plan Review Team just had one final comment that I just wanted to forward on to board members. I believe it's been discussed at least at some detail today, so I'll leave it to you all to make a decision on how you respond. The Plan Review Team recommends that the Lobster Management Board consider the implications of delays in Addendum III implementation, given the goals and objectives of the FMP, as well as the intent to meet the egg-rebuilding schedule by 2008. The primary reason why the Plan Review Team brings this before the board for consideration is that there has been a significant amount of discussion that has occurred at the board level relative to establishing and defining performance criteria; and if in fact there is this concern about meeting the intent to rebuild the stock by 2008, then certainly these delays in implementation should be something that should concern board members greatly. I just want to point that out and then if you all have any directives in terms of how we might investigate this issue further, we would be more than happy to do that.

CHAIRMAN LAPOINTE: Does it make sense to the board that when the technical committee meets, they look at this question? It strikes me that if in fact the delays in Addendum III requirements cause that schedule to be bumped up, a legitimate question to ask the technical committee is if we have to boost the back end of the 2007/2008 measures to compensate for that? Does that sound all right to the board? We've worn people out. Seeking not a head shake one way or the other, that's the manner in which we'll proceed. Heather, please *de minimis* discussion. We had a motion to table and we need to take action.

MS. STIRRATT: Just by way of a little brief background, during the May 2002 Lobster Board meeting, board members expressed concern over state requests for *de minimis* status. Specifically, board members expressed confusion over which management measures a *de minimis* state would be required to implement versus those in which they would be exempt. As a result, the board tabled the following motion: Move that the state of Delaware, Maryland,

Virginia, and North Carolina be granted *de minimis* status for 2002. The board asked that staff provide clarification regarding plan requirements for implementation by *de minimis* states. Commission staff has prepared a brief on *de minimis* provisions under Addendum I to the Interstate Fishery Management Plan. This brief contains *de minimis* qualification criteria, plan requirements for *de minimis* states, and recommendations for board action. Board members should have carefully reviewed that in advance, and therefore I will not take a lot of your time to go over the specifics. However, if you have questions I would be happy to answer those.

It is important, though, that board members consider the requirements for *de minimis* states, which would be only the coastwide management measures at this time. And if in fact board members feel as though additional requirements should be made, then they should be listing those out upon approval of those states for *de minimis* status. They should also provide a deadline for implementation of these additional management measures. Again, the action before this body is to take action on the tabled motion as listed during the May 2002 board meeting.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I think on that one I may just have to say so moved because the motion read moved that the states of Delaware, Maryland, Virginia, and North Carolina be granted *de minimis* status for 2002. Is that correct, sir?

CHAIRMAN LAPOINTE: That's not correct.

MR. AUGUSTINE: Well, what's correct?

CHAIRMAN LAPOINTE: We need a motion to take this off the table.

MR. AUGUSTINE: Okay, move to take it off the table.

MR. WHITE: Second.

CHAIRMAN LAPOINTE: There's a motion by Pat Augustine and second by Pat White to take this issue off the table. We already have a motion before us and we need to vote on that. Is there discussion on the motion before us, and I will read that motion: Move that the states of Delaware, Maryland, Virginia, and North

Carolina be granted *de minimis* status for 2002. Board discussion? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman, just a question. Then it is our understanding that the technical committee has approved and agreed with all of the elements, that these states do in fact meet the requirements of *de minimis* status as we described it?

MS. STIRRATT: Pat, to answer your question, the Plan Review Team is the body that appropriately reviews the annual reports. They have looked at the landings and they do meet the 40,000 pounds *de minimis* criteria. There is only one state that is pressing that threshold and that's the state of Maryland with I believe 33,000 pounds. But other than that, they all, even Maryland, meets the criteria.

MR. AUGUSTINE: Okay, that was the follow-up question --

CHAIRMAN LAPOINTE: Hang on just a second, Pat.

MR. AUGUSTINE: Mr. Chairman, it was a follow-up question.

CHAIRMAN LAPOINTE: I jumped the gun and I did not ask for board action on the motion to take it off the table. I had a motion and a second. Because I'm an optimistic guy, I assumed it was going to pass. Is there objection to that non-debatable motion to take this off the table for discussion? Seeing none, go ahead.

MR. AUGUSTINE: Thank you, Mr. Chairman. My question was, in response to what you just gave us as additional information, it appears that Maryland is not in jeopardy of going over the 40,000 threshold and that 33 seems to be a substantial window there of coverage. So unless there is further discussion, I would like to call the question.

CHAIRMAN LAPOINTE: I think staff did raise the question of those measures that were listed in the document that would be required of those states.

MS. STIRRATT: That's correct. As long as the board is comfortable knowing that these *de minimis* states are only going to be bound by the coastwide

management measures, that means three and a quarter coastwide, that's what they're bound to. It means they are not bound to the area-specific management measures, so all of the areas that just went up on the gauge, they're not going to be bound to that. They're not going to be bound to the maximum gauge sizes that were established. It's all outlined clearly in the report. If you all are comfortable with that, then approval of this motion is correct; and if not, then we need to identify what additional management measures need to be listed.

CHAIRMAN LAPOINTE: Vince O'Shea and then Gil Pope.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman, a question for Heather. This determination is subject to review every year so that if a state's landings were to increase for some reason, that fact would come before the board for subsequent review; is that correct?

MS. STIRRATT: That is correct.

CHAIRMAN LAPOINTE: Gil Pope.

MR. POPE: Thank you. I guess that answered my question because it looked like it was a motion that will just be in place for four months. I know that we're *de minimis* in a number of things. Is that redone on an every-year basis or is it just this particular one?

CHAIRMAN LAPOINTE: I believe that's correct, and it would be a function of the state requesting *de minimis* status of the board and saying they're regulations were in place -- getting landings would take some time, but talking about their landings as well. Bruce Freeman.

MR. FREEMAN: Heather, has there been consideration given by the Plan Review Team of the possibility of requiring size increases in the future of the areas, well, of the four states involved and how that would occur?

MS. STIRRATT: The Plan Review Team simply was reiterating the requirements according to the FMP, which I believe was the task that was given to them at the end of the last board meeting. They have not evaluated the concept of applying additional

management measures. Rather, they simply reiterated the requirements of the board, should the board decide that they want to have additional management measures listed.

MR. FREEMAN: Well, I would submit, going back and reviewing this whole history of *de minimis*, it started out a relatively simple concept of relieving a state the responsibility of reporting on a weekly basis. That's where *de minimis* came from. It's developed much more now and I could see a situation where the harvest in those four states, if they were to increase substantially, it may be an effort to simply circumvent minimum size by moving operations to one of those states, that the board would be seriously concerned about increasing the size. It could happen by the board simply saying those states would have to implement size increases of their adjoining states, which could at some time in the future require they in one year increase their minimum size a quarter of an inch, if we, let's say, get to 2008. It seems to me it would be helpful for the Plan Review Team to look at various strategies. I can state for our state of New Jersey that if we saw landings increase substantially, but still being under the criteria for *de minimis*, that we would be concerned and would favor a size increase. Technically New Jersey would meet the criteria for a *de minimis* state, with our catch, but it is an important component. We want to be players with the rest of the state and quite frankly think that if we were exempt from some of the restrictions, it would create havoc in the marketplace, and it would also give a bad taste to our adjoining states where we share fishing grounds. So New Jersey has taken what we believe the responsible position of being a major -- well, not a major, but being a player of this plan and certainly not a major one. But we are concerned that any increases in catch, we would certainly want to see those states have some additional requirements.

CHAIRMAN LAPOINTE: Do you want the Plan Review Team to look at this or the technical committee or do you want to make an amendment to the motion so that the states would be subject to the minimum and maximum sizes in the appropriate management area?

MR. FREEMAN: I would prefer making a motion. The reason I say that, the fishermen, particularly from Virginia and Maryland, share the same grounds and fish side by side with some of our

vessels. Although our minimum size would be possession and those lobsters would not be, or at least if they didn't meet the criteria, wouldn't be sold, there is a feeling of equity amongst the fishermen that some people are required to do other things and the people next to them are not, and that doesn't sit well. I would prefer that beginning in 2003, that the *de minimis* states at least have the maximum and minimum size gauge increases in place. Now the issue is how it's done. You know, to require them to go up quickly would certainly create a problem, and we talked about this. The board decided that we would ratchet this up in small increments to have minimal impact on the fishermen, and I'd certainly want to give that opportunity to those *de minimis* states. I also want to put them on record that they should start looking at increasing the size and then having maximum sizes as well.

CHAIRMAN LAPOINTE: Mr. Carvalho.

MR. CARVALHO: Thank you, Mr. Chairman. I agree with Bruce and I think it should be tied in with the *de minimis* status, that there should be the appropriate gauge increases as part of that motion.

CHAIRMAN LAPOINTE: We don't have a motion. It would be an amendment to the main motion, which is fine, and Heather reminds me, and it's worth asking, we want to give states' time, 2003, is that December 31, is that July, is that January? I mean, because Maryland is the only state that's here, I would give them -- I mean, my sense is to give them time to work this through their processes, but --

MR. FREEMAN: Well, I would also say that the Delaware fishermen fish out of Maryland's port. They're located in Delaware, but quite frankly they're fishing out of Ocean City.

CHAIRMAN LAPOINTE: My question stands what time in 2003?

MR. FREEMAN: I would have no difficulty of having it December of 2003, to give them as much time because it's going to be something they need to do, and it's something that you just don't do overnight.

CHAIRMAN LAPOINTE: And should this motion pass, I would ask the staff to send letters to those states; and in that, addressing your issue of how they need to step up, I mean, if they need extra time to

do that or not. I have a second from Jerry Carvalho. I have Pat Augustine, Eric Schwaab and Gil Pope.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was noticing under the plan here within the document that we have on page 1, it does say plan requirements of *de minimis*, if they're granted, what is covered, and we basically say in there what is covered; prohibition on possession, et cetera, et cetera, et cetera, prohibition on possession of v-notch, requirements for biodegradable, minimum gauge size three and a quarter and limits on landings on so on, but what isn't covered, interestingly enough, for all other required components of the plan, the board will specify by motion what measures *de minimis* state must adopt. So it would seem to me either that will cover it or do we really a motion or just can the board do this on an annual basis. I just need clarification, Mr. Chairman.

CHAIRMAN LAPOINTE: I think the motion is appropriate and it addresses that question specifically, which one of those coastwide measures might need modification, and this is the motion at hand. I had Eric Schwaab and then Gil Pope and then Gordon Colvin.

MR. SCHWAAB: Thank you, Mr. Chairman. I'm not sure I understand exactly what this means at this point or what it would mean to us. I heard some discussion. Of course, other increases in this plan follow a careful ramping up, and I don't see that in this at this point, and I wonder if there is an opportunity for us to at least get some further advice as to what an appropriate phase in of these measures might be, given the potential for varying levels of discrepancy between the various lobster management areas and what's in place in the *de minimis* states.

CHAIRMAN LAPOINTE: And I think that's a fair request and that was the reason I mentioned that should the motion pass, that staff will communicate with the states and will work with the states on that very issue. Eric has a follow up.

MR. SCHWAAB: I just don't see a provision yet that would allow for at least some type of phase in of these requirements, and is that inherently understood or do we need to --

MS. STIRRATT: Eric, I think your point is very good. Let me just take a step back to the original; in your situation, Area 5 LCMT proposal that was approved under Addendum III. There were two options

in that proposal, which basically said that Area 5 on July 1 of each year would be required to implement a one thirty-seconds of an inch gauge size increase annually up through 2004.

So your question is a very good one in that where do we start that implementation process at the end of December 2003? Do we start it where Area 5 is holistically because if that's the case you're talking about three thirty-seconds of an inch gauge size increase. If not, then it might not be a bad idea for this body for to specify what type of an incremental increase they are looking for *de minimis* states specifically.

CHAIRMAN LAPOINTE: Gil.

MR. POPE: Yes, that was going to be my point is whose area are you going to use because in certain areas you have different states with differing sizes. So if you're going to go with the nine-sixteenths, are you going to go with the next one or are you going to go with what Rhode Island has in place or -- in other words, all it says here is adjacent states.

If you're going to run into that problem where you're going to have smaller lobsters being sent in there because of the gauge is two thirty-seconds smaller, then you will run into that problem. So where should you start? What would that size be and should it be based on the most restrictive, the least restrictive, or what?

CHAIRMAN LAPOINTE: These states are all off of Area 5, are they not?

MS. STIRRATT: Yes.

CHAIRMAN LAPOINTE: Bruce.

MR. FREEMAN: I think there is a table on the back of *de minimis*.

CHAIRMAN LAPOINTE: And this would be for the state waters components in the appropriate area.

MR. FREEMAN: Yes, the majority is for Area 4 and 5. However, there are vessels that fish in Area 3; and if they designate Area 3, then they're required to have the size as in Area 3, so this really applies to Area 4 and 5.

CHAIRMAN LAPOINTE: And this is just

for the state water components and not the federal water fishermen from those states. They would have -- but in regard to Area 3, they would have the same question about most restrictive that we're going to address soon. Gil.

MR. POPE: That was my point on the most restrictive. If you have people landing in different areas or applying to land in different areas, I don't know if all the states have your plan in place where if you choose Area 3, then everything that you land, no matter where you land it, has to be the size that happens to be in Area 3 or Area 2. Is that what you said?

MR. FREEMAN: Well, the issue is right now under Area 4 and 5 there is minimum and maximum sizes, and it's very similar to Area 3. However, the states that we declare *de minimis* have been exempted from that, and that's the issue. And, again, I understand it's not an easy thing to do, and my intent here, Eric, is to allow Maryland, Delaware and Virginia and North Carolina to increase a gauge size incrementally if they choose, give you time to do it. You would just be like a year behind. That was my intent, but the idea is you've got to get up there.

CHAIRMAN LAPOINTE: Is it to that point, Eric, or is it --

MR. SCHWAAB: I just wonder, having that being said, whether Mr. Freeman would accept a friendly amendment that would add that *de minimis* states begin to implement the minimum and maximum gauge sizes that are required in the adjacent lobster management areas subject to a schedule to be approved by the board.

MR. FREEMAN: That would be fine.

CHAIRMAN LAPOINTE: Secunder of the motion, how does that sound? Good. I had Gordon Colvin a while ago and then Eric Smith.

MR. COLVIN: Since New York is now obligated to implement size limits for red drum, which we don't have and don't get landed in New York, and we've never had a single case to enforce the size limit that we were asked to put in originally on red drum, I guess I can understand the reason for doing this. And it probably makes sense that even that size limits are kind of elemental and ought to apply even in *de minimis*

states. I don't really have a problem with that at all. I do have a question for Bruce regarding the mechanics of the motion on a slightly different subject to what we've been discussing, and that's that I noted with great interest his comments earlier that the new New Jersey size limits will be possession based size limits anywhere within the boundaries of the state of New Jersey. Is it the intent here, Bruce, of this motion to apply the size limits in *de minimis* states, that the motion contemplates as possession limits or are they intended to be at point of landing?

MR. FREEMAN: I would leave that to the individual states. However, I will say that I believe the state would be foolhardy if they didn't have possession.

MR. COLVIN: Well, remember we're talking about *de minimis* states here. I think I recall that one of the state's landings was in the range of hundreds of pounds a year; and I suspect that within the boundaries of that state, or states, they would be an awful lot more concerned about lobsters in commerce from outside the states than that couple of hundred pounds that got landed. And particularly when you look to -- you know, where are you going to put your enforcement effort, what is a *de minimis* state really going to do about all this, and I ask the question because it occurs to me that if it's the expectation of the board that these size limits be applied as possession limits in a *de minimis* state, that the motion ought to state that. I would not make that case myself. I don't think it's critical. I think it's critical that lobsters possessed on the water in Area 4 or Area 5 or lobsters that are landed from those areas comply with the Area 4/5 size limits. I'm not so convinced that if you buy a lobster in a restaurant somewhere inland, that that's a critical issue in those *de minimis* states.

MR. FREEMAN: If I may, I would leave that decision to the individual state. But as I indicated, personally I think it would be to the benefit of the state to have possession, but that would be their choice.

CHAIRMAN LAPOINTE: Eric Smith.

MR. SMITH: Thank you, Mr. Chairman. Embedded in this comment, I guess I'm going to have an implied question that probably Maryland or maybe New Jersey can answer for me for those four states. I can see a real reason for having a Massachusetts or a Rhode Island phase in a size limit increase because



they've got inshore fisheries and people who do not have federal permits. But my understanding of the fishery from Delaware south is it's all EEZ and if that's true -- now that could be an incorrect presumption, but if that's true, I guess I wonder why there needs to be the phase in because the people doing the fishing have to obey those larger sizes anyway, and it's simply a question of the enforcement nexus to make sure that as they come through the state's waters to hit the dock, they're enforced as of the place where they were harvested. So I would just ask whether that's critical. It's not an issue for Connecticut, but I just see it as a complicating issue if we have multiple different phase-in periods and maybe that last perfection and reflection isn't necessary.

CHAIRMAN LAPOINTE: I think that's a valid question to ask and that's something that, I mean, those states would have to consider. I have the same kind of thought, is that because they have an EEZ based fishery, that they're probably already there, but if they need time, we can provide that with this. Pat White had the last comment, I hope.

MR. WHITE: I just had a quick question. Should there be something in that amendment referring to it being a landings law and not a possession and what happens to then the interstate commerce of different gauge sizes?

CHAIRMAN LAPOINTE: That's another agenda item, if you don't mind. Other board comments? Seeing none, members of the public. Have we kept you awake? Have we put you to sleep? Seeing none, do we need time to caucus? Just the amendment: Move to amend beginning in December 2003 the *de minimis* states begin to implement the minimum and maximum gauge sizes that are required in the adjacent lobster management areas subject to a schedule that will be approved by the Lobster Management Board. Made by Mr. Freeman and seconded by Mr. Carvalho. William.

MR. ADLER: Yes, Mr. Chairman, did we vote on the first motion?

CHAIRMAN LAPOINTE: No, we're doing the motion to amend.

MR. ADLER: Oh, you're moving it up.

CHAIRMAN LAPOINTE: Is there objection to the motion to amend? Are there abstentions to the motion to amend? It passes unanimously. We go back to the main question. Are there further comments on the main motion as amended? Are there public comments on the motion as amended? Seeing none, is there objection to the main motion as amended? Abstentions? Seeing none, the motion passes unanimously. Heather.

MS. STIRRATT: I think that moves off the subject of the *de minimis* update and on to the next topic, which is the discussion of the Plan Review Team's issue paper regarding the most restrictive rule. Just by way, again, of bridging the last board meeting --

CHAIRMAN LAPOINTE: How about the Draft Technical Addendum I to Addendum III?

MS. STIRRATT: Oh, I'm sorry, I skipped right over it, the Draft Technical Addendum to Addendum III. Description of this issue. Basically as I had mentioned earlier, Addendum III limits upgrades in Area 5 to a 10 percent in vessel length upgrade and a 20 percent increase in horsepower. During the May 2002 board meeting, staff was asked to begin drafting a technical addendum to remove the vessel upgrade provision for Area 5. A copy of this draft addendum has been enclosed on your CD-ROM's and in the meeting materials. The action before this body is to take action on Draft Technical Addendum I.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: Move approval.

CHAIRMAN LAPOINTE: Is there a second? Bill Adler. Discussion on the motion? Public comments on the question? Seeing none, is the objection to approval of Draft Technical Addendum Number I to Addendum III? Abstentions? Seeing none, it passes unanimously. Heather, next issue.

MS. STIRRATT: Okay, finally, we're now onto the PRT's issue paper regarding the most restrictive rule. The Plan Review Team expressed concern during the May 2002 meeting week that states have no means to enforce all management area requirements under the most restrictive rule outlined in Amendment 3, given that they are not implementing all area management regulations into law. During this

meeting, the board requested that staff work to provide states with additional assistance in resolving this concern. The Plan Review Team was convened at the request of staff to prepare a supplemental report regarding the most restrictive rule. We kept it very brief. It's a one-page supplemental paper that was included in your briefing material. Specifically, the report recommends the following: That states should implement management measures by area, if at all possible. States must create -- and this is a must because it is a requirement under the trap tag program -- states must create a link between trap tags and areas fished. In other words, under the trap tag program, the traps are supposed to have on each individual tag the area fished. And, finally, that states should make it mandatory to report area fished on license and permit applications. A few states have taken action already to apply some, if not all, of these recommendations, at least in part.

We have enclosed copies of New York's proposed rule, which does implement management measures for areas outside of their jurisdiction. It's basically provided some examples from New York, as well as from New Hampshire, who has also implemented management measures for areas outside of their jurisdiction or at least makes note of them so that the most restrictive rule can be applied. In terms of anticipated action before this body, there is no formal board action that's required if in fact all of the states are in agreement that they will resolve this issue at the state level and within their own regulatory rule-making processes. Otherwise, if the states aren't in agreement and are not willing to do that, then because there is a compliance requirement to meet the most restrictive rule under Amendment 3, then some other formal action or requirement will be required in order to comply with the ASMFC's charter, which requires that states fully and effectively implement and enforce all of the requirements of our FMP's.

CHAIRMAN LAPOINTE: Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, unless there are some states around the table who do not want to comply and this requires a motion, I so move, sir.

CHAIRMAN LAPOINTE: I think Heather said it didn't require a motion. Is it the sense of the board that the states -- New York and New Hampshire, I believe, have taken action in this regard. Is it the sense of the other states that they will follow through and take action at their state level, and we should have states

report back -- would there be a chance the Lobster Board is not going to meet in November? Probably not. A fellow has got to dream. Probably at the first -- I mean, just to give states time to look into it, until our first meeting in 2003. Does that sound all right to the board? Seeing no comments, that is what we will do. Gordon.

MR. COLVIN: I guess I'm a little unclear what that means.

CHAIRMAN LAPOINTE: I think it means that I know for the state of Maine this hasn't been a front burner issue and what we have to do is put it closer to the front burner and deal with the most restrictive in other areas, and we can do that at the state level.

MR. COLVIN: There are some different approaches that have been kicked around, and I don't know what guidance we're giving to the various states.

CHAIRMAN LAPOINTE: We have provided your regulations. Have we provided New Hampshire's -- and New Hampshire's. My recommendation to board members, to states, would be that they look at those two examples, see how they address the issue of most restrictive that best suits their needs, and then move forward on that regard. I suspect New York and New Hampshire would be willing to discuss how they feel that's gone along; I mean, worked for their states as they carry through with this procedure. William.

MR. ADLER: Thank you, Mr. Chairman. I didn't see in this -- and I hope that what you just said means that we're going to revisit this in some form. I didn't see the most restrictive situation about if a person fishes in two areas and one of them happens to have historical participation and an ITT, that it wasn't intended that if the person happens to, let's say, be in Area 1 with an 800 pot trap limit, for instance, and also happened to qualify for Area 3 at 200 traps, that he would then have to fish 200 traps in Area 1 as well as Area 3. And that particular thing I think was an issue that was discussed when they talked the word most restrictive rule, and I think that does need some discussion. Maybe later, but some time, that needs to be straightened out.

MS. STIRRATT: To your point, Bill, it's a

very good point and I would say that really is the founding, that particular issue and others where you have dual-permitted fishermen. They are going to be bound to the most restrictive management measure, whether that means the minimum gauge, the maximum gauge, the trap limits of multiple areas regardless of the area fished. And, really, that is the point that led up to the original draft paper that the Plan Review Team supplied. It was at that point that the board concurred that this was an issue; and that because the states were only implementing the management measures for those areas that fell under their jurisdiction and not having any record of the other management areas, that something needed to be done because it was a loophole in the plan.

MR. ADLER: Yes, Heather, I understand the other part of this issue, which is states putting in plans for areas that are not perhaps directly off their coast. I understand that's one thing, and this was not having to do with minimum size increase. The most restrictive applies with your permit. It just got into a mess somewhat when some area has one trap limit, some area has the other -- It was more zeroed in on the trap limit discussion rather than sizes or other things. I think everybody understood the most restrictive applied there, but I don't think they understood that most restrictive applied to a 200 pot trap allocation versus an 800 trap limit and the complexity there. So that particular part I think needs to be flushed out, perhaps at a further meeting flushed out, and that's a separate issue from states putting in rules for all the areas in their waters. I think it's sort of a separate issue, but I would like it covered.

CHAIRMAN LAPOINTE: I think the language reads as Heather said it did. The intent is as Bill said it was. I remember talking to I hope Bonnie Spinazzola about this where the Area 3 people didn't intend that somebody in Maine with an Area 3 permit go to 200 traps outside of Area 3.

MR. ADLER: But there was some wording that could fix that. I don't know what happened to it.

CHAIRMAN LAPOINTE: I mean, as states move forward with this, they should address that issue specifically; and as we bring it back to the board, it might take some board action. That's a legitimate issue.

MR. ADLER: Right, provided when the

states address it and perhaps fix it, we come back to the board and the board says, well, that's not in the plan, it's most restrictive and so now we've got to talk compliances or something. I don't want to get into that one.

CHAIRMAN LAPOINTE: Gordon Colvin. Gee, when the former chairman starts squinting at the present chairman, it makes me nervous.

MR. COLVIN: Well, I have to express some discomfort in just understanding exactly where we're going with all of this. Here's what I think I'm hearing. We acknowledge that the plan requires states to implement and enforce regulations which are consistent with the plan's requirement that the most restrictive rules apply to fishermen who are permitted in more than one area, but we acknowledge that we haven't really scoped in on the nuts and bolts of how states will implement, administer, and enforce those provisions of their management programs, so we're going to defer on that and let states come up with some ideas about how they might do it. That's what I'm hearing and that's fine. Just recognize that a couple of us on our own, it sounds like New Hampshire and New York, read what was in the plan and felt that we had an obligation to adopt enforceable regulations that could be implemented, administered, and enforced in our waters, which boiled down pretty much to the choices we make on size limits in particular where we have different size limits, and incorporate those into our regulations. Now it seems to me that we -- and there's a couple of different approaches to this that have been suggested. Our approach and New Hampshire's are a little different. I think that we need to confront this perhaps with a little bit more specificity than we have up until now. Now the other point is Bill Adler is right. That issue that we put into our regulations doesn't really get to the tougher question of differences in trap tag allocations. Later in this agenda, something we probably won't get to under 10A today, is a suggestion that we engage a dialogue where we had a difference of opinion with NMFS over an issue that boils down to the interpretation of the most restrictive provision of the FMP. It really does; that's what it all boils down to. There is some correspondence in the briefing book on that, and I think there has been some more since then that we could perhaps share with the board so they could see both points of view and maybe we could proceed on this on a more informed basis down the road. The bottom line is, Mr. Chairman, I would like to see us try to commit

ourselves to something that is a little bit more specific in terms of time frame for coming to grips with this and calling on our members to take action with respect to their regulations on most restrictive or else get rid of it. I don't think it makes sense to get rid of it. We had pretty good reasons for including that provision in here in the first place. Well, I would just leave it at that and see if folks have thoughts about how and under what schedule to do that.

CHAIRMAN LAPOINTE: I thought I had suggested that we bring it back to the board at our first meeting in the new year and you were -- I mean, is it your sense that's not specific enough and that we want to have specific actions that the respective states are going to take to deal with this issue?

MR. COLVIN: Well, here's a for instance. For instance, we could task the Plan Review Team with reviewing the next state regulatory submissions, whenever that falls in the cycle, specifically with respect to what measures the states have done to make sure the most restrictive rule is enforced and report to the board on non-compliance. It is, after all, a compliance issue.

CHAIRMAN LAPOINTE: That report will be in next March. How does that rest with board members? Pat Augustine and Gil Pope.

MR. AUGUSTINE: Thank you, Mr. Chairman. Not good. It seems to me that the Plan Review Team went to an awful lot of effort to describe the recommendations that they put forth in this document; and quite frankly, if we took time to read it, it clearly identifies what the actions are that we could or should take on a state-by-state basis. New York has gone forward and done it. I believe Rhode Island has gone forward and done it. Again, we're going to delay something off another six months when in fact we've got the document here. It was sent to us on the CD-ROM and there was a lot of information here, but it just seems to me that maybe a conference call by our subcommittee, as we had before, Heather, maybe it's with each one of the state representatives, to see which direction they want to go based on these three recommendations or what the implementation date might be, and then come back to the full board, hopefully before the end of the year, as a part of our LCMT meeting -- not our LCMT meeting -- our ISFMP meeting and make at least an indication as to what the

states have decided to do at that point in time. I just think six months is too long. Here's another issue that's clearly written. Work has been done on it and I think we should move forward before the end of the year. Thank you, Mr. Chairman.

CHAIRMAN LAPOINTE: Gil.

MR. POPE: I think there needs to be some clarification of intent as to what this actually was originally done for, because in the cases of some of the people that have come to me that fish in the offshore fishery, they think that somewhere along the line they got messed up or got skewed, at least that was the message that I got to me, that it was never intended to have somebody in Area 3 that had 1,200 pots or something like that and 200 in another, that they go with the 200. That was what was told to me, and I think there needs to be some more clarification as to the intent of this and whether or not we want to actually go back and change it dramatically because I think it's more than just a yes or no answer on this.

CHAIRMAN LAPOINTE: Harry Mears and then Bob Baines.

MR. HARRY MEARS: Thank you, Mr. Chairman. I believe it's more of a matter of just intent, and several board members have already commented, yes, we have discussed this on several occasions during the past two years, ever since we approved Amendment 3. I would question in fact what flexibility or discretion Amendment 3 does provide for a differing interpretation other than allocations by historical once implemented would in fact be impacted by the more restrictive language. And if in fact they are and if in fact it is not the intent of the board to do that, I guess I would ask the question through what mechanism would the plan need to be changed to reflect that?

CHAIRMAN LAPOINTE: Bob Baines.

MR. BAINES: The advisory panel discussed this at their April meeting and David Spencer reported about it at the last board meeting in May, and what specifically addresses Bill Adler's concern -- and there was a paper written on it and as we reported what we thought was the preferred alternative was Option 3, which basically says if you're fishing in two areas, you have to abide by the most restrictive rule in one of those areas; meaning if you fish in Area 2 and Area 3 and you

have an 800 trap limit in Area 2, if you go to Area 3, you can only fish the 800. You cannot double up or anything like that. So I'm not sure if anyone else has this, but it has come before this board before and the advisory panel has discussed it, and we found it pretty clear cut that the intent was not to really restrict the fishermen to the smaller number if he fishes a larger number in the other area.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I think that's the little paper that I was talking about. It was the idea that they couldn't -- if they had 800 and 200, I'll use that example. If they were fishing in Area 3 with a 200 allocation, they could only fish 200, and they could only fish 600 in the other area. So they couldn't fish 8 and then 2 when -- yes, that was the paper, and I think that would be a good way to look at it and see if -- I don't know what would be needed to make this official or whatever, but that's what I was talking about.

CHAIRMAN LAPOINTE: Harry.

MR. MEARS: Just one more quick follow-up comment. Through a recommendation from the commission, there was a change proposed in federal rulemaking with specific regard to the Area 2/3 overlap where in fact a strict literal interpretation of what existed at one time in the interstate plan would have in fact resulted with you can only fish 200 if in fact you were in both areas in the overlap area. The regulations were changed as a result of the recommendation that you bring with you the highest allocation you were afforded, but that was only with reference to the Area 2/3 overlap area.

CHAIRMAN LAPOINTE: Bill.

MR. ADLER: The area was one where if you're Area 3 and you've got whatever your allocation is, you were allowed to fish in the overlap with your allocation; and if you were in Area 2, whatever your trap limit was, you were allowed to fish -- and this is sort of like a different scenario. This is not the overlap. This is clearcut, one area and the other, not the overlap.

CHAIRMAN LAPOINTE: Rich White.

MR. WHITE: I guess I don't fully understand

this. Isn't this just a compliance issue that each state has to come forward with something; and if they don't, they're out of compliance at some point. I guess I don't understand why it has to come back to this board. Why doesn't each state go ahead and try to come up with their rules, and then the PRT at some point will look at those and say you're in compliance or you're not.

CHAIRMAN LAPOINTE: I believe that's what is supposed to be done under the plan. Was that David Spencer with his hand up? Please, David.

MR. SPENCER: David Spencer. I just wanted to clarify that the language that we came up with does not do away with the most restrictive rule. It's just how it's applied and where it's applied, and it seems to me it's very difficult to discuss this unless you have that language in front of you. And if I could, I think it might make sense to print this language out and put it at the next board meeting so that people have a chance to see what we're talking about. Thank you.

CHAIRMAN LAPOINTE: Heather.

MS. STIRRATT: I guess I just have a question at this point about where we're at in this discussion. It seems to me that we've evolved a little bit. The Plan Review Team originally brought forward an issue paper which in essence questioned states' ability to adequately and fully enforce the most restrictive rule. That was the entire reason why the Plan Review Team brought this paper forward, because most of the states, in fact all of the states are only required to implement the regulations under which their states jurisdiction falls. So it question whether or not a state could adequately enforce all of the management measures across the board under the most restrictive rule. I guess today what I'm hearing is that there's a separate discussion which needs to occur about whether or not the board is in agreement with what's written in Amendment 3 relative to the intent of the most restrictive rule. I think those are two very different and separate discussions; and if the Plan Review Team needs to do anything in this regard, I would simply ask that the board provide some directive as to the priorities of those discussions first, before we spend a lot of time trying to assist the states in finding out a more effective means by which for them to enforce this regulation, if in fact the regulation in the first place is not what was intended.

CHAIRMAN LAPOINTE: And with those two questions, because I -- well, speaking for the state of Maine, I haven't spent a lot of time on our ability to enforce regulations for areas outside our jurisdiction, although I can blithely or superficially say, yes, we can do that because our regulations, our laws apply to our fishermen regardless of where they fish. Other states may not be in that case. So with that clarification, we should pose that directly to board members and then -- I mean, in the case of Maine, the question of what we do for those Maine fishermen who are registered, licensed, ticked off, whatever it is in Areas 1 and 3, with the question about what it does to trap limits. We knew that Area 1 Maine fishermen would be at 800 traps regardless of where they fished. I have a colleague in Stonington who fished in Area 3. He would have to fish at 800 traps. But if you look at the historical participation, the strict interpretation of the law might force that person to fish at 300 regardless of where he fishes, and I don't think that was anybody's intent. I'm quite sure they meant that the minimum sizes and the trap limits would apply in the discussions now five years ago, seven years ago, whatever it was. Heather.

MS. STIRRATT: If in fact that is the intent, then that's not what is written in Amendment 3. What's written in Amendment 3 reads as follows: "Fishermen are allowed to place traps in multiple areas, but must comply with the most restrictive management measures, including minimum sizes", everything, "of all area fished, including the smallest number of traps for the area selected." It's very specific about traps; so if the intent is different, then we need to change Amendment 3.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Yes, Heather, that might be true because when that was written, they hadn't got into the ITT mode yet, and they were getting there and what developed was they came up with one area that had an allocation system based on history and perhaps the other didn't. So, that's how it came about and so I would just simply maybe ask that there are the two different issues here in my mind. One is where the states should put in the rules for all the areas or not. That's one issue and then this issue is the other. Now, perhaps it would be good if the technical team would take a look at this and come back at the next meeting, using that piece of paper that's suggested and leave it at that.

CHAIRMAN LAPOINTE: Who's on first? Gordon and then Bonnie.

MR. COLVIN: We are getting, you know, kind of tangled up in two different discussions here, and I appreciate that, but I wanted to come back to the issue of size limits for just a minute. And, Mr. Chairman, if you don't mind, I'm going to use the state of Maine as an example.

CHAIRMAN LAPOINTE: I don't mind yet.

MR. COLVIN: Stay tuned. It occurs to me, building on the case you mentioned earlier, that there are probably some lobster fishermen in Maine who are Area 3 fishermen and have a different size limit now than applies in Area 1, and I believe it's the expectation of the plan that the state of Maine will issue gauges to its enforcement agents at higher size limits; and when the encounter a lobsterman who is an Area 3 lobsterman, will check those lobsters for compliance with the higher Area 3 gauge. Now that has cost implications in terms of buying gauges. It has work load implications for the enforcement officers and it has other implications, I suspect, in the state of Maine. It seems to me that that's what the FMP requires us to do, and that's the point I'm trying to make. I think that's required now or was required at the time that the gauges went up; and, consequently, that's kind of why I keep coming back to when are we going to start -- I mean, we spent two hours on a compliance review here earlier this afternoon of little things and big things. But we didn't touch on this and yet it's there and has been there right along, as far as I can tell.

CHAIRMAN LAPOINTE: Paul Diodati.

MR. DIODATI: To that point, Mr. Chairman, we spent most of the day on at least four potential non-compliance issues for Massachusetts, and this is something that we understood was part of the FMP and that's how we enforce it. So when the PRT did their review, did you overlook this or was this something that you did not identify on a state-by-state basis, how these particular rules were being enforced?

MS. STIRRATT: That's a good question, Paul. The PRT by no means overlooked this. The FMP specifically states that states are required to implement the management measures for those areas

that are subject to their jurisdiction. That's one part of the FMP under the compliance section. In a whole 'nother part of the FMP, it says states are required to fully and effectively enforce and implement the most restrictive rule. So the PRT brought this issue to the board back in May because we didn't know. We see it as a loophole in the plan because one part says you should only need to implement your state waters. Another part says you're going to have to implement and enforce the most restrictive rule. How do you do both at the same time? So we brought it to you all as an issue. We brought it to you all as a loophole in the plan; and, certainly, one of the questions that I, in particular as staff, went before the PRT to ask was whether or not we needed to include compliance concerns and areas of concerns for those areas outside of the states' jurisdiction if in fact they weren't enforcing and implementing the most restrictive rule. It was determined at that time they would rather point out the issue of concern to the board and see what the board had to say about it.

CHAIRMAN LAPOINTE: I had neglected Bonnie Spinazzola, which she just reminded me of.

MS. BONNIE SPINAZZOLA: Thank you for un-neglecting me. I would like to say first that as far as states implementing adjacent measurements, as far as being a representative of Area 3, right now we feel that it's imperative that the states implement adjacent measures because the feds have not yet done it. Therefore, for us to be able to move forward with any management measures whatsoever, we have to depend on the states that we land in. So, we would hope that all the states would implement adjacent measures. As far as the most restrictive trap issue, which is a completely separate issue, I'm just going to very, very briefly try and explain what that language was that the advisors came up with. They came up with language that they felt would not have to be changed through the most restrictive language at all that's in the plan. If you use Area 1 and Area 3, Area 1 has 800 traps, Area 3, right now the highest number of traps would be 2,656 traps, depending on where or when or how we start. What would happen is that if an inshore fisherman fished offshore 200 traps, he would still be limited to the most restrictive number of 800 traps, no matter where he fished, whether it was part of inshore, offshore, or whatever. He would still be at the most restrictive point. He would never go to the higher number of traps. So you would have to look at the total area

allotment to look at the most restrictive, rather than what the individual was fishing in each individual area, and that would make the most restrictive rule work as it is on the books.

I realize that's a very quick, down and dirty kind of description and very hard to understand, but once you read the language, I hope you'll try and remember that and put it to it.

CHAIRMAN LAPOINTE: Eric, if I might, just for a moment, the discussion has shown it's a compliance issue and many states have not done it. Why don't we deal with it as a compliance issue at our next board meeting? The Plan Review Team has already done the review. We know which states have and which states haven't, and that means that all of the states, including my own, will have to start action to put this in place. and it will be reviewed as a compliance measure at our next board meeting. That's the most direct way of dealing with it. It would encompass both issues because your legal ability to enforce it would impact your ability to fully enforce the plan. Vince.

EXECUTIVE DIRECTOR O'SHEA: Just so I understand this, there's been two different strategies to comply with this, what I would call the New Hampshire strategy and the New York strategy, and I'm wondering if the board is at a position now to endorse either one of those strategies or both of those strategies. And it kind of seems to me that we may need to -- if we can get to a compliance discussion three months from now, it would seem to me you would have to sort of define what compliance is, and I'm wondering if you're at the position to do that now.

CHAIRMAN LAPOINTE: I would ask Heather. In reviewing what New Hampshire and New York have done, do those different actions put those respective states in compliance with this FMP; and if you can't say it, that's fine, too.

MS. STIRRATT: Well, I agree with Gordon in that there are a number of different approaches that could be used. The Plan Review Team, when they initially presented their original paper, suggested that the states at a minimum implement non-adjacent areas management measures in which they had permitted or licensed fishermen in those areas. And we outlined those permit numbers in that paper. I believe, if I'm not mistaken -- and Gordon could probably correct me and I don't know if Ritchie or

someone from New Hampshire can speak to this issue, but I believe that's what they've done. They've looked at where they have permitted fishermen and for those areas they've implemented those management measures. So, to that degree, I think that would cover them. It's a very vague answer. I'm sorry, I can't give you a better answer than that.

CHAIRMAN LAPOINTE: And my sense is, if I might continue, I might come up with a plan for the state of Maine, looking at the New Hampshire and looking at the New York provisions, trying to deal with what's in the plan and how Maine implements and the board may not like it. There's got to be some review mechanism and that may not pass muster, and I think the key is that a number of states, and again my own included, haven't concentrated on this. That will force concentration on the issue, attention to the issue, and it may take another board iteration to get through that process, but it will get movement on the issue. Pat Augustine, Vince O'Shea, and then Dick Allen.

MR. AUGUSTINE: Thank you, Mr. Chairman. It seems to me that licenses or tags, if you will, are issued between January 1 and about July 1, if I understand when the issuing process occurs. What the definition and further expansion of what the FMP says, according to this second part, states must create a link between trap tag requirements and area fished on tags. It would seem to me, no matter which method or technique, whether it was a Rhode Island technique or a new technique or something that some other state might come up with, it would seem to me that by picking off what we have to do, according to the FMP, that we as individual states should be able to implement the most appropriate thing for us while we're issuing those tags between January and July. And so it would seem to me that requirement of all states would be in compliance by the end of tag issuance, period, pick July 1 of 2003. We've let it slip. We've got very, very clear definition and clarification as to what this means. I don't think it requires a motion. I think it requires a consensus around the board. But if you want a motion, George, I can make it.

CHAIRMAN LAPOINTE: I'm fully aware of that. Dick Allen.

MR. ALLEN: I'm just concerned that the two issues are getting kind of melded together and confused again, and I would just like to recommend that the

board agree to make two separate charges to the PRT; one, to address the broad issue of states' compliance with the most restrictive rule and another to address the question of how the wording of the plan impacts the potential conflict between trap limits and individual historical allocations.

CHAIRMAN LAPOINTE: Board members? Eric Smith.

MR. SMITH: Very quickly. Part of this is a technical correction. I've been trying to refrain from it, but it seems like it's important that some states have done this, some states haven't. We have also done it, so I think we need to get the document corrected to show that there are three states that have adopted rules to do that. More to the point, though, I am particularly picking up on what Gordon has said, and Bonnie. You know, there is no confusion on it. I mean, we've done it for trap tags and we've done it for size limits and it's hard to do. It's aggravating, and in our case it's a small state, but it's still an aggravation. But I think, Mr. Chairman, your solution is the right one that this is a reminder to all us, so now let's get on with doing it. It may be that you can't do it by three months from now entirely because you may find that there are a couple of different ways. I would not want to have to go through a rule-making process to find out then that the board or the PRT thought that, well, you didn't really do it the right way. Well, enough said. Part of that was just to correct the growing tendency to think that there are only two states that have done this. Thank you.

CHAIRMAN LAPOINTE: So we report back to this board, those states who have not taken action, at our next meeting, and I assume that's November, with Vince's head shake, on the actions we've taken to implement the most restrictive provisions of the plan and the board will -- we should technically review it to -- should it go to the Plan Review Team or can the board take action at that point? I would think it would go to the Plan Review Team. Is that sufficient? I see head shakes yes. Further discussion? Next agenda item. We now have our advisory panel report. Bob Baines is the new advisory panel chair. As I said earlier, Bob fishes out of Maine, out of Spruce Head Lobstermen's Co-op. Welcome, Bob.

MR. BAINES: Thank you, Mr. Chairman. I can be very brief since the advisory panel has not met.



There is just one item I would like to review that David Spencer reviewed last time, but since it is next on the agenda, Draft Amendment 4. The advisory panel recommends that Draft Amendment 4 be indefinitely tabled, and that's all I have. Hopefully at the next meeting we will have a meeting before that and I will have more. Thank you.

CHAIRMAN LAPOINTE: Talky guy. Any questions for our advisory panel chair? Seeing none, we move on to the next agenda item, and that is the review and discussion of Draft Amendment 4 status. Heather.

MS. STIRRATT: During the May 2002 meeting, Paul Diodati requested that the discussion of Draft Amendment 4 be postponed until the next board meeting. As such, Draft Amendment 4 is before this body today for final action. Draft Amendment 4, if approved, will allow for consideration of conservation equivalency for two issues in Amendment 3, including non-trap gear limits and the prohibition of possession of v-notched female lobsters. A motion for approval of this draft was presented and rejected during the October 2001 board meeting. As such, this document remains open for discussion until such time as it is either indefinitely tabled, which would take it out of consideration indefinitely, or approved. Public comments were summarized by staff in preparation for the October 2001 meeting and have been redistributed on a CD-ROM and in the materials at the back of the room. Final action has been deferred on this item for the previous three board meetings; and as such, the board should take final action on Draft Amendment 4 during this meeting. Board members should consider the use of a single motion to indefinitely table the draft if rejection is appropriate. Otherwise, board members may wish to employ separate motions for approval by issue, i.e., a separate motion to approve consideration of conservation equivalency for non-trap gear limits; and also, if appropriate, a separate motion to approve consideration of conservation equivalency for the prohibition on possession of v-notched females.

CHAIRMAN LAPOINTE: Thank you, Heather. Board members? David Etnier.

REPRESENTATIVE ETNIER: Thank you, Mr. Chairman. Mr. Chairman, I would move that the board indefinitely table Draft Amendment 4.

CHAIRMAN LAPOINTE: Is there a second to that motion? Bill Adler. A motion to table is non-debatable. We'll give board members time to caucus and we will take the question. That was a motion to table indefinitely.

(Whereupon, a caucus is held.)

CHAIRMAN LAPOINTE: Can board members please return to the table? There was some question brought by Vince about whether the motion to lay on the table indefinitely is debatable or not. Paul Lenzini and Vince and I have looked through Robert's Rules of Order more than I would like to, and it's unclear. I asked the maker of the motion whether he was willing to open it up to debate, and he said yes and so in the interests of getting this discussion through, we will allow debate on the motion. Mr. Smith.

MR. SMITH: Thank you, Mr. Chairman. I for one would like to hear some discussion as to why an issue that was voted down -- Amendment 4 was voted down by the board last October, why it's come forth. I think Massachusetts and Rhode Island, if they're the proponents of bringing it back, deserve the right to explain why they want to do that, and then we can make an informed decision on whether we would like to give them a future day in court to bring a proposal forward, which is what conservation equivalency would do; or, if we really want to say, no, we don't want them to even have the chance to bring something forward, that we could then see does it pass muster. That's why, with all due respect, I thought the motion to table was a little bit premature because it circumvented all possibility of debate. I'm happy to hear the mover of the motion has allowed us to entertain that debate. I would like to hear them out. Thank you.

CHAIRMAN LAPOINTE: Well, if it's like our past debates, you'll hear plenty. Heather suggests that I ask Paul Lenzini to sit at the table because he was involved in those discussions. Our former executive director was also involved, but I don't even know where he is right now. Paul, do you mind?

MR. PAUL LENZINI: So what exactly is the question, Mr. Chairman?

CHAIRMAN LAPOINTE: The question was why, when a motion had been voted down, it is back before us. It was voted down in October of last year,

2001, and it's back before us again.

MR. LENZINI: There has been an intervening lawsuit, as you know, and we sat down in the Outer Cape lobstermen litigation, and it was decided that we would take advantage of the process that the commission has to consider conservation equivalency. This was a matter that it was make clear that the commission could consider conservation equivalency, but there was no agreement that any particular proposal would be a conservation equivalent to v-notching or to the 100/500 limit. So basically in order to attempt to settle the Massachusetts litigation brought by the Outer Cape, it was agreed that the process of the commission would be employed, so that's why we're here.

CHAIRMAN LAPOINTE: Other board members? Paul Diodati and Gordon Colvin.

MR. DIODATI: Mr. Chairman, I think it's important not only to have debate on this issue, but hopefully this particular motion will be defeated and we will have an opportunity to perhaps modify a proposal to adopt part or all of this amendment. Keep in mind, well, for the past year actually I've heard nothing from LCMT membership that we've got bottom-up management, that the board bought into it, that we should be listening to LCMT recommendations, that the areas are very discreet and what they do within the areas is up to them to propose any management plan that they like. I heard earlier today some strong remarks from LCMT members again that one size does not fit all; that what's good in one area may not apply to the next. So on that basis, I think it's very, very important, not only because there's a lawsuit, but just on principle and how this process works, I think we should move this amendment forward for a vote. Thank you.

CHAIRMAN LAPOINTE: Thank you, Paul. Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman. I heard Mr. Smith's question and I heard Mr. Lenzini's answer. I myself had a similar question and I'm not sure that I yet understand why the issue arises this second time, and I speak to some degree as the person who chaired the board at the time of the original development of Amendment 4. It's public review and comment. It's deliberation by the board and the action by the board -- and I regard it as action and not inaction -- at last October's meeting, which I felt was conclusive

at the time, and was surprised to see this item on the agenda again. And I want to just state for the record, from the perspective that I held at the time, that it was my perception, and I would hope that other board members would speak to this as well, that there was a very full public review, deliberation and a debate by the board on the issues and merits of the components and content of Amendment 4. And at the end of the day the board declined to adopt it, and I thought that was the end of the day; and as I said, I am still a little uncertain as to why the issue arises again. And in fact I made the observation to one of my colleagues earlier that I think I must have missed a meeting because I don't recall a specific action by the board to put this issue back before us again. So I guess I wanted to raise the question again to you, Mr. Chairman, if you can help us understand a little better why we are of the opinion at this time that the prior action and debate by the board was not the last word on the issue.

MS. STIRRATT: Gordon, that's a very good question and the only answer that I can give you in that regard is you're correct. We took a vote and the motion failed. Subsequent to that meeting, I think we all thought that was a final action. Jack Dunnigan approached me and said, "Heather, FYI, until Draft Amendment 4 is indefinitely tabled, it is not dead". Those were his exact words and so I have discussed at length with Jack Dunnigan and Paul Lenzini the appropriate action that needs to occur; and as I have outlined it previously, either there needs to be a motion which would indefinitely table further discussion of this, and therefore reject Draft Amendment 4; or, there needs to be a motion or separate motions for approval.

MR. COLVIN: Thank you, Heather. If I can, George, I guess I won't be buying Jack any martinis in the near future because I didn't hear that at the time, that advice, and I think frankly the board could have disposed of the matter differently back in October if that was more clearly understood by myself as chairman and by the members of the board.

Be that as it may, I just clearly want this record to reflect my perception, and I think the board's perception at the time, that there was a very full debate and discussion on this issue at that time and that the record was closed and complete. Thank you.

CHAIRMAN LAPOINTE: Thank you. Pat White and then Eric Smith.

MR. WHITE: Well, I'll save everybody my long dissertation on my beliefs on these issues. Even prior to that, starting back in early 1990, these two issues were set up as the cornerstone for this amendment. There was a great deal of discussion and pain involved in arriving at these two issues, and even back then we felt that this was something we had spent a lot of public discussion period on and we wouldn't have it anymore; and then, as Gordon said, I was extremely disappointed when we went through this whole thing and it's now back on the table again. I just urge you that it is the cornerstone of our whole management plan; and if this type of thing passes, then we've got to start right from the very beginning again.

CHAIRMAN LAPOINTE: Eric Smith.

MR. SMITH: I'm going to refrain from following up on my good friend Pat White's comment because I don't think we're debating the merits of Amendment 4. We're debating the merits of whether we want to indefinitely table, and that process question is what I would like to comment on. I confess I haven't memorized Robert's Rules of Order, but indefinitely tabled to me is a pretty wild idea because no parliamentary body can prevent a future meeting of the same body from considering something if the members are concerned enough about the issue to want to revisit it. This board and the commission can revisit any issue that it feels after some passage of time that it doesn't like the outcome. For that reason, I think the motion to table indefinitely would be ill- advised to do because this clearly is an issue that half the board approximately doesn't like how it was concluded and the other half approximately of the board does like how it was concluded. And it's those kinds of things and this kind of a deliberative body that have to be debated until there's an overwhelming majority that is satisfied that this is the best we can do with it, win or lose, and there's a very small minority that says I'm still not happy, but I understand seven to one. I don't understand four to three, three to four, and so forth. So I would hope we would vote no on the motion to table indefinitely. I would hope we don't debate the issue of Amendment 4 too much more today given the late hour, but ultimately when we have whatever would be the next vote on this issue, I would hope -- and I know as a representative of Connecticut, I would hope that if an issue came forward in the future like Massachusetts has an issue and Rhode Island has an issue, that this group is open enough to

hear the debate, which means allow conservation equivalency to be debated, and that means that you have to have a plan amended for Amendment 4 that says you have the right to come forward with a proposal and show us how you think you're going to do this a different way that's to your satisfaction in Rhode Island or Massachusetts. You've got to show us how you're going to enforce it and how it's not going to affect the other states around you; and if we like the idea, we'll say yes and if we don't like the idea, we'll say no. That's what this process should be about, not in my view taking a vote that says you don't even have a chance to try. I hope we vote no on this motion. Thank you.

CHAIRMAN LAPOINTE: I've got Dennis Abbott and then Gil Pope and Dave Etnier.

MR. ABBOTT: Thank you, Mr. Chairman. I'm a bit confused of what we're doing. I'm trying to go back to my legislative experience, and I forget things rather quickly. There are motions to indefinitely postpone. I'm not familiar with a motion to indefinitely table. It seems to me the motion that should have been made at this point is a motion to reconsider, and the only way you can have a motion to reconsider is having voted on the prevailing side. I mean, we took action and we killed Amendment 4. I would probably defer to Senator Gunther, having a little more legislative experience, to explain how motions go. But I don't think that the motion to indefinitely table is a proper motion. I went over and asked Representative Etnier and he was shaking his head like I was. I just think we've gone afoul here, and I think that the motion that we have in front of us is not the proper motion or one that we should be considering.

MR. SMITH: Before we go too far on that point, in the New England Council we deal with a lot of motions to reconsider and Roberts Rules are very clear. During the course of a meeting, whether it's a two-day, three-day, four-day meeting, during the course of that meeting, Mr. Abbot is absolutely right. You have to be on the prevailing side, move to reconsider it, and get it out back on the table. Once that meeting ends and you've gone to another meeting, it's all new business. You don't need a motion to reconsider to bring something back. And I'm not disagreeing as much as I don't want to see us go down this road of dueling Roberts Rules of Order on that point. Thank you.

CHAIRMAN LAPOINTE: And we don't

intend to. Gil Pope, David Etnier, Pat Augustine.

MR. POPE: Thank you. The whole thing is that it's very difficult to argue philosophy here because in my mind the 100/500 -- and I realize that there have been a lot of discussions on that particular issue for years and years and years. In my mind, from everything that I've seen, it's a philosophical issue. I had one person just get through telling me, he said, "My members are philosophically opposed to the dragging of lobsters and that's the way I have to go". Well, it's awful difficult to argue conservation equivalency with philosophy. I can argue conservation equivalency with biology or with stuff like that, but if there are basic philosophical differences here and if something philosophical is considered a cornerstone of an amendment, then what can you say. If it's a cornerstone, it doesn't belong in something that goes along with biological concerns in Number 3/1, 3/2, 3/3, and 3/4. It sticks out like a sore thumb. This has to do with dealing with fishermen. It doesn't have to do with dealing with scrub lobsters or with v-notched lobsters or with parts of lobsters and stuff like that. That applies to absolutely everyone equally. What doesn't apply absolutely equally is the fact that the guy on one dock can have a hundred and another guy have five hundred. That's a philosophical issue. It was brought up that way. It wasn't brought up as being a biological issue in the first place. That's why we want to dispose of it and go at it through another task. It's going to be very difficult to argue conservation equivalency on philosophy.

CHAIRMAN LAPOINTE: David Etnier and then Pat Augustine.

REPRESENTATIVE ETNIER: I feel compelled to address or defend my motion, evidently. I don't pretend to understand the parliamentary activities of this board. I just go along with the recommendation as presented to us and the choices that were laid out to us. I think Gordon laid out very clearly where I feel this board was and the public was and the state of understanding by everybody a year ago when this was dealt with, and I don't want to reiterate everything he said. I think he said it very clearly and all I am trying to do -- and I'm sorry to offend some -- is to effectively put this Draft Amendment 4 to bed. I think failing to do so would fly in the face of the public hearing process that was engaged in August and September of last year, where in all the states of concern on the eastern

seaboard this was dealt with. Definitely, relative to the 100/500 that Mr. Pope was just talking about, there was only one person out of all those five hearings who spoke in support of that concept. I think the public has spoken on this, not only verbally but also in writing. I think it would be a disservice to them to say, oh, we've had the public hearings, we heard you, we voted this way and you thought, the general public, that this was decided for the foreseeable future, at least for a year or two, and low and behold it's never gone away, and you're going to have to troop out again to public hearing to say what you said in August or September of '01. So that's why I do what I did. I'm sorry if it offends anyone, but that's why I felt that I had to do what I did.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I would like to amend this motion to refer that the board forward this decision for final decision at our ISFMP board later this week and put it to bed. I mean, can't we do that?

CHAIRMAN LAPOINTE: We've obviously entered into a debate on the motion, but the motion is to table indefinitely, and I don't think that's an amendable motion, is it?

MR. AUGUSTINE: Well, if you allow -- excuse me, Mr. Chairman, if you allow debate on a non-debatable motion --

CHAIRMAN LAPOINTE: No, no, stop for a second, if I might. We used the language that David Etnier used because our parliamentarian at the time, our former executive director, said because we did not use this specific language, this issue, Amendment 4, not the issues behind it, but the package embodied in Amendment 4 was still alive. And as Heather has said, we've lingered three meetings with that and so this motion is to have it tabled or not. That's the issue that's before us and I think that we still have a motion to table. I don't think that's an amendable motion. I mean I'm going to rule that out of order. Gordon. I need that lady who came to us about parliamentary procedure a couple of years ago. I'm going to have to hire her.

MR. COLVIN: One of the questions on my mind is what might our procedural status be should this motion fail, and I'm puzzling over it, frankly. I guess it begs the question where have we been?

CHAIRMAN LAPOINTE: In the dark.

MR. COLVIN: You know, I'm very uncertain about this, and, frankly, you know, some of us have been around these tables for a long time, and I can assure you that most of the people I've talked to in that situation find this experience somewhat unique. We haven't been here before. This board decided to initiate the development of an amendment to its Lobster FMP, Amendment 4. It scoped the issues that would be covered by it. It included certain issues and it excluded issues. Decisions were made in the normal course of the board's business about what we would include and not include, and there were ideas from some of the board members about other issues that didn't make it into the amendment, and part of the reason for that was workload and priorities. But, nonetheless, we went forward under the ISFMP process, developed the amendment, held public hearings as we are required to do by law, collected a lot of public comment, compiled that comment, presented it to the board. It was extensive and debated the issues, and then at the end of that debate, a motion was made to approve the amendment and the motion did not carry. I agree with David. At this point I think that an awful lot of people, including the people who made the comments, felt that issue was over and behind us and that maybe it might come up again someday as Amendment 5, 6, 7, or 8, but that Amendment 4 was finished. I know I did, as I said earlier. If it's not finished, if it wasn't finished, then where was it? Is it at a point where at any board meeting any member could make the same motion again to approve it and again and again? That strikes me as very odd, Mr. Chairman, and could the board approve that motion and send it to the commission without further public comment? Can you imagine what an action of that nature would do to our cooperative interstate management program for lobsters? I know you can, Mr. Chairman. It would end it. Let's face it, it would end it. So I continue to be very concerned about not just the process of how this comes up on the agenda as it has, but what it means if we don't table the amendment or we don't somehow reject the amendment and move on as many of us thought we had. I also want to respectfully disagree with some of the comments I've heard that get into the issue of discussing the merits of the amendment, the tabling the amendment can be kind of separated from a discussion of the merits of the amendment itself. It's not so easy to do that

considering, again, that we've been pretty thoroughly through it all, and leaving open the opportunity to further consider this amendment is the same as saying that the amendment has merit. It is a comment on the amendment and it's not disconnected from it. I don't know if we would be better off if the motion were to reject Amendment 4 outright, but, you know, procedurally maybe that would be better, and I'll assure you that I'll never again as a sitting board chairman on any board that I happen to chair, accept as final a motion to adopt an FMP that doesn't carry as the last word. I'm going to call for a motion to reject it on the spot. Thank you.

CHAIRMAN LAPOINTE: Other board members? Paul Lenzini.

MR. LENZINI: Mr. Chairman, I looked into this matter in some detail in the spring and advised Vince as follows, that the point that was earlier made that one congress, for example, cannot bind a later congress and one meeting of the Lobster Management Board cannot bind later meetings of the Lobster Management Board even on the same issue, but the process is dealt with, as I understand it, this way; that at a later meeting a motion defeated during a prior meeting may be offered again. If a motion to accept Amendment 4 or either part of it is introduced anew at a later meeting, a member could seek to suppress consideration of the question by objecting to its consideration. A second is not required, but on the question of suppressing consideration, there must be a two-thirds negative vote. So that is the process by which kind of a super majority keeps things from coming back until enough time has passed that it's timely to consider it again. So the process would seem to be that the question could be suppressed, but it would take two-thirds of the meeting to do it.

CHAIRMAN LAPOINTE: Our difficulty is that we're interpreting Roberts Rules of Order as we go along. We were given advice by our former executive director that the way to stop the development of Amendment 4, the advancement of Amendment 4, was to table it indefinitely, and that's why it came back up again because of that action hadn't been taken, and that's why, I think, the motion was made this afternoon to try to take final action on it. I think the lesson for all of us as commissioners, all of us as board chairs, is that we need to figure out how to make this work in the future because there are a number of avenues that might be

taken, but it strikes me that making them up as we're going along isn't a productive use of -- I mean, we had one interpretation, we had another interpretation giving us another one. It's not clarifying the issue for me at this point. Gordon Colvin and then Rich White.

MR. COLVIN: I'm sorry to give the appearance I'm belaboring this, but I'm concerned about what's going on, obviously, and there's another facet of our process that doesn't lend itself very well, I think, to the parliamentary process that Paul Lenzini had just outlined, and that's our obligation, and in fact our legal mandate to seek public input on fishery management plans and fishery management plan amendments. What happened here is that we went through the process, as we are required to do by law and by our own process, duly came together as the board, a motion was offered, and the motion was defeated, and we did what we always do. Before any of us got upstairs to cocktails, Tina had a press release out. I mean that's what we do. We tell the world what we've done, and we're very efficient at it, and we have, I think, created the impression amongst ourselves, much less thousands and thousands of other people who are affected by our decision, that we were done. To simply then at a subsequent meeting, without going through that whole process again of bringing the issue back up and voting again to adopt it, I think we operate inconsistently with the letter and certainly the spirit and intent of the ISFMP management plan development process. I don't think we should ever put ourselves in the position where we enable ourselves to do that. Is this to say that the substance of Amendment 4 should be dead forever? No, that's not what I'm saying. What I'm saying is that I think that Amendment 4 should be dead forever; and if those issues, either of them or both of them that are part of the amendment have merit and need to be brought forward again, one or more of the members of this board can do so under the process when the board decides to develop the next Amendment 4 or Amendment 5 or Amendment 6 and go through that entire process, our process, that we've crafted, and that includes the requisite public input. To me, that's what I think we ought to do and that's why I'm going to vote for this motion and suggest to those who favor defeating the motion, that there is another route to go that's more in line with our process. Thank you.

CHAIRMAN LAPOINTE: Rich White.

MR. WHITE: Gordon has said it all. I just

endorse everything he said.

CHAIRMAN LAPOINTE: Gil Pope, did you have your hand up?

MR. POPE: Yes, thank you very much. I think one of the only reasons that you probably won't run into this in any of the other plans is because in this particular plan the first thing it states in 3.1 is that measures in this section are required for all states and all areas and can only be changed by amending the fisheries management. That is not found in any other plan. It's not found in any other plan. So basically what you did in the very beginning in 3.1 was set up a roadblock in the very beginning that anything you wanted to put in here was basically, oops, got to go through that whole process again; whereas, it should have been in adaptive management, but it wasn't. So from the very beginning, we have a plan here that's different from any of the other plans we have. In my mind, the particular thing that was stuck in there by a congresswoman I think who put this in here in the very beginning -- if for some reason it got put in there and we happened to just adopt it because oh, boy, that looks like a good idea. That's how I see it as being done and we wouldn't have run into this mess if that one sentence wasn't in there, in my mind. Thank you.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Mr. Colvin did say it all. Mr. Pope, you pointed out a very key point that is in there, and therefore I think it's time to vote, and I do believe that we should vote this down and kill it.

CHAIRMAN LAPOINTE: Dennis Abbott and then Jay Carvalho, and then I'm going to ask members of the public to be brief, but I want to do that as well. Dennis.

MR. ABBOTT: Thank you, Mr. Chairman. To be brief, Mr. Lenzini talked about one legislature not bound by the previous legislatures actions, but it is incumbent upon the new legislature to create their own bill. As Gordon implied, you can't bring up the old stuff. You've got to have some new stuff, and I don't think that we should be getting into a situation -- I'm reminded of when I first went to the House in New Hampshire and the speaker of the house told me this was all a big poker game. He said, "I want you to learn

the rules, because if you don't know the rules of the game, you'll never win", and I don't think that we should be getting into a situation where this becomes a game. I respect and I agree with Representative Etnier's motion. I mean, he's trying to kill the dog and I'm trying to kill the dog, too, so I think we should probably move the question and be done with it.

CHAIRMAN LAPOINTE: I said I would recognize Jerry Carvalho and then go to the audience because that's our normal practice.

MR. CARVALHO: Thank you, Mr. Chairman. Gordon raised the issue of this coming back on the table and so forth. I want to remind the board that originally the issue, at least the one that concerns the state of Rhode Island, was settled in Peabody, Massachusetts, and then it was reconsidered in Philadelphia without the public comment. This exact thing that's taking place here today took place that established that restriction. So now when the question comes up again, we don't like the rules. Well, the rules were all right when it was originally passed at a following meeting without the public comment and all that other stuff. We had all the public comment in Peabody and then when we got to Philadelphia, we changed it. Now we're trying to do the same thing here and that's not acceptable.

CHAIRMAN LAPOINTE: Members of the public? Seeing none, we'll go to board caucuses and vote when those caucuses are done.

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Do board members need more time? We're going to get through the agenda. This will be odd for this commissioner, but I'm going to keep us here until we drop. The motion before us is to indefinitely table Amendment 4. Those board members, those states in favor, please raise their hand, six; those members opposed, three; abstentions, none. The motion carries. Thank you all for your forbearance. The next agenda item is discussion of issues for inclusion in Addendum IV. Heather.

MS. STIRRATT: Okay, I am probably going to defer a little bit to representatives from Area 2 or Area 3, if they're here, but I will simply note that the commission -- again, this is another item that has been deferred from previous meetings. The commission is in

receipt of two LCMT proposals for management program changes. The first comes from Area 2 and includes a total allowable trap program, which provides a ceiling for trap allocations to qualified participants in the program; passive trap reductions between 10 and 15 percent through a transferable trap certificate program. All provisions of Area 2 proposal are to be implemented if in fact the next stock assessment indicates that F and egg production benchmarks have not been reached. The second proposal comes from Area 3 where they are interested in amending the trap reduction schedule to add for two additional years of trap reductions at a rate of 2.5 percent per year after the scheduled four-year trap reduction period ends and is outlined in Addendum II. The anticipated action before this body is to provide staff with a directive as to how to address these proposals, either through some formal action in an addendum, which would be Addendum IV, or it would also be helpful to me if the board is not at a point where they can make a determination on these proposals, to provide me with some direction as to how we address this at future meetings while it remains in limbo.

CHAIRMAN LAPOINTE: Mark Gibson.

MR. GIBSON: Could you remind me, how was the Outer Cape compliance issue from Massachusetts dispensed with, the one that involved the transferable trap elements to it? We were going through the Massachusetts compliance issues. How was that dispensed with?

MS. STIRRATT: That the Commonwealth of Massachusetts is going to develop a conservation equivalency over the next six months or so and supply that to the commission and have the technical committee review it and present a recommendation to the board.

MR. GIBSON: It seems to me we need -- I would like to find a way that we could, in view of the workshop today, that we could keep this development discussion and research on this transferable trap programs alive at the commission and set up some sort of board action to do that, but it seems to me at this point it's premature to force proposals that are based on this program into an addendum at this time. I think given the difficulties Massachusetts has with it, the difficulties some components of Rhode Island's industry has with it, it seems to me it's premature at this time to

force it into an addendum format. I think it still needs more work and the workshop was a great way to start this morning, and I'm looking for a way to continue that so this continues to develop, but not necessarily move ahead right now as an addendum. I'm looking for some suggestions on that.

CHAIRMAN LAPOINTE: Other board members? Paul.

MR. DIODATI: I couldn't agree more with that suggestion.

CHAIRMAN LAPOINTE: Other board members? There is a parliamentary procedure called tabling, which I'm reluctant to get into. Seeing no board members right now, I'll take Dick Allen and then I think it was David Spencer.

MR. ALLEN: Yes, I'm not going to repeat the comments that I made this morning about my concern for the resource, but I will point out that at the 2000 lobster stock assessment peer review, Dr. John Hoenig raised the question or the issue that if he were going to give his advice as a scientist on the status of the resource and the risk to the resource, that one of the things that he would need to know is, first, how much of a warning you would get as the resource started to go downhill; and, secondly, how quickly could the management system respond to that fact that things were starting to change.

And as it stands now, our lobster management plan has only one criteria, which is the 10 percent egg production per recruit and that does not have any relationship to biomass. The biomass in this fishery -- if we got down to two lobsters left in the ocean, but that female was allowed to live long enough to have 10 percent of the egg production that she would have living her natural life, then we would say this fishery is not overfished. My concern is that we just don't have a system that responds to declines in the resource, and the industry is trying to get ahead of that, but the management system does not respond very quickly. That's the concern that Dr. Hoenig raised, and I share it, certainly, and I would hope that you would keep lobster management moving ahead because I really think we've got problems in a couple of areas. Thanks.

CHAIRMAN LAPOINTE: Thank you, Dick. David Spencer, did you have your hand up?

MR. SPENCER: Thank you, Mr. Chairman, David Spencer. Area 3 is the second component of the proposed Addendum IV, and certainly I would prefer that we move on this. In the event that we don't, I would ask the same question that we asked at the last board meeting, and that question would be that we would have an assurance that there would be money set aside in order to do this at a later date. I do think that it's important for the board to realize that we are concerned about the resource. We are trying to stay ahead of the curve; and even though it may seem like a fairly insignificant effort reduction, we feel that it is important. Also, we do have plans to have another proposal early next year to present to the board for further effort reductions in the form a transferable trap plan. Thank you.

CHAIRMAN LAPOINTE: Thank you, David. Board members? Mark.

MR. GIBSON: I certainly agree with Dick Allen. There are some growing problems and in some cases alarming problems in particularly Area 2. There needs to be a discussion and awareness of the board about those problems, and perhaps we need to challenge the technical committee to advise us on those rather quickly, to assemble some information and advise us on those rather quickly. I doubt that including transferable trap tag programs in Addendum IV quickly is going to get us any faster response to this problem that we have right now. We probably need immediate fishing mortality reductions in these areas. You saw from the trap tag program with the spiny lobsters, they neither got a decline in landings nor a reduction in fishing mortality, with all the effort that they put into that. They certainly got benefits in other areas, but I think the technical committee or some group needs to be challenged with advising this board very quickly what's the nature and the magnitude of the growing problems in some of these stock areas and what a potential response from the board and the commission should be to those.

CHAIRMAN LAPOINTE: Harry.

MR. MEARS: I too agree. We had an excellent workshop this morning, and I also agree with other comments that at this point it is premature to put this into addendum form. One primary reason I indicate this, or suggest this, is because a number of issues were



identified at the closure of that meeting which indicated a very strong need to continue tying up some of the loose ends, identifying a lot of the logistics, not the least of which was the administrative infrastructure that would be needed to make it happen. And just by relationship, when we approved historical participation under Addendum I, I believe in hindsight when we identified there were some lingering problems and identified a need to have a workgroup continue to address those problems and to identify exactly how the system would work and never to have that workgroup meet to address those questions, we have an opportunity now to avoid that situation so that we can all go forward with a clear understanding of what's involved and seek a much more efficient way of public response to the proposed management regime. Thank you.

CHAIRMAN LAPOINTE: Thanks, Harry. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I just wanted to bring up something that Dave Spencer brought up, and that was do you foresee, Heather, a problem with -- he mentioned the money to go ahead with this addendum. I mean we would have -- when do you have to put that thing in to make sure you have enough money, and, you know, we want to move ahead with an Addendum IV?

MS. STIRRATT: The last that I looked at the status of the budget, there was about \$7,000 left and that was out of a total budget of \$17,000. Now there has been some time that's passed since that, so I would assume it's a little bit less than \$7,000. As the year goes on, if we have overages, or not overages, but debts or deficits in other places, then money that's left over can be funneled off from species to areas where it is more appropriately needed. I would also mention that there are a number of things that have occurred this year with lobster that weren't anticipated. For instance, we've had two subsequent Plan Review Team discussions that were not originally budgeted for. and it looks like after today we will have another one. So these are the things that quickly eat up the remaining monies that are left over for lobster, and I just want to make you aware of that. Whereas we did budget for Addendum IV, as other things come up and are listed as a higher priority, that money goes away quickly.

MR. ADLER: Is that something that's

discussed in the fall meeting, the budget? I can't remember.

MS. STIRRATT: Next year's budget will be discussed in the fall, but this year's budget has been finalized, so we're working off of limited resources at this point.

MR. ADLER: Because I would like to somehow keep the ability to move ahead financially, as David Spencer brought up somewhere there, so that's not the problem. Thank you.

CHAIRMAN LAPOINTE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Maybe in reassurance, Mr. Chairman, to Bill Adler's point, you know, this is the most valuable species that the commission manages. I would suggest that, frankly, if you guys decide there's something important you need to do to better manage this species, we'll find the money to do it.

CHAIRMAN LAPOINTE: Seeing no board hands, I'll take Bonnie.

MS. SPINAZZOLA: Thank you, Mr. Chairman, and thank you, Vince, for that comment as well. I would like to say, first of all, I do agree with what the board members have said about perhaps this isn't the time to move forward. There are too many unanswered questions. However, what Harry said just afterward about bringing a group together to look at these unanswered questions and to formulate either more questions or hopefully answers to these problems, I think would be very, very prudent considering there are two area teams that have come forward to request these plans, and obviously Area 3 is looking at that in the future. So I would like to see the board, if at all possible, discuss putting a group together and looking at these issues, rather than letting it just kind of go idly by. Then at that point perhaps in the near future, perhaps beginning of next year or the middle of next year, spring or something, we could then look at Addendum IV and have answers and be able to speak intelligently about this whole subject and hold that money for Addendum IV. Thank you.

CHAIRMAN LAPOINTE: Dick Allen.

MR. ALLEN: I just have to point out that a

little bit of my frustration goes back to the fact that plans that were essentially similar to the Area 2 plan and what the Area 3 folks are talking about now were developed by industry and were submitted to the New England Fishery Management Council in 1991 and 1993. We are talking about the most valuable resource on the Atlantic coast, the most valuable fishery, and as we watch it go down the tubes, it's very frustrating to realize that the industry was trying to do something at that early date and yet now people are saying, well, we're not ready to move forward because we have these unanswered questions. And while that may be true, it certainly seems like for this fishery those questions could have been dealt with, and we could have made a little more progress than we have and I hope we'll kind of speed up that progress in the future. Thanks.

CHAIRMAN LAPOINTE: I'm reluctant to charge a separate group because we've done that. I mean, we haven't set up another group. The difficulty in implementing transferable trap tags in this case is one of how the states are going to react internally. I mean, that's the issues that have come up, I think, and it strikes me that the states need to wrestle with that so that in fact if we move that way, or we don't, it's based on their ability to move forward with this kind of program in a cooperative management program and not getting six people together to talk about the issue independently and then coming back to the board. Paul Diodati.

MR. DIODATI: Mr. Chairman, as I spoke to the point earlier, the Commonwealth is working on a plan. We'll continue that work. It's a plan that I hope to be able to demonstrate to my neighboring states, to our fishing public, and bring it forth to the commission as well. I suggest that we maybe use Massachusetts as the tool here to move forward with this. It's also my intention, if the plan I come up with fails in any way, then I'll be looking at OCC and Area 2's proposals very closely.

CHAIRMAN LAPOINTE: I see no real strong indication that people want to move forward with this now. The difficulty is if we don't, when do we revisit these issues again; in the spring? When are our meetings next year; February, June; February, May?

MR. BEAL: Yes, I think they're tentatively February, early June, this same week at the end of August, and then the annual meeting is November next year.

CHAIRMAN LAPOINTE: The commission is meeting in November, the week before Thanksgiving in Williamsburg, and then sometime in February here I suspect, the last week of February. June would be where? Here. So, I mean, I don't think the discussions will be done by November. Do people want to see how Paul's process perks up, and, Paul, other states can participate in that so they have the benefit of engaging in those discussions? I mean, obviously, you have a state regulatory process, but if we use you as a guinea pig, we don't want to over use you.

MR. DIODATI: Oh, I'm sorry.

CHAIRMAN LAPOINTE: He is watching a DVD on his machine. I asked if your process is moving forward, and I suspect there would be something for the public to chew on in regard to how you deal with the Outer Cape transferable trap tag issue, as you said, sometime in winter, is that something that stakeholders from other states can participate with you so that in fact the discussion that people have been talking about occurs. I mean, the real nuts and bolts of the discussion about what people get out of trap tag transferability process, what it would take the states to implement, how to engage the wide variety of stakeholders in our state.

MR. DIODATI: Well, we'll do the best we could in that respect in terms of having a transparent process for people to look at, but I'll have my hands full just meeting with our constituents in Massachusetts over the winter. But certainly I'll be willing to demonstrate our progress to anyone on the board interested.

CHAIRMAN LAPOINTE: Board members? Mark.

MR. GIBSON: That's good. When I asked about the next board meeting, I was thinking more in terms of requesting that between now and then the technical committee -- I don't know what their workload and schedule looks like, but look a little more in detail into this stock problem, and, if possible, chronicle the time line of the stock declines and the spatial extent of them, if possible, both through survey information as well as any sea sampling information to as current a data as possible and give the board a report on that. I think it's important enough that we need to

know more about this, about what's happening, and whether or not the timeline in our FMP may have been eclipsed by events that are ongoing right now.

CHAIRMAN LAPOINTE: I was going to get to that. Carl, is that something the technical committee can start addressing, Carl and Bob because --

MR. WILSON: I would have to pass the mike to Bob, the next TC chair.

CHAIRMAN LAPOINTE: Bob Glenn from Massachusetts. Two "n's" right?

MR. BOB GLENN: Yes, two "n's." Yes, I think that is something the technical committee would like to look at. Without talking to them, I can't say that's something that we've discussed recently, but it's I think it's something that I've talked with Mark Gibson about, and I think it's something that when areas of concern like this arise, I think it shows a red flag that the technical committee needs to respond to in a timely fashion. I think that's a priority that, if this board wishes for us to look at it, I think that would be a priority we would be willing to take on as soon as possible.

CHAIRMAN LAPOINTE: Is there objection to that? Seeing none, we will task the technical committee. Gordon.

MR. COLVIN: Certainly not an objection. My question is how does that dovetail with the next scheduled stock assessment update and does it interfere with it?

MR. GLENN: I'm going to pass that question over to Heather because that's actually an issue that I believe we're supposed to discuss today later on the --

MS. STIRRATT: The next stock assessment is scheduled to be an update, and it's supposed to occur in the fourth quarter of 2003. And as many of you may recall, some time ago we approved a timeline whereby that stock assessment would be concurrent with the completion of the database. There is another and separate issue which may cause me to go on somewhat of a little bit of a tangent here, but we have not yet received monies that are needed to facilitate further work on the database. As Bob and Carl and I discussed last night over dinner, we are quickly approaching a

time in which there will be some concern raised about whether or not we can actually complete that database in time to facilitate a stock assessment update at the end of next year. I would be happy to go into, perhaps at some other time at the end of the agenda or in person with those of you around the table, the details about why we have not received that money. But just so that you know, in terms of dovetailing this type of a discussion with the stock assessment, it's unlikely given that the stock assessment at best would be completed in the fourth quarter of next year, and it's highly probable that this discussion would probably occur much earlier than that.

CHAIRMAN LAPOINTE: And my sense of the technical committee discussion is that it wouldn't need to be an exhaustive discussion. There are a number of issues that a lot of people have discussed about the magnitude of the kind of changes you would need to make to affect a change in this regard. Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: So we're talking about a report available by February, just so we get an idea of expectations?

CHAIRMAN LAPOINTE: I would think that -- I mean, we could get some of that during the technical committee report at our next meeting. They could have some e-mail discussions, as they've done in the past, and give people a sense of the kinds of things they're discussing to further refine that.

MR. WILSON: I would also add that some of these issues have been discussed at the technical committee level and have been brought up with previous year's yearly trawl survey updates. I don't think it would be that big of a task for the TC to kind of compile those different sets of information.

CHAIRMAN LAPOINTE: Vince.

EXECUTIVE DIRECTOR O'SHEA: So am I hearing earlier than February, then, maybe at our next meeting we'll block some time off to make a report on that?

CHAIRMAN LAPOINTE: Yes. Any other discussion on that for the board? Addendum IV issues, are we going to let them go until February because of giving time for people to discuss transferability issues?

Board members, I see some shaking of the head. That's my sense. Bonnie.

MS. SPINAZZOLA: I understand your going to Massachusetts because they are working very hard with their trap reduction program. I think in one sense it's unfair to put the whole burden on them to see if they're going to look at transferability and that sort of thing, to come back and try and cure all of our problems. I appreciate Paul taking that on to a degree. However, in his letter to the board, he does say that he does not plan to include a trap transferability concept. His effort control concept does not include trap transferability. Therefore, if at all possible, I would still like to see a group, either a person from each state or whatever it might be, anybody who might be interested in getting together to talk about nuts and bolts, and it wouldn't even have to hopefully take any of the commission's money. Maybe the meetings could be held at different state offices or if you would like, I would even be more than happy to make phone calls and set up meetings or things like that only because -- although I think the issues as far as perhaps Rhode Island in Area 2 and that sort of thing and their resource and being able to act quickly is a different situation and is not necessarily a transferable issue, I do believe that Area 2 is looking at transferability to help with that issue. I know the Outer Cape looked at it. I know we're looking at it for effort controls. So I just would hate to see that issue die and go away or be attacked very, very slowly. I would rather be as aggressive as possible, understanding everyone's schedule. Thank you.

CHAIRMAN LAPOINTE: I don't have a good sense on -- if the states are to engage in that kind of process, and Heather concurred that would be useful discussion, it would require a commitment on the part of our agencies to engage in that discussion process, and I don't know what that means at this point, number of meetings. I mean, we could make it no reimbursement for the commission. That doesn't help some of our states who are in fiscal stress, frankly. Are states willing to engage in that kind of discussion? Paul. You're going to be engaging on your own.

MR. DIODATI: Yes, we are going to be engaged in this and my only reluctance to agree to any formal teams is because I'm trying to move something forward quickly, and I'm putting together a plan in a short time frame that some of the LCMT's have had

years to work on. I don't want to get myself tied up with a lot of regional meetings.

CHAIRMAN LAPOINTE: That's fair. I don't see a lot of interest and I don't have a good idea at this point. I will talk to Heather about that, and you, Bonnie, and if we can figure out a way for that to happen, we'll bring it back to the board at the next meeting. I've missed Agenda Item Number 7, Heather, discussion of LCMT Concerns. There is an LCMT subcommittee report that we're supposed to take action on.

MS. STIRRATT: I promise this will be the last powerpoint presentation of the day. I know that you all have had your fill for today. Sorry, there is one more. The report of the Ad Hoc LCMT Subcommittee, we were originally tasked with recommending a strategy to address some of the LCMT concerns that were raised at previous board meetings. This discussion basically started back in February of 2002, and the report today is basically to provide a description of the issue, a description of the work task that was issued, the methods that were used to arrive at a recommendation, and the resulting recommendations themselves. I'm just going to start off with a description of the issue. Again, this all started back in February of 2002 where a couple of different concerns were expressed by board members in particular. They ranged from a receipt of competing LCMT and/or state proposals that could be submitted to the commission and what to do in that circumstance. A separate concern was raised relative to different interpretations of Amendment 3 and the process by which LCMT's should or should not be submitting proposals to the commission. And, finally, one of the overriding concerns that was raised was the LCMT role in the process of providing recommendations. Are they in fact advisory to the board or is it some other interpretation, which was expressed by others, where LCMT's would be advisory to the states? And so as a result of these concerns, the Lobster Management Board provided the directive to form an ad hoc LCMT subcommittee, which was composed of Harry Mears, Pat Augustine, David Spencer, Bob Baines, and Ernie Beckwith. And they asked that the subcommittee review the LCMT role and responsibilities which are currently outlined in both Amendment 3 and the lobster operating procedures, and that those recommendations be forwarded to the board at the next available meeting. So just to give you an update, there were a series of

conference calls, three, in fact, that were held to try and reach some type of a recommendation to forward to the board. The first was held on May 13, and the primary goal of this conference call was to review the current language that would be both Amendment 3 and the lobster operating procedures. There was general agreement on two primary points and that was that LCMT's are clearly identified in Amendment 3 as being advisory to the board. In addition, current language was noted as being very vague about LCMT roles and responsibilities, as well as the process for submitting recommendations to the commission for review and consideration. As a result of those two agreements, a directive was given to staff to prepare a series of process schematics, which basically outlined alternatives to the current process as well as clarifications to the current process for consideration. On June 13, the LCMT Subcommittee reviewed these draft process schematics. Four processes were outlined, which included a status quo, which is basically a very big process where LCMT's go out and they're given a directive to prepare a proposal. They immediately submit that to the commission and the commission takes it under consideration. It doesn't really say anything more than that, and so we outlined that as one particular process. A second process was a process whereby the LCMT's would submit their proposals to the states and then the states would collaboratively hold a public comment period. A third option was where the state would actually take the recommendation of the LCMT and submit that recommendation for consideration to the commission, and the fourth was where the LCMT would submit the proposal and/or recommendation and there would be a public comment period that would be held. Many of the discussions of the LCMT regarding these four outlined process alternatives noted that we needed some changes and some modifications to those, and so at that point in time we held a third conference call, which was our final conference call, where we reviewed revised process schematics, and there were five options which were outlined. The first was status quo, where LCMT's are advisory to the board and they submit their proposals directly to the board. The second was LCMT's submit their proposals and a state comment period is held. The third was an iterative development process whereby the LCMT's and the states collaboratively develop their proposals and the proposals is submitted to the state contact person, which has already been identified for every area. That state contact person would then submit the recommendation to the

commission and then the commission would move that proposal into a decision-making process. It's notable that Options 1 through 3 do not require adjustment to Amendment 3 because there is no change in the bottom line, that LCMT's are advisory to the board. The changes that would be required for implementation for Options 2 and Option 3 would be located in the lobster operating procedures, where we would simply clarify the current process. We also considered two additional options, which involved an LCMT change in their advisory role. This would be where the LCMT's would be advisory to the state. Because we would be changing that role, it would require a change to Amendment 3, and as such we came up with two additional options. Option 4 was whereby the LCMT would submit their proposals and/or recommendations to the states. The states would then review those proposals. They would have the opportunity to modify them, and then the state would be the responsible agency for submitting those proposals to the commission for consideration. Option 5 was a situation where the LCMT's again are advisory to the state. They would submit their proposals to the state. The state would review, modify, and submit that proposal; and then subsequent to that, there could be a period whereby a state would open up a public comment period or an open meeting for suggestions. Those were the five options that were outlined; and when the subcommittee got back together to discuss these process alternatives, there were a number of questions which we addressed. The first was to what extent should states participate in LCMT deliberations for areas that are not subject to their jurisdiction? A specific example for you to consider would be a situation where you've got Area 3 developing a recommendation for a management proposal. The question comes up do all eleven states need to participate in the development of Area 3's management program, and there was, I would say, considerable concern raised with that line of thinking. We did not reach a consensus or try to develop any response to that, but it was agreed to by the subcommittee that we could forward that to the board for some type of a directive in how we address that in the future. In addition, the question came up of should the National Marine Fisheries Service play a more prominent role in reviewing, approving, and perhaps even endorsing LCMT proposals? Harry Mears was on the subcommittee and commented that NMFS is limited under the ACFCMA regulations in that it cannot approve or endorse a proposal prior to final action by the commission. However, it was noted that the

National Marine Fisheries Service will continue to participate in the LCMT deliberations and provide comments as necessary. The third and final question that came up was what will happen if a state and LCMT disagree on the development of a recommendation, and the group did reach a consensus on this that an iterative development process must occur and that this must occur until agreement can be reached by the two interest groups. That would include the state and the LCMT. So based upon this last series of discussions and questions that were asked, we were able to form a recommendation about how to deal with the concerns that were raised back in February. The LCMT Subcommittee recommends that Option 3, which was an iterative development process for submitting and developing the proposals, be adopted. It is worth noting here that particular option, which is Option 3, and it's outlined in the report, is not a substantive deviation from status quo in that there's no change required to Amendment 3. Rather, we're looking to provide clarification of the process, i.e., the partnership between LCMT's and the adjacent jurisdictions, and this can be clarified via changes in the lobster operating procedures, which do not require public comment. So the final slide is the action items before the board today are as follows: We are looking for some type of board action, whether it be approval of the recommendation, i.e., the directive for staff to change the lobster operating procedures in accordance with Option 3; or, some adoption of an alternative process and perhaps that could be an alternative process that's already been evaluated and looked at very closely by the LCMT Subcommittee or an alternative process perhaps that we didn't come up with at all. We're also looking for a response to the question in which the group could not reach a consensus on, and I'm not sure that you will be able to do this today, but we need some direction or some outline on the record as to what extent states should participate in LCMT deliberations that occur outside their jurisdiction. Mr. Chairman, that pretty much sums up the LCMT report.

CHAIRMAN LAPOINTE: Board questions?  
Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. On your Option 3 here, who are these people, this area state contact submit, that little section, who are these people?

CHAIRMAN LAPOINTE: They would be the people from state agencies who participate in that

LCMT process. For the state of Maine, Terry Stockwell and Carl, I think, participated in all of those meetings; did they not?

MS. STIRRATT: No. Actually we're referring to -- back when the LCMT's were originally formed and membership to the LCMT's was discussed and approved by this body, there were also a number of contact persons which were approved for each one of these areas, and I have that list in front of me. It gets distributed on an annual basis to make sure that our records are complete at the commission. For Area 1, the contact person is Penn Estabrook and John Nelson. For Area 2, the contact person is David Borden. For Area 3, the previous contact person was Jim Fair, and recently Paul Diodati and I discussed that Dan McKernan would be taking that role over. For Area 4, it would be Bruce Freeman and Gordon Colvin. They do this jointly. For Area 5, Bruce Freeman; for Area 6, it's Gordon Colvin; and for the Outer Cape, it would be Dan McKernan again.

MR. ADLER: Okay, you've explained who that contact person is. I can see that now. Thank you.

CHAIRMAN LAPOINTE: Paul Diodati.

MR. DIODATI: Heather, can you put Option 3 back up there -- I'm having trouble reading the schematic in the copy I had -- just so I can understand it better.

MS. STIRRATT: Paul, Option 3 requires a change to the lobster operating procedures. That's outlined on page 6 of the LCMT report. You can see the way that the lobster operating procedures would be worded if in fact I was given the directive to change that language. It's the text that appears in bold italics, and, again, this is just a clarification of the process that would be utilized for submission of area recommendations and/or proposals.

CHAIRMAN LAPOINTE: So for Area 1, the LCMT would come up with a proposal, submit it to Penn Estabrook or John Nelson, who would then subsequently submit it to the board?

MS. STIRRATT: That's correct.

CHAIRMAN LAPOINTE: I have Jerry Carvalho and then Dennis Abbott.

MR. CARVALHO: Yes, thank you. Two of the problems that we've run into is that the LCMT proposal may not be approved by the state that these people are from, so they might be in conflict. What I don't like to see is to have state people come before the board and argue the case with their own citizens. I would like to see any proposal coming from the LCMT's to go get state approval first, at least on those issues that are serious and if we have to distinguish between the issues. The other thing is a rank and file. Sometimes we get a proposal -- and we had that experience in Rhode Island -- where the LCMT comes up with one idea, but they don't have universal support from the rank and file. Now they may play an exceptional leadership role in that capacity, but in our society I'm comfortable when the rank and file come out and say, yes, we support it, at least the majority of us do. Both of those things are absent, and I don't think that it's appropriate to have that argument presented in this forum. That should take place at the state level and the conclusion from that should come and be presented here. I would prefer either 4 or 5 as a better way to go.

CHAIRMAN LAPOINTE: Thanks, Jerry. Rich White.

MR. WHITE: Do you see the meeting process, the LCMT and state, a meeting that they're both working together to formulate a plan? That's what you see, so that's far different than what is taking place now. Well, in Area 1; I should say Area 1. That's where my experience is. I've been at like the last five and the LCMT makes a plan and the state sits in the audience and they answer questions, but they're not working together to formulate a plan.

CHAIRMAN LAPOINTE: Paul Diodati.

MR. DIODATI: Well, I'm just going to echo what Jerry said, that Option 4, from my point of view, is much more practical for a state to deal with what. What Option 3 does, it does bypass the state very similar -- I think it's very similar to the way the LCMT's have been working right now. By going directly to the board, we don't always assure that we're going to meet the requirements in the state, the administrative capabilities of the state, and I think it basically sets us up for failure.

CHAIRMAN LAPOINTE: Thanks, Paul. I have Pat Augustine and then Pat White and then Gil Pope.

MR. AUGUSTINE: Thank you, Mr. Chairman. I think there may be some misunderstanding here. Under Option 3, when we talked about iterative development, if you look at the first box it, actually says LCMT/state development. And the sense here, as I recall, was it was an interactive process with the state person who typically should be in attendance with the LCMT members, and that it may not be so in your area, but that was the hope that we had whereas instead of your LCMT developing the plan and then going to the states and saying, hey guys, here's what we want whether you want it or not. Along the way in the process, it was a matter of back and forth and back and forth and trying to resolve your differences and I think that was one of the reasons that we, as a group, agreed this might be the way to go; and that once you've reached a consensus, that this is the essence of what we want to put forth to the board, it would go forward. I think that was the interpretation of it.

CHAIRMAN LAPOINTE: Thank you, Pat. Pat White.

MR. WHITE: Well, I just would like to echo that, Pat. I think that was our original intent. I think many of the LCMT's have strayed from it, but I think it's a much more important part of the process to have the LCMT's and the states working together to make plans as advisory plans to the Lobster Board. I don't think the LCMT's work directly for the state. I think they've got to take their advice from science and management in their deliberative processes and come up with something that can stand the test, and I think Pat is absolutely right.

CHAIRMAN LAPOINTE: Gil.

MR. POPE: One of the problems that I see we could possibly be running into here, if you don't include some people from each state in this LCMT process to also review whether it's legal in some cases or whether it will require some kind of changes in the state law, then you're going to run into these problems where you have a situation where the LCMT has a proposal; and it comes to the board, the board passes it and all of a sudden the state says, "What do you mean we're out of compliance? We don't like that". "Well, it's already been passed". So, in other words, I see this - - and getting back to what we were just talking about earlier about the 100/500, I think if that process had

gone through the state first, viewed in each state as to whether or not it would have been acceptable, that particular process would not have gone through. So, in other words, I see that either 4 or 5 is much better than what we have now.

CHAIRMAN LAPOINTE: I see fundamental two paths in how we deal with this. I think everybody has said that we need more state participation and review in that process; so that in fact as LCMT proposals come forth, people talk about issues that are drop-dead issues for their states for the LCMT's consideration. Option 4 or 5, with state approval, it would give each individual state a veto authority over what the LCMT proposal was going forward; and in the case of if all eleven states participated in Area 3, which I don't think they would, but there could be half a dozen, that would be a hard way to reach a consensus position. Paul.

MR. DIODATI: Nevertheless, I feel that's the way the process should be. This is the Atlantic States Marine Fisheries Commission and not the Atlantic LCMT Commission. I think it's important that the states are in this process in more than we'll let you know what's going on. I think we have to know whether it meets the politics, the policy, and the administrative capability of the state to implement the plan.

CHAIRMAN LAPOINTE: And I don't argue with that; it's just a function of how we carry that out. I've got two members of the audience. I had David Spencer and then Dick Allen.

MR. SPENCER: Thank you, Mr. Chairman. I would certainly agree we want the state in there from the beginning, and I think Option 3 is the only way they're there from the beginning. In Option 4 or 5 they're actually second. And in the interest of having co-management, having input from the beginning, and not wasting either the state's time or industry's time, I think Option 3 is the most efficient way to run it. Thank you.

CHAIRMAN LAPOINTE: Dick Allen and then I'll get Vito.

MR. ALLEN: Yes, I would just like to relate my experience with both the Area 2 EMT back when the councils were handling lobster and with the

LCMT's since that time. I think it was always our intent that the state representatives were participants in that process. In Area 2 they sit around the table with the industry. Depending on the individual and depending on the guidance that they're given from their agency, what I've seen in my experience, that's what determines the level at which they have input to the process. I would say as much as anything in some cases it's a lack of the state agency giving guidance to their representative on the LCMT that lets things go quite a ways before you hear about it. But certainly all the folks in Area 2 have paid a lot of attention to what the state folks have said. They're viewed as an integral part of the process. So that's why I think Option 3, if it works in that way, really is the best way to achieve what people are trying to do and avoid this possibility that you've got different states having different positions on a plan. Try to keep it all moving together at the same time. Thanks.

CHAIRMAN LAPOINTE: Thank you, Dick. Vito Calomo. Welcome, I almost forgot you were here. It's four hours into the meeting and this is the first time you spoke.

MR. VITO CALOMO: Sometimes a few words spoken later than earlier is better. I mean, I just want to say this to you, Mr. Chairman. The LCMT's only represent fishermen. The state represents all the people and this fishery is for all the people. I prefer Option 4. Thank you, Mr. Chairman.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: I prefer Option 3. I do agree that the state needs to be right in it right from the beginning along with the technical, as well as the administrative staff because there's no sense in wasting the LCMT's time trying to come up with whatever the plan is just to have it thrown out when it gets to the state because it didn't do this or it didn't do that. And as far as the state, I agree with the state having to take it through perhaps some of its checkpoints before it goes on and that would be desirable. I do think it gets a little bit confusing when it gets down to Option 4 or 5 or whatever it is there. It's starting to get too complicated, and just remember what happened the last time that lobster management got so complicated that what went in one door with the fishermen and came out nowhere near that, what happened basically was that it was rejected by the industry completely. We don't want that. So far we've made a lot of progress with moving



ahead with the ideas. I do think the state needs to be right in there all the way, but I don't want to get it so far removed that what went in one door and comes out the other door is totally not what they discussed at all. I like Option 3.

CHAIRMAN LAPOINTE: Staff informs me that the report also says that Options 4 and 5 would require a plan amendment. I've got Gordon and then David Borden.

MR. COLVIN: Thank you, Mr. Chairman. Actually that was a point that I was going to make, is that it seems that in the short run if we need to do something, we need to do something that we can do under the current language, and that may be necessary to take a first step while we continue to evaluate where we are and perhaps develop the issue further for the next plan amendment. I don't think this issue by itself warrants embarking on an amendment. I suspect most would agree. I think that Option 3 can be workable with respect to those who have brought up the concern, which I share, that ultimately it is the responsibility of the states to develop and implement lobster management programs, and NMFS in the EEZ, that meet statutory requirements, that are implementable, and that meet the needs of all of the stakeholders. I think that can be accomplished through the iterative process as I understand how the subcommittee has laid out Option 3, and I think that's worth a try in the intermediate term. I do see some potential, particularly in those programs that involve multiple jurisdictions, some potential for the iterative process to become very iterative, if you will, and perhaps some -- if you get to a point where there's just an impasse, you have to recognize, I think the process needs to recognize that ultimately the buck stops with the state agencies, the states themselves. If a state is not able to reconcile an impasse in the development of a management program with the members of the LCMT's, ultimately the state, I think, needs to bring something forward to this board consistent with the management plan amendment or face sanctions, and you can't leave that in the hands of the LCMT's. So, you know, with that reservation and with that kind of end-game mechanism out there, I would favor going with Option 3 for the time being, kind of keeping our eye on this issue and keeping the option open for going to an Option 4 like solution in the future if we felt it was necessary, when it became timely to do an FMP amendment, not before.

CHAIRMAN LAPOINTE: Thank you, Gordon. Harry.

MR. MEARS: Picking up on some of the points made by others, arguably what's envisioned under Option 4 can also come true under Option 3. What Option 3 could in fact do is remove the potential scenario where there would be in fact a veto power at the midnight hour where days and months type of deliberations have gone on that did not have the iterative type of approach. I think one of the humbling aspects, however -- and this is particularly true for NMFS that has federal waters in all six of the seven management areas -- it does involve a significant expenditure of time, of representatives at a level high enough that would be aware of the type of issues that would be forced upon LCMT plans at the final stage. So it would, certainly from a NMFS perspective, require a considerable investment of staffing to make sure the iterative process could work effectively.

CHAIRMAN LAPOINTE: Mr. Colvin.

MR. COLVIN: Harry is right on the money on that, you've got to do it that way. I know I sort of felt -- and Eric can tell me I'm full of bologna, but I sort of felt that the way we went about the Area 6 program was sort of consistent with this Option 3 approach, and in fact that's what it took. We had very senior management people from both states, and their names were Byron Young and Eric Smith, who were in the lead in working with the LCMT, and we had our technical staff also present at the meetings to assist in technical issues. I think to me that process model works in this kind of a co-management approach. I think it's consistent with what we've developed hand in hand with the coastwide lobster industry from the outset of this area management process. And I guess, I don't know if you would like it, Mr. Chairman, but I'm prepared to make a motion now that commits us to Option 3, if you believe that's appropriate.

CHAIRMAN LAPOINTE: Eric, do you want to make a comment before Gordon makes a motion?

MR. COLVIN: He's going to tell me I'm full of bologna.

MR. SMITH: But he's right. It did work well, and in fact Gordon and Ernie attended most of those meetings too and John Mason for a long time, and it

was very, very interactive. I mean, nobody pushed anybody else around, but everybody listened to everybody else and you get to a better consensus that way.

CHAIRMAN LAPOINTE: David Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. What I would suggest is something slightly different; and listening to the discussion, I can't help but reach the conclusion that you're talking about a hybrid of Option 3 and Option 4; and if I can take another one minute, I'll explain that.

I think what you want to do is you want to have that iterative process with the state involved right up front, but when the recommendation comes before the board, you want to know whether or not the state agency can support that. And that did not happen in one recent event and in fact where we ended up was the state agency came forward and said they couldn't implement; and at that point I think it's too far down the road. At that point what you're doing is you're setting up a system whereby the participants that invested all this time and energy in the process are basically saying you're coming in at the last moment and killing this thing. I think you have to do a combination of Option 3 and Option 4, just take out -- just combine those two, but take out that first bullet under Option 4 where it says they're advisory, and basically get a state recommendation at the same time that the recommendation comes to the board. Thank you.

CHAIRMAN LAPOINTE: I was asking staff whether we could hybridize those out without doing an amendment, and I hear I don't think so. In this discussion, I hear a clear idea that Option 3 as a recommendation to the committee is a way to start; and then when an amendment comes along, this could be an issue that's considered for part of that amendment process, to move to Option 4. I will concur with David and Gordon that the only way to make Option 3 work well for the states is for them to be in that process, technical people and decisionmakers, throughout the LCMT process and to raise those, I'll call them red flag issues as early as possible so that there aren't unrealistic expectations raised on the part of LCMT members. Does that make sense? I don't think we need a motion for that. What I would recommend is staff will change the operating procedures to go with Option 3 and we need to keep it on a tickler list of issues to put in the

next amendment. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman, and one final comment. Heather is to be commended for herding us through the process with three very intensive meetings. She did a great job. Thank you, Heather. (Applause)

CHAIRMAN LAPOINTE: Heather is to be commended for herding the Chair through all these processes. The next agenda item is the technical committee report.

MR. WILSON: Thank you, Mr. Chairman. I only have three items, which I hopefully will be able to get through relatively quickly. The technical committee met on July 9, last month, and we basically talked about three issues, the first being evaluation of the mandatory v-notch program. The second item was the broader performance criteria, coming from a motion posed by Paul Diodati at the last board meeting; and, finally, the election of the new chair. So if you don't mind, I will go to the presentation about the v-notch.

CHAIRMAN LAPOINTE: Please do.

MR. WILSON: Okay, this presentation is an adaptation of a memo sent to the board from Bob Glenn. I believe the final draft of that was last Friday. Evaluation and performance criteria for v-notching; back in October 2001, there was a motion to amend Area 1 v-notching requirement in that the Commonwealth of Massachusetts will monitor the percentage of v-notched egg-bearing female lobsters in the commercial catches during 2002. If the observed percentage has not reached 50 percent by the end of 2002, the Commonwealth will consider additional management measures in 2003 to help achieve the goals of the FMP. At a minimum, all regulations promulgated to implement Addendum III in Management Areas 2, 3, and the Outer Cape Cod will be expanded to include the Massachusetts portion of Area 1. Other entities of Area 1 may also consider additional management measures within 2003. Implicit within this amendment was the directive to the technical committee to develop a means by which to evaluate performance for the hundred percent mandatory v-notching requirement in Area 1. And, really, these conversations had started internally within the technical committee as much as two years before this. So, technical advisors to Area 1 met on April 19 and June 12 of this year. The main thrust of

this work centered on developing a means to relate the observed proportion of v-notched lobsters from sea sampling to a v-notching rate as is used in the egg per recruit model. Joe Idoine, with National Marine Fisheries Service, has put a tremendous amount of time into this issue, along with Paul Rago, starting in August of 2000 and has really done an excellent job, I think. Joe developed a model that estimates a proportion of v-notched lobsters in the catch over a range of fishing mortality and implied v-notching rates. So these models examine the fate of a cohort of female lobsters destined to extrude eggs in the following nine-month period. The purpose is to predict the expected proportions of v-notched lobsters in a population given a seasonal pattern of extrusion and simultaneous fishery in which some fraction of the berried lobsters are v-notched when captured. More on the model, and I'll try to go through this quickly. The analyses are based on the probabilities of capture and v-notching and fishing and natural mortality rates. The user can change the rate of capture and v-notching proportion, as well as specify the duration and relative distribution of extrusion period. This model does not directly address the efficacy of v-notching, but acts only as a tool to interpret observed ratios of notched and un-notched berried lobsters on an annual basis. The annual fishing mortality in this model is converted to a rate of encounter and results in mortality only to those unberried, un-notched lobsters. One could assume that an equivalent encounter rate would be applied to lobsters that are not destined to become berried or notched within the model duration. Although this would represent a mortality rate on the unprotected portion of the population, it is not a population weighted F and therefore cannot be directly compared to those from any EPR or usual mortality rate estimates. And this you'll see in later deliberations is a bit of a sticking point. To quickly go through what an example of the model outputs can do -- and, again, it's an informative exercise that Joe has put together for everyone and I'll try to walk people through this.

CHAIRMAN LAPOINTE: Can I break in? We need more work on this, don't we? I mean, my only thought is it's 7:00 o'clock and I'm starting to think like this graph. Do people want to hear this through? My sense is the technical committee needs to do additional work on the questions posed to it.

MR. WILSON: There was actually a majority and minority opinion and there is an action statement

for the board.

CHAIRMAN LAPOINTE: All right.

MR. GIBSON: We can go right to that, George.

CHAIRMAN LAPOINTE: No, carry on.

MR. WILSON: To try to quickly go through this, basically if you look at an annual mortality rate and then a proportion of v-notches, so a v-notching rate. Given our estimates in the field either from sea sampling or trawl surveys, we could say that in this light blue area, 70 to 80 percent of the observed percentage of egg-bearing lobsters were v-notched. This happens to be what we see in Maine state waters. If you take that observation, with our current estimates of fishing mortality for the Gulf of Maine of around 0.75, we see that the resulting v-notching rate would be approximately 100 percent. If you work it the other way, you could say that if our fishing mortality rate was approximately 1.2, which is not an unreasonable estimate for Massachusetts Bay, you can look at a percentage and predict a proportion for v-notch. So it allows you to go both ways, essentially. Following our meeting in July, Bob Glenn kind of called the question for the technical committee, and there was a majority and a minority opinion. The majority of the technical committee endorses the proposed model as an appropriate tool to measure compliance with the mandatory v-notching measure adopted in the Area 1 lobster management area. The techniques employed within the model are appropriate and are applicable to both fishery dependant and fishery independent input data, meaning that you could use sea sampling data or trawl survey. The model allows the user to input a specific fishing mortality and v-notching rate to obtain an expected proportion of v-notched lobsters in the catch, as well as solving over a range of combination of those rates. Conversely, the model can be used to relate a given level of fishing mortality and observed proportion of v-notched lobsters in the catch to an expected v-notching rate. Using this tool, it is possible to determine the rate at which a lobster rate is v-notching at a given fishing mortality rate. This was the majority opinion. The minority opinion is this. The minority within the TC did not endorse the proposed model as an appropriate tool to measure compliance with mandatory v-notching measures. There are three primary concerns raised by the minority. One, the predicted monthly proportions of v-notched lobsters in

the model did not match up with monthly proportion of v-notched lobsters observed in Maine sea sampling. The model predicted that the instantaneous fishing mortality rate on female lobsters would have to exceed 1.25. Currently, we assume this is 0.74. There is uncertainty whether or not the fishing mortality rates and capture rates in the v-notch model are directly comparable to the F's generated by the DeLury model and used in the egg-per-recruit model. This relates back to some of the caveats that Joe Idoine stated in the beginning. So, George, for board action, the TC does endorse the proposed model as an appropriate tool to measure compliance with the mandatory v-notching measure adopted in the Area 1 lobster plan. That is an action item for the board so you guys can deal with it as you feel fit. I don't know if you want to deal with that at this point or just go to the final item that I had, which was the election of the chair. Finally, we did elect a new chair. Bob Glenn from the Commonwealth of Massachusetts was voted unanimously, and I gladly pass the baton, and that concludes the technical committee report.

CHAIRMAN LAPOINTE: Before we get into the report, welcome, Bob, and, Carl, thank you for your two years of hard work in shepherding this process through. (Applause) Board members? Pat.

MR. AUGUSTINE: Mr. Chairman, does that require board action in the form of acceptance of it or -- Carl's last statement, he was recommending that the board accept the model, or do we need further discussion on it or how comfortable do we feel with that recommendation from the technical committee?

CHAIRMAN LAPOINTE: Heather says unless there's objection, it should be approved by the board. I have a technical committee member, the current chair, who signed on the minority opinion; and given the fact I saw the memo for the first time about 15 minutes ago, I'm a little reluctant. I mean, I would like to spend some more time thinking about it, but that's just my own opinion. Bruce.

MR. FREEMAN: The question I would have is how do we reconcile the technical difference? I mean, these are technical issues. There's people who agree and there's people who disagree. I mean, it's being now brought to the board. What we had asked the technical committees in the past to do is try to come to a consensus position; so if there is disagreement, at

least those issues that can be agreed upon and bring forth to the board. It seems an impossible task to ask us to now judge who is right and who is wrong.

CHAIRMAN LAPOINTE: Heather.

MS. STIRRATT: The procedure that was utilized in this scenario to present this recommendation to the board is the procedure that was passed and approved by the ISFMP Policy Board during the last meeting week, which clearly states in the guidance document for technical support groups that where a consensus cannot be reached, a majority/minority opinion would be presented to the board for review and consideration, and that some action would be taken on that report.

MR. FREEMAN: But are you saying, Heather, that the discussion was carried out and there could not be a consensus reached and therefore we are where we are?

MS. STIRRATT: Yes, that's correct. At that time, given three or four months of considerable debate and discussion over the utility of this model and what it can and can't do, there could not be a consensus reached.

CHAIRMAN LAPOINTE: Pat Augustine and then Paul Diodati and Gil Pope.

MR. AUGUSTINE: Thank you, Mr. Chairman. Not naming the committee members, could you tell me how many folks we had in total on the technical committee that participated in the process?

MS. STIRRATT: There are eight members on the technical committee.

MR. AUGUSTINE: Eight and we had a minority of one. Okay, thank you very much.

CHAIRMAN LAPOINTE: It was a minority of two, as I understand it, but I seem to recall past discussions about not getting into exact number counting as a part of this process. Paul Diodati.

MR. DIODATI: I did have an opportunity to see the memo before the meeting, and so I did have time to review it carefully. What I looked at was what was the concern of the minority individuals, the

minority report, and essentially it was the mismatching that the model outputs gave you. And when I looked at it a little closer, I found that for Massachusetts, when you run the model based on the percentage of v-notched lobsters in Massachusetts, that we have an estimate of F as well in our nearshore waters. It matched right on. So it doesn't match in Maine, but only because you don't have an estimate -- I don't believe you have an estimate for your nearshore waters, so how do you know it's not matching? So given that -- and the other concern is so far out there that I don't know what to make of it because he basically states that since he doesn't believe that the Gulf of Maine stock is not overfished or in an overfished condition, I don't believe that the model works at all. So it seems to me that second concern is so polarized that a lot more work needs to be done, I guess, with individuals on the committee to come a little bit closer together on that. But given what I've read and what I've seen, I'm ready to make a motion to approve the TC's recommendation.

CHAIRMAN LAPOINTE: Second by Rich White. Discussion on the motion? Gil Pope.

MR. POPE: There was a majority and a minority. Was there any kind of an informal vote?

CHAIRMAN LAPOINTE: When Gordon was still chair of the committee, we said we wanted to get away from the voting, and I'm reluctant. There was a majority, there was a minority. I think they expressed themselves as best they could and we ended up where we are. Gordon.

MR. COLVIN: Is there some urgent need to act on this today?

MS. STIRRATT: No.

CHAIRMAN LAPOINTE: No, Heather says.

MR. COLVIN: As I find myself in kind of the same situation as the chairman. This is pretty complex stuff; and when the board is going to get called on, whether it's the Lobster Board or the Seahorse Board, it's going to get called on to take action based on technical advice that comes as a majority and a minority. We might ask ourselves how do we do that? What do we do as we receive that advice and make decisions based on it, and I'll tell you what I think we ought not to do in general. I think we ought not to jump

to make a decision without individually trying to understand what the issues are and think about them and try to make a judgement that's simply based on what the majority recommended. We probably ought to talk to our own technical committee members a little bit, get their assessment of the strengths and weaknesses of the majority and minority view. Now, unfortunately in this instance, many of us haven't yet been able to do that. Clearly, Paul has and I appreciate that. He's ahead of me on this by probably two weeks, and I'm just not comfortable, based on seeing this stuff cold turkey, voting on the motion right now. If there isn't any urgency to it, I'm not sure why it couldn't be postponed to our next opportunity to discuss it, and I would be much more comfortable doing so.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: I make that motion that we table this until the November meeting.

CHAIRMAN LAPOINTE: Is there a second to that motion?

MR. COLVIN: I'll second it.

CHAIRMAN LAPOINTE: Now a motion to table to a time --

MR. ADLER: There's a motion on the table already.

CHAIRMAN LAPOINTE: There was a motion to table the motion and the motion to table, correct me, parliamentarians, to a date certain is non-debatable. Are we okay with that? Do states need a chance to caucus? Seeing none, all in favor of the motion to table, raise their hand. Gordon, you seconded that. Did you raise your hand? Did you get a count?

MS. STIRRATT: No.

CHAIRMAN LAPOINTE: All right, let's start over. Those members in favor of the motion to table, please raise their hand, five; those members opposed, same sign; abstentions, two; null votes; two nulls, one abstention. The motion carries. Bear with us. Other technical committee information? We have three bits of other business, NMFS status update/discussion of tag issuance concerns. Gordon Colvin.

MR. COLVIN: Not in a million years, Mr. Chairman, would I suggest that this board address this discussion at this time at this meeting.

CHAIRMAN LAPOINTE: Bless you, my son.

MR. COLVIN: I suggest, as I alluded to earlier, that this is predominantly an issue of the most restrictive. I suggest that the correspondence -- some of it's here; there's more. Harry sent an e-mail to Heather. We can send another one. That can be sent to the board. It can be given to the folks that are looking at the most restrictive issue and we can address it down the road, please.

CHAIRMAN LAPOINTE: Is there objection? Seeing none, that's what we'll do. Heather has suggested that we ask if you want to provide an update on NMFS rulemaking. Sure. We have two concurrent actions. One is nearing completion, which is the final rule, for which the key note component is the implementation of historical participation in 3, 4, and 5. Even though I can't guarantee it today, I fully expect -- my intent is to be able to have an infrastructure in place to be able to begin evaluation of applications for historical during mid to late fall and to have that implemented by the next fishing year. Like I said, that's my own intent. It can be changed, but I'm hopeful that will happen. The second action is to revise a previous advance notice of proposed rulemaking, which was specific to Addendum II, and to reissue that along with a notice to prepare an EIS that essentially would bring in or fold in Addendum III so that we can do both at the same time. So once again in summary, the next action, which should appear in the Federal Register, would be a notice of intent and then an advance notice that would speak to the next EIS; and hopefully at the same time even, approximately the same time could be a concurrent final environmental impact statement to move forward with a historical participation regime as proposed in the proposed rule from last year.

CHAIRMAN LAPOINTE: Thank you, Harry. Questions for Harry? Seeing none, our next issue is Addendum III gauge size and marketing issues discussion, Heather. And I suspect, given our discussion about possessions and landings, that issue is still hanging. Is that enough said?

MS. STIRRATT: Yes.

CHAIRMAN LAPOINTE: Okay, thank you. The next agenda item is the election of a vice chair. Is anybody prepared to make a motion for the election of a vice chair?

MR. ADLER: Mr. Chairman, can I make a motion for vice chair for Pat White?

CHAIRMAN LAPOINTE: You may. Is there a second to that motion? Seconded by Pat Augustine.

MR. AUGUSTINE: I move we close nominations and cast one vote for Pat White.

CHAIRMAN LAPOINTE: What he's trying to do is close the nominations, but given my parliamentary lashing that I had today, what's the process for that? Are there other nominations? That will be a way to get at that issue. Are there other nominations for the position of vice chair? Seeing none, Pat White is elected by acclamation. Congratulations. I would entertain a motion to adjourn and I do note from Roberts Rules of Order that is non-debatable.

MR. ADLER: So moved.

CHAIRMAN LAPOINTE: Good night and thank you all for your patience.

(Whereupon, the meeting was adjourned at 7:25 o'clock p.m., August 26, 2002.)

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