

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

**The King & Prince Beach and Golf Resort
St. Simons Island, Georgia
October 28, 2013**

Approved August 2014

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INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move to adopt the following elements of Addendum XXII and ask the ASMFC Executive Director to forward the addendum to NMFS with a request that they implement the new management provisions as soon as possible: Section 3.1, governing single ownership caps, adopt Option 2; and for Section 3.2, governing aggregated ownership caps, adopt Option 3, full exemption** (Page 4). Motion by Dan McKiernan; second by Ritchie White. The motion carried (Page 9).
3. **Move to request NMFS to enact a control date of today, October 28, 2013, or alternatively the earliest date possible after this date to establish a time certain after which a single person, company or entity may no longer be able to purchase additional permits or trap allocation in excess of the limits established in Addendum XXII** (Page 9). Motion by Dan McKiernan; second by Ritchie White. Motion carried (Page 10).
4. **Move that the implementation date of Addendum XXII be tied to the onset of transferability among state and federal permits after the creation of the data base to accommodate all transfers** (Page 10). Motion by Dan McKiernan; second by David Borden. Motion carried (Page 11).
5. **Move to approve Addendum XXII as modified today** (Page 11). Motion by Bill Adler; second by Steve Train. Motion carried (Page 11).
6. **Motion that the Draft Addendum XXIII to the American Lobster Management Plan be approved for public comment** (Page 12). Motion by Pat Augustine; second by Patrick Keliher. Motion carried (Page 12).
7. **Move to adjourn by consent** (Page 27).

ATTENDANCE

Board Members

Pat Keliher, ME (AA)	Lance Stewart, CT (GA)
Steve Train, ME (GA)	James Gilmore, NY (AA)
Rep. Walter Kumiega, ME (LA)	Pat Augustine, NY (GA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Peter Himchak, NJ, proxy for D. Chanda (AA)
Doug Grout, NH (AA)	Tom Fote, NJ (GA)
G. Ritchie White, NH (GA)	Adam Nowalsky, NJ, proxy for Asm. Albano (LA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	John Clark, DE, proxy for D. Saveikis (AA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Russell Dize, DE, proxy for Sen. Colburn (LA)
Bill Adler, MA (GA)	Roy Miller, DE (GA)
Robert Ballou, RI (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
David Borden, RI, proxy for B. McElroy (GA)	Tom O'Connell, MD (AA)
Rick Bellavance, RI, proxy for Sen. Sosnowski (LA)	Bill Goldborough, MD (GA)
David Simpson, CT (AA)	Rob O'Reilly, VA, proxy for J. Travelstead (AA)
Rep. Craig Miner, CT (LA)	Peter Burns, NMFS

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

Ex-Officio Members

Joe Fessenden, Law Enforcement Representative

Staff

Robert Beal
Toni Kerns

Kate Taylor
Marin Hawk

Guests

Terry Stockwell, ME DMR
John Bullard, NMFS
David Pierce, MA DMF
Derek Orner, NOAA
Kim McKown, NY DEC
Mike Armstrong, MA DMF
Nichola Meserve, MA DMF
Lauren Latchford, Duke Univ
Linda Mercer, ME DMR
Tim Huss, NY DEC
Mari-Beth DeLucia, The Nature Conservancy
Joseph Gordon, PEW

Charles Lynch, NOAA
Richard Allen, Newington, NH
Arnold Leo, E.Hampton Baymens Assn.
Jay Lugar, MSC
David Spencer, AOLA
Will Bokelaer, Colonial Heights, VA
Raymond Kane, CHOIR
Rick Allyn, Trenton, NJ
Ann Pierce, Maine Elver Fishermen Assn.
Jeffrey Pierce, Maine Elver Fishermen Assn.
Mark Alexander, CT DEEP

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Lanier Ballroom of The King and Prince Beach & Golf Resort, St. Simons Island, Georgia, October 28, 2013, and was called to order at 9:35 o'clock a.m. by Chairman Douglas E. Grout.

CALL TO ORDER

CHAIRMAN DOUGLAS E. GROUT: All right, this is a meeting of the ASMFC Lobster Board. My name is Doug Grout; I'm chairman. This is my last meeting; Dan, you're up. The vice-chair will be taking over. We have a few things on the agenda here. Hopefully, they'll go smoothly and quickly.

APPROVAL OF AGENDA

CHAIRMAN GROUT First of all, we have an agenda here. Is there anybody that would like to make a change to the agenda or any modifications? Pete Himchak.

MR. PETER HIMCHAK: Mr. Chairman, I have two small items to bring up under other business. One is a change in the sixth abdominal tail segment that all states should be interested in hearing about. We're going from 1-1/16th to 1-1/8th inches. I'll get into that under other business. The other issue is the potential for shifting the closed season in Areas 4 and 5 under Addendum XVII. That really only pertains to five states and maybe I'll just bring it up and we can discuss it throughout the week. Thank you.

CHAIRMAN GROUT: Dave Borden, you had a change?

MR. DAVID V.D. BORDEN: Mr. Chairman, under other business I would like to just briefly talk about Closed Area 2.

APPROVAL OF PROCEEDINGS

CHAIRMAN GROUT: Are there any other changes? Are there any objections to approving the agenda as modified? Seeing none; we will now move to approval of the proceedings from the August 2013 meeting.

Are there any modifications? I actually have one note that I'd like to make. One of the motions had a slight error in the listing of which section of the addendum they were referring to in there.

What I'd like to do is tell Joe that under the change to Motion Number 3 on Page iii, it says right now 3.2.3, ownership caps, when it should be 3.1.2 refers to ownership caps. With that note made, we'll make that change to the minutes. Are there any other changes to the minutes? Okay, seeing none, are there any objections to approving the minutes as modified? I see they are approved.

PUBLIC COMMENT

Item Number 3 is we have the opportunity for public comment, and these are for things that are not on the agenda right now. Is there anybody in the public that would like to provide comments on things that are not on the agenda? Seeing none; we will move to Agenda Item Number 4.

DRAFT ADDENDUM XXII

This is to consider Draft Addendum XXII for final approval. This will be a final action and we'll start off with Kate Taylor providing a review of this draft addendum.

REVIEW OF MANAGEMENT OPTIONS

MS. KATE TAYLOR: In December 2011 the board approved the development of an addendum to respond to the poor condition in the Southern New England stock by scaling the size of the fishery to the size of the resource. The stock is currently overfished but overfishing is not occurring. The board initiated an addendum to address this issue with trap reductions and changes to the transferability programs.

The board split the addendum with trap reductions addressed through Addendum XVIII approved in 2012 and some changes in the transferability programs for Area 2 and 3 addressed through Addendum XXI, which the board reviewed and approved in August. This

draft addendum presents two additional options for management of the Southern New England stock for consideration.

These options, if the board will remember, were previously considered under Draft Addendum XXI. This draft addendum made two corrections to the options that were considered in the previous addendum, and this was to accurately reflect the trap reduction schedule. The addendum for consideration today also adds one additional option under the aggregate ownership cap.

The first option for consideration was a single ownership cap or it is previously called the individual permit cap. Option 1 is the status quo and Option 2 is a single ownership cap. Under the aggregate ownership cap, Option 1 is the status quo. Option 2 is an aggregate ownership cap, and this option was previously considered under Draft Addendum XXI, which is referred here to as a partial exemption.

Under this option, no single company or individual may own traps greater than five times the single ownership cap if they have not already accumulated them prior to the Service publishing a present-day control date. However, should an individual owner be in excess of the cap before the control date is published, that owner will retain their existing cap and the owner may not increase their trap ownership once the control date has been published.

A new option for consideration under Draft Addendum XXII under aggregate ownership cap is a full exemption under the cap. This would be if an entity falls under the grandfather provision, that entity would be allowed to acquire additional trap allocations up to the single ownership cap for each of its grandfathered permits.

Otherwise, an ownership with an accumulation of fewer traps than the cap at the time the control date is published may not exceed the aggregate ownership cap. This table just reflects the trap reduction schedule.

If either Option 2 or Option 3 is considered, then the board would recommend that NOAA Fisheries establish a control date for the number of traps a single company or individual may own or share ownership in Area 3. This table shows the single ownership and the aggregate ownership caps as presented during the trap reduction schedule. That concludes my presentation. Thank you, Mr. Chairman.

CHAIRMAN GROUT: Are there any questions on this right now? Steve Train.

MR. STEPHEN R. TRAIN: I'm trying to understand the purpose of this entire thing is management and effort control and it seems like the new option would actually allow an increase in effort based on the current effort in the fishery. If somebody had three or four permits but was only fishing one to two of them and maybe only had three or four hundred tags on one of them, they could increase the tag allotment in each permit they have up to the individual cap and work all the way up to the five or something. Did I miss this the last time or does change allow an actual increase in effort because there could be latent effort sitting in tags and permits that now under this option could be active and real increased effort.

CHAIRMAN GROUT: You remember there is also an active trap cap limit, which is lower than the actual number of traps that you can own. That is what is really restricting fishing effort. The aggregate trap cap limit provides the opportunity for an owner of a permit to accumulate extra traps in anticipation of potential future reductions that may occur.

But what it is, is they're buying these – and correct me if I'm wrong, but they're obtaining these extra traps that are latent traps and there still is going to be latent effort. They still can't fish it because we have the – at least at this particular point in time because there is still the active trap cap.

MR. TRAIN: I understood the active trap cap, but my question as with most of these fisheries we have a lot of latent effort. The new option, as I see it, would allow that latent effort to be

transferred into a multiple permit holder's hands and increase the active effort on one of the permits or two of the permits that may not have been up to the individual trap cap; and therefore it becomes active effort without changing – it is not like they'd have 1,200 tags and 1,200 in reserve.

One of those permits may have been a 300 or 400 tag permit; and by activating the latent effort from other permits, these multiple permitted vessels or owners would increase the real effort in the fishery. I didn't think that was the point.

MS. TAYLOR: The new option under consideration just deals with – the change is really with the grandfathered permits; so if a permit holder had a grandfathered permit – they had seven permits; they would be allowed to purchase traps up to the single ownership cap for each permit. The original option under consideration; those permit holders would still be allowed to hold more than five permits, but they would still be required to follow the aggregate ownership cap.

MR. PATRICK AUGUSTINE: As we select and approve which options we're going to take; have our partners – the National Marine Fisheries Service – have any major issues with going in this direction? Is it compatible? As I recall, they did review and they made comments about it. Has that position changed?

MR. PETER BURNS: We can look at this. We were unable to provide comments on this particular addendum because the government shutdown prevented us from being able to submit the comments. These issues have been debated by the commission under Addendum XXI in part and also now, so we would take a look at these and we would go through our normal process to evaluate these measures.

MR. BORDEN: I would just like to follow up on Steve's point just very briefly that I think the way to look at this addendum is that it is part of a comprehensive package that the Policy Board has adopted over the years. Basically there is an

overall cap that was based on the history of performance in the area.

The commission then cut 25 percent of those traps that were allocated in a separate action. The new action that you promulgated as part of Addendum XXI is going to cut another 25 percent of the traps; and then on top of that there is a 10 percent transfer tax that gets imposed. When you consider all of those factors together, what they do is they basically lower the amount of gear in the water. The first cut was estimated pretty much to remove a large portion of the latency. As these traps transfer, the amount of gear will get consolidated on to fewer and fewer operating units, which basically can maintain their economic viability. That is the whole purpose of doing this.

CHAIRMAN GROUT: Pat, you had a followup?

MR. AUGUSTINE: Yes, the followup was when you get through with the questions, I'm ready for a motion.

CHAIRMAN GROUT: We have one other thing we have to do before motions; and Kate has a report on the public comment that was received on this.

PUBLIC COMMENT SUMMARY

MS. TAYLOR: The public comment period on the addendum ran from September 16th through October 17th. There were two letters that were received. The first one was from ALOA and they supported Option 2 under the single ownership cap and Option 3, the new option for consideration under the ownership cap.

The Little Bay Lobster Group supported Option 3, the new option under the aggregated ownership cap. I would also just like mention that in addition to ALOA and the Little Bay Lobster Group, additional organizations also commented on these measures, the single and aggregate ownership caps, during the public comment period for Draft Addendum XXI. We mentioned at the last board meeting that their options just would be presented to board again,

but please note that Option 3 under the aggregate ownership cap was not included in Draft Addendum XXI.

Under the single ownership cap, Off the Shelf, Cote Fisheries and Rhode Island Lobstermen's Association supported Option 2. Under the aggregate ownership cap, Off the Shelf supported Option 1, the status quo. Cote Fisheries and Rhode Island Lobstermen's Association supported Option 2. Thank you, Mr. Chairman.

CHAIRMAN GROUT: Are there any questions for Kate? Bob Ballou.

MR. ROBERT BALLOU: Kate, you correctly characterized the comments, but in your memo there is a typo and I think you know that, so maybe there is a way to correct for the record that typo that refers to XXII when it should say XXI. Thank you.

CHAIRMAN GROUT: Okay, sounds good. Are there any other questions? Peter.

MR. BURNS: Mr. Chairman, I just had a comment in part of the addendum that pertains to the implementation at the federal level. I think this is probably something that is standard for all the addenda; but when we just took a little closer look at it, we didn't see the need. It recommends that the National Marine Fisheries Service promulgate all necessary regulations to implement the measures contained in Sections 3 and 4.

I just want to point out that there is really nothing in Section 4 which deals with – specifically it deals with the compliance and with the annual review. There is really nothing – there are no regulations that we would promulgate to be consistent with that. We already have that authority already in place; so it would really just be the Section 3 measures.

CHAIRMAN GROUT: Okay, are there any further questions? I guess we're ready for a motion.

MR. DAN McKIERNAN: **I have a motion to adopt the provisions of Addendum XXII, and**

I forwarded that motion to Kate, if we can get it on the board. I move to adopt the following elements of Addendum XXII and ask the ASMFC Executive Director to forward the addendum to NMFS with a request that they implement the new management provisions as soon as possible: Section 3.1, governing single ownership caps, adopt Option 2; and for Section 3.2, governing aggregated ownership caps, adopt Option 3, full exemption.

CHAIRMAN GROUT: Second by Ritchie White. Is there discussion on this motion? Dave.

CONSIDER FINAL APPROVAL OF DRAFT ADDENDUM XXII

MR. DAVID SIMPSON: Yes, just a general I guess implementation concern that as we do this cap-and-trade type of thing, I have a concern about knowledge and availability of federal permits and traps in every state. Part of what I think we'll have to do to implement this is that data base and I think logically using that data base so that we can publicly see who owns how many traps, how many permits.

When traps or permits become available, the public in each state can see that. I wondered if either Chip or Peter could comment to how the federal government would respond to this – this would be purely federal permit – to make sure that they're available regardless of what state is offering or interested in getting a permit.

CHAIRMAN GROUT: Peter, were you listening to Dave's query here?

MR. BURNS: Yes, and I believe that his concern is making sure that the general public is aware of traps that may be available for transferability once this program goes online. Right now our program isn't really going to change anything. It would allow anyone with a federal – you'd still have to have a federal permit in order to transfer traps; so it wouldn't be that anybody from the public would come out – this is all about capping federal lobster permits.

In our proposed rule we would allow anyone with a federal permit who didn't qualify to be able to buy into that process. As far as making the public known about what types of traps are available during the trap transfer period, maybe that's something that the commission might want to discuss and have some kind of process in place through the data base or some other way to address that.

MR. SIMPSON: Well, even if you stay within existing permit holders and you're just trading traps, I want to make sure that frankly as a small state that only has a couple of players, that they have an equal opportunity to participate in the federal fishery and that these traps aren't traded exclusively privately by neighbors and friends; that there is a more open process to see that there are traps available and have equal opportunity in this fishery regardless of what state they're from.

MS. TONI KERNS: Right now the data base is not designed to be open to the public, and that is because there are data confidentiality issues. In particular your state has told us that we have to have all users sign the data confidentiality agreement to allow for Connecticut's data to be put into the data base. I don't believe we can make it open to the public that way.

Secondly, we didn't design it to be open to the public right now. It was just for administration. My understanding of how the public would know about the ability to buy and sell is just the same way that the public knows about the ability to buy and sell full businesses where people put up ads in the different trading papers, et cetera, when they're looking to sell traps.

MR. McKIERNAN: Toni makes a good point, but I think there is another challenge here, and that is how each of the states treats its permit records. We have been dealing with the ITT system in the Outer Cape and Area 2; and we have been disclosing to the public the permit holders and their allocations; because typically how this works is someone might cold call someone who has got a permit to find out if they're interested in selling.

I think that is what is in play as well as just a disclosure of who has the allocation. I believe the federal allocations are public record, the Area 3 allocations, so I think this is probably something the individual states have work out to determine if they can all join in to make this stuff transparent.

MR. SIMPSON: I would have to look into what the issue for Connecticut is; but we're not talking about catch. It's allocation of traps in federal waters; and I don't know how we could effectively implement and enforce these caps and limits if it's all secret who has how many traps. I do think we think we need that transparency.

Again, on level they're just private businesses and what they do is their own issue; but as governments, federal or state, we have a responsibility under the law to make sure that protected classes aren't adversely impacted and at the federal level that interstate commerce is open and transparent.

MS. KERNS: I think one thing that potentially we could do, and we would need to check with all our partners before agreeing to do so, but we could have all of the partners send the commission a list of their permit holders and the number of traps they have allocated potentially at the same time that you are sending out the letters to your permit holders and then we could put it in a report and make it available on our webpage. I would want to make sure that information would be allowed to be published prior to agreeing to do that. We could have Kate check with all the partners and then get back to the Lobster Board at the February meeting.

MR. HIMCHAK: Mr. Chairman, I see David's point and at some point there should be, yes, like a clearinghouse on who holds how many traps. Under the federal scheme of things, in surf clam management we're grappling with excessive shares, who has a certain percentage that can control the market. Since the ASMFC essentially has the regulation on lobsters, at some point they may want to address the issue of what constitutes an excessive share in a certain area. I just put it out for thought.

MR. SIMPSON: Dan observed that he thought the federal trap allocation was public information, and I wondered if Peter or Chip could let us know.

CHAIRMAN GROUT: Does either of you want to take bite at this? Peter.

MR. BURNS: Right now we don't divulge that information on actual allocations information, but this is something different. This is really talking about – I think what Mr. Simpson is proposing is establishing a marketplace I guess for transferability, so somebody to be able to go online and say, "I've got so many traps available" and making that available.

I think it's sort of outside the context of how we handle permit allocations and that type of thing. It's not really something in the data base. Maybe I said that, but I was kind of thinking some report or capability in the data base that would make that information available, but I think it might be up to the buyers and sellers to provide that information voluntarily in order to facilitate trap transferability.

MR. SIMPSON: Okay, so the first part it does sound like the federal government won't disclose to the public how many traps somebody has and that they issue a permit for, which seems odd to me and will probably defeat my desire to see some openness in this process. We're issuing permits, we're proposing caps on ownership and consolidation and yet nobody will be able to see that for themselves, so I don't know how it's going to work.

I didn't anticipate the data base being the marketplace but simply I think there is a need to be public in these transactions; that this number of traps are available and where do they go. As a crosscheck as just open government, these are federal and state permits that are being traded, authorization to do a certain activity, and it just seems to me it should be open and transparent.

CHAIRMAN GROUT: Correct me if I'm wrong, but I didn't see that this was going to be a list of people who are offering trap allocations for sale. I saw this as just saying what you were

asking – you and Dan were talking about was just a list of who has got what. There is no marketing involved here.

It is the same way if someone asked us if we could provide a name of who are the licensees in our state. We couldn't provide private information but we could – and I guess I see that a little bit different than saying this is a clearinghouse of people that want to offer it up for sale. I don't understand why there would be a problem with just offering the names of people that have the allocations. Dan.

MR. McKIERNAN: This conversation is really interesting and it is going to have to go on especially when Mike Cahall gives his presentation, about the data base, but can I call the question at this time. I think the things we are talking about need further discussion but just not at this point.

CHAIRMAN GROUT: I agree; we kind of got off the track here on how this applied to the motion. Did you want to make one final comment on the motion?

MR. MICHAEL PENTONY: For those who don't know me, I'm Mike Pentony with NMFS Northeast Regional Office. I just had one question and two concerns about the motion. The first question is in Option 3, Section 3.2, there is an assumption that NMFS will publish a control date that will form the framework for this action in determining who is grandfathered in and who is not, but there is no backstop if the agency doesn't publish a control date. I was just wondering if the board wants to entertain a backstop or just assume that we will publish the control date.

CHAIRMAN GROUT: Do you want to answer that question?

MR. McKIERNAN: Yes; I intended to follow up with another motion after this asking NMFS to enact a control date.

MR. PENTONY: My first concern is that because we have not yet published a control date – although obviously if the board requests it, we

will entertain that, but obviously any control date will be published some time in the future. It could be a month, two months, three months, depending on our ability to follow through on that.

Has the board given any consideration to the implications to the market for permits between today when the board would take this action as final action and when we publish the control date that then determines who is grandfathered in and who is not? I do have some concerns about the potential implications to the permit market for the timing of those two actions.

The second concern that I have is with the – I think there is an assumption embedded in this document that we can clearly identify individual firms and entities to then assign ownership of permits and trap allocations, too. I can tell you that in almost all of our fisheries we are struggling significantly with identifying individual entities because of how the ownership of permits and vessels can be very, very convoluted with multiple owners owning multiple pieces of multiple vessels.

We have no information on ownership share; so if two individuals own a vessel and a permit, it might be a 90 percent/10 percent allocation as far as control, but we have none of that information so we could assume a 50/50 percent, which may not be appropriate or fair. When we get into the weeds on implementing this type of action where we are setting up ownership caps across entities, that is when things are going to get very, very complicated as we try to identify who all the actual entities and individuals are and how we would assign those ownership shares to those entities and individuals. I just raise that as a concern to the board that this is a very complicated system that you're proposing.

CHAIRMAN GROUT: I think in addressing the last part, the way the addendum is written, if a person has their name on any corporation or business entity, that would be considered – he would be considered an owner regardless at what percentage he owned of it. Mike.

MR. PENTONY: Yes, I mean, obviously, if a person's name is on the record as being an owner, they're presumed to be an owner. The difficulty is – I hate to get into examples, but maybe it would clarify. Two individuals jointly own a vessel and a permit is associated with that vessel. One of those individuals also jointly owns a vessel and a permit with a third individual. Do we treat those three as a single entity because there is co-ownership among them? Do we treat them as two separate entities based on the vessel and the permit associated with that vessel; but then we have to split up – but then how do we determine the ownership since there is a common owner between the two entities?

We have to determine how allocate ownership rights and caps to that individual or do we treat them as three different individuals and just divvy up the permits and trap allocations among the three? That is just one very simple example. There are layers and layers of ownership and entities among common owners and common interests out there that we have to navigate in order to assign these ownership caps and track the allocations if we are to implement this effectively.

MS. KERNS: I just wanted to go back to Mike's first point about the control date; for what we would do if the control date was a couple of months down the road instead of today. I just want to remind the board that for Area 3 we already have what we call an anti-monopoly clause where if an individual didn't have more than five permits before 2003, then they couldn't carry that forward.

That doesn't mean that the commission put in place. I know that is not necessarily something that NOAA has put in place, but it is rules that we do have in our regulations; and the states that give out there permits for federal waters to their state fishermen have been upholding those rules because I think is in Addendum VI.

MR. BORDEN: A process issue, Mr. Chairman. Dan McKiernan had suggested that the discussion is really appropriate to the presentation that Mike Cahall is going to give

and provide us. My preference would be to postpone further discussion on it until we first hear from Mike, who I'm sure is probably going to enlighten us as to how some of these issues are going to be handled. I'd like to call the question.

CHAIRMAN GROUT: Okay, the question has been called.

MR. AUGUSTINE: Point of order, Mr. Chairman. I'm concerned that we make this motion and pass it without hearing this report; so I would move to temporarily table this motion until that report. Can we do that or not and will it have a direct impact on the outcome of this vote?

CHAIRMAN GROUT: These issues aren't really tied together with the motion that's up on the board.

MR. AUGUSTINE: Well, there are enough questions that have been raised by NOAA that we're concerned as to how to vote on this thing. There are enough wrinkles here that leave one to wonder – the lobster fishery is probably one of the most complicated plans that we have had. This seems to make it more complicated, and it is going to affect us like everybody else.

I would like to hear more debate around the room before we call the question, Mr. Chairman. This is another one of those scary ones where we're doing something that there is just a lot of gray area, and I understand what we're trying to do. I was willing to make the motion early on, so I'll leave to the other board members. Thank you.

CHAIRMAN GROUT: Okay, we're getting into a discussion after the question was called, and then you were talking about tabling this after the question has been called. I don't think that's a point of order that you can make. All right, another point of order, Mr. Abbott.

MR. DENNIS ABBOTT: Well, the point of order is you can't call the question while heated debate is going on and while people are interested in stating their views. To Pat

Augustine, he feels that we need more information before we vote, and he is asking that we hear from Mike Cahall, which would be proper.

You vote to limit the debate if you wish, if you don't want to go on and vote, but for just a board member, my friend, David Borden saying let's call the question while other people are still seeking information that will make their vote clearer, then it's not correct to take a vote. I agree with Pat Augustine that it isn't a big deal to table this for a few moments while we obtain additional information which might obviously be helpful in us making a final decision.

CHAIRMAN GROUT: I will turn to Toni, but I believe the point that we're making here is that when he gets this information that Mike is going to provide is not going to be pertinent to this particular motion here. You may believe it is, but it's not going to. Toni, go ahead.

MS. KERNS: The discussion that we'll have with Mike is talking about the use of the data base. The discussion that we were just having that Mike Pentony brought up was about the aggregate caps, and the data base discussion will not get into control dates or the aggregate ownership cap. It is not going to enlighten you for the use of this motion that is on the table. I would recommend that you move forward with your motion.

MR. AUGUSTINE: Very quickly, Mr. Chairman, to that point, that's the issue. There were some raised questions as a result of the response from Mike, and now I'm more concerned that we just go ahead and slam-dunk this thing and approve it knowing full well we're not going to have full disclosure as to who has ownership and so on.

We're going down that road and that was my concern; and what Mr. Borden had said led me to believe that maybe if we would have had this report, it would have been helpful. Obviously not now, so it keeps that big cloud over this action as to whether we're really going in the right direction. We have no control date – I'm sorry, we're past debate; we've called the

question. That was my point, Mr. Chairman, and I thank you for that.

MR. McKIERNAN: Many years ago we adopted an addendum that limited the number of permits that an entity can hold to five in Area 3 with grandfathered in anyone who held more than five prior to that date. I think that has largely been unenforced by NMFS. I don't believe that they have been policing the ownership of those permits consistent with the ASMFC Rule.

We're not actually doing anything that changes that. We're simply changing another ASMFC Rule that at some point we do need NMFS to address this because it is a long-standing rule that entities shouldn't own more than some number.

What we're doing today is we're saying, okay, for anybody who has more than that magic number five, once trap transferability starts, yes, if they have seven permits they can go up to the trap limit of those seven permits. I understand Pat's concerns; I understand all the concerns, but I just don't think that it is direct to this motion. I think it is a little bit off the mark in terms of the concern. Having said all that, we do have to deal with the complications of ownership and corporate entities, and it is very complicated.

To Toni's point, most of our permit holders in states are issued to individuals. The permits are issued to individuals so we could police that; but when it comes to the Area 3 fleet, they're all federal permits, most of them are corporations. We don't necessarily look into another state's corporate records to see who in Rhode Island has Area 3 permits, but at some point the larger regulatory entity, NFMS, might need to do that. I understand Mike's concerns that it is time-consuming and difficult, but we have to get to that, but it's not part of this action.

CHAIRMAN GROUT: Okay, is there further discussion on this? I know you want to call the question, but if you'd like to limit the debate. Is there any further discussion on this? Dave.

MR. SIMPSON: Yes, just quickly to say I think we all knew that this was a lot harder to implement than to talk about. With that understanding, we're striving for this and I'm fine with it.

CHAIRMAN GROUT: Okay, let's vote on this question. I'll give you a minute to caucus and this will be a roll call vote. This is a final action so this will be a roll call vote.

(Whereupon, a caucus was held.)

EXECUTIVE DIRECTOR ROBERT E. BEAL: Mr. Chairman, I think the cleanest thing to do would be to approve all the pieces of the addendum through regular votes and not roll call votes; and then at the end have one final motion that approves the addendum with all the provisions in the previous motions and the vote on that final motion would be a roll call vote. It is probably the cleanest and easiest way.

CHAIRMAN GROUT: Thank you for that clarification; so this will not be a roll call vote. This will be a raise-your-hand vote. All those in favor of this motion raise your hand; all those opposed; abstentions; null votes. **The motion carries nine to zero to one to zero. The motion carries.** You had another motion, Dan, for a control date.

MR. McKIERNAN: **I do; a motion to request NMFS to enact a control date of today, October 28, 2013, or alternatively the earliest date possible after this date to establish a time certain after which a single person, company or entity may no longer be able to purchase additional permits or trap allocation in excess of the limits established in Addendum XXII. This is designed to affect those permit holders who hold Area 3 allocation.**

CHAIRMAN GROUT: Second by Ritchie White. Is there discussion on this motion? Mike, would you like to come up?

MR. PENTONY: I just wanted to advise the board that typically when we publish a control date, the control date is effective as of the date of publication in the Federal Register.

CHAIRMAN GROUT: Thank you, Mike, for reminding us of that, and I think that's incorporated into your motion. Craig Miner.

REPRESENTATIVE CRAIG A. MINER: Just as a clarification; would the purchase of additional permits be different from an individual's purchase of a permit if they were new? The point of my question is, is this fishery in essence closed to new participants or would that still be allowed? It would just be the accumulation of additional permits that would not be allowed after that date if you weren't in the fishery?

CHAIRMAN GROUT: The latter. Yes, you would have to purchase a permit that is already out there. Okay, is there further discussion? Are you ready to vote on this? Do you need time to caucus? I'm not seeing anybody raise their hand. Okay, all those in favor of this motion raise your hand; all those opposed; abstentions; null votes.

The motion carries nine to zero to one to zero. Now we need a motion an implementation date for this. Remember in Addendum XXI we had an implementation date of November 1st and I thought that might be a little bit quick for this. Does any have an implementation date they'd like to suggest for this? Bill.

MR. WILLIAM A. ADLER: Mr. Chairman, I'd like to ask like, for instance, the federal service will work on its own, I assume, so I would just want to think that not rather than throwing a date or when you throw a date out there, that everybody will have to have when they can do it.

MS. KERNS: If folks remember when we did Addendum XX, I think it was, the implementation was tied to the onset of transferability and NMFS being able to enact that rule for transferability, so that the states didn't start reducing traps before traps had been allocated by the federal government and started transferability. We could do something similar here, recognizing that this addendum has all basically recommendations to NOAA Fisheries so that if the states have any regulations listed,

then you would want to go ahead and change those in your rule-making process.

Several states just state that your regulations are consistent with those identified in Addendum I through whatever number we're at; and so you don't actually put regulations in place for Area 3 fishermen. It depends on the state. We could just tie it to the implementation of transferability by NOAA Fisheries if we need to.

CHAIRMAN GROUT: Would anybody like to make that motion?

MR. McKIERNAN: **I move that the implementation date of Addendum XXII be tied to the onset of transferability among state and federal permits after the creation of the data base to accommodate all transfers.**

MR. BORDEN: Second.

CHAIRMAN GROUT: There is a second and I just have a question for Toni; and that is if this is the implementation date at the onset of transferability, how does that affect our request of NMFS to implement a control date?

MS. KERNS: I think you can have different provisions of the addendum move forward without having the date be the same. Again, I only made that recommendation in the sense that, for example, in Addendum XX we had these trap reductions that we didn't want to actively start happening until traps had been allocated. Folks were starting to get their rulemaking done and in process, but they didn't actually put it a go until those allocations occurred. That was why I was trying to tie it to the onset of transferability, but that states could go ahead and get it ready to go.

CHAIRMAN GROUT: So this implementation date then would be implementation of state rules, but the addendum is going to be officially approved here, conceivably, at this date.

MS. KERNS: Correct.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Thank you for that

clarification. Seeing no discussion; are you folks ready to vote on this? Seeing no objection, everybody in favor of this motion raise your hand; all those opposed raise your hand; abstentions; null votes. **The motion carries nine to zero to one.** Now we need a motion to approve Addendum XXII as modified today. Bill Adler.

MR. ADLER: I'll make that; approve the addendum as modified today.

CHAIRMAN GROUT: Is there a second; Steve Train. Since we've had nine to zero to one votes, I'm going to ask are there any objections – okay, I will read the motion, but keep in mind what I was going to do was ask for any objections as opposed to going to a roll call; and then if the federal services want to abstain, we'll put that on the record. Okay, move to approve Addendum XXII as modified today. The motion was made by Mr. Adler and seconded by Mr. Train. Is there any motion to this motion? Yes, Peter.

MR. BURNS: I will abstain from the vote, please.

CHAIRMAN GROUT: So seeing no objections except for one abstention by the Service, **this is passed.**

CONSIDER DRAFT ADDENDUM XXIII FOR PUBLIC COMMENT

CHAIRMAN GROUT: All right, the next agenda item is to consider Draft Addendum XXIII for public comment, and Kate Taylor has a presentation on this.

MS. TAYLOR: Draft Addendum XXIII is a habitat addendum. Our Habitat Committee has set priorities to update the habitat sections for our species FMPs. The habitat addendum contains habitat components, which are those elements that play a vital role in the reproduction, growth and sustainability of fisheries by providing shelter and feeding and spawning and nursery grounds for lobsters to survive.

This includes the recommendations for temperature, salinity, dissolved oxygen, pH, and other habitat components that are important to lobsters. For each of these components, a description of the summary of the requirements, tolerances and potential effects on lobsters is described for the early life stages, juveniles and adults.

It also includes impacts to these components and their effects. This includes the anthropogenic and ecological impacts associated with dredging and dumping, transportation projects, pollution and water quality, commercial fishing. It also includes impacts associated with climate change. There are also sections on habitat bottlenecks and habitat enhancements. The addendum makes recommendations for further research on habitat improvements and recommendations for monitoring and managing lobster habitats. Thank you, Mr. Chairman.

MR. ADLER: Mr. Chairman, when I first read this over, I said, okay, so what; what does this do; there are no options. Dan McKiernan did explain to me why. I was just wondering usually there is a section in an addendum that says, well, background, and it says something like statement of a problem. Usually it has something like that in there.

I was just trying to picture somebody at a public hearing going okay, yup, yup, yup, that's great; agree with that, agree with that; and so what! I just didn't know if – I didn't see that in here, a section at the very beginning. It simply says we're trying to update our information on all of these things for our records, I guess. Am I reading this correctly?

MS. TAYLOR: No; this is an addendum that just updates the habitat sections. The board has previously passed habitat addendums for sturgeon and red drum. There are no management options; and for the public comment period we have not had any public hearings held on these addendums. We just state that there no management options under consideration in the addendum; it is just for updating the necessary sections for FMPs.

MR. ADLER: Yes; I understand that. It is just normally – and I think that’s good and I’m in favor of it. It is just that usually there a little paragraph that says we’re doing this and there are no management options. Usually there is something in there.

MS. TAYLOR: We can add text in to make sure that is very clear to the beginning of the document.

MR. AUGUSTINE: This is an excellent report to add to that. I think what Bill is getting to is basically what I was looking at. At the tail end of it, about Page 22 and 23, actually Page 17 and under – I’m sorry, Page 21, 1.7, recommendations for further habitat research. I wonder if you could eke out two or three key items that might be brought as clear recommendations for the board to take action in the future.

You define what some of the issues are that should be looked at, but I’m just wondering if maybe a couple of bullets that would lead us in that direction as a clear statement. You’re saying what we could do as recommendations, and I’m saying what in bullet form so the reader will say, “Gee, whiz, you’re right. This is a great document, it updates our habitat, but it doesn’t really clearly tell me where we want to go.”

MR. ADAM NOWALSKY: Similar to what Bill was mentioning, I didn’t see a specified board initiation for this addendum in the document; so would it be useful to include something in here so that the public would understand how this was initiated; if not through specific board action, as a result of something out of the Habitat Committee or from a process perspective so the public would know what the origin of this addendum was. Typically we move to initiate an addendum at a board meeting. I don’t believe that was the process with this. I think it would be helpful to offer that information.

MS. KERNS: These habitat addenda are prioritized via the Habitat Committee. Next year we’re doing a sciaenid document. The

Policy Board approved the ability to do this. We can put it in the beginning where we describe what the document contains and how to do public comment on it, so we can that it was initiated through the Habitat Committee. It is some that we will continue to do for all of our species that we update the habitat sections.

The recommendations that are in here do come from the Habitat Committee, so I don’t think we want to limit the number of recommendations that are included in the document. If boards want the Habitat Committee to prioritize those recommendations, we can go back to the Habitat Committee and ask them to do so, but I think it’s important that we keep all of the recommendations in the document.

MR. SIMPSON: I just want to say this is a really good report, a lot of good information in it. There were a couple of other potential references to add. I hope I can do those in the next week or two. There was a nice study that Linda Alexander did on food habits of larval lobsters and things like that that would be good to include.

CHAIRMAN GROUT: I think that will be wonderful if you can add those. You can send those to Kate. Is there any other discussion on this? What we need is a motion to approve this for public comment. Pat.

MR. AUGUSTINE: **Mr. Chairman, I move that the Draft Addendum XXIII to the American Lobster Management Plan be approved for public comment.**

CHAIRMAN GROUT: Seconded by Pat Keliher. Is there further discussion? Okay, we’ll vote on this. All states and jurisdictions in favor raise your hand. **The motion carries unanimously.**

REVIEW OF LOBSTER TRAP TRANSFERABILITY DATA BASE PROGRESS

CHAIRMAN GROUT: The next item on the agenda is Mike Cahall. He will have a

presentation on progress of the Lobster Trap Transferability Data Base.

MR. MICHAEL CAHALL: Hopefully, I will be able to answer some of your questions and hopefully we won't raise anymore than we answer. We did come up with a catchy acronym, which will be Lobstahs for Lobster Trap Allocation History System, LOBSTAHS – sorry, folks, I'm from Maryland. We thought that would get a rise out of you.

We have a working group that is put together composed of representatives of all the folks that are currently involved in transferability; of course, Massachusetts, Rhode Island, Connecticut, NOAA Fisheries and the commission. We have been meeting over the course of the last several months via conference call.

At this point I think we're up to five or six – it's a lot of calls – to try and work through what everyone's expectations of the system is and also what kind of business processes we need to establish as we work through it. One of the issues was that really the concept of transferability was pretty well understood. The mechanism of transferability and the business practices that you have to put in place to make it work were not.

There was a lot of discussion back and forth on how we would go about doing business and the work that needs to be accomplished for everyone to work together. The basic premise of a transfer is relatively straightforward, but then a side issue as how; how do you notify everyone else. If your permit holder holds permits in another jurisdiction; does that person need to be notified, does that jurisdiction need to approve the transfer, those sorts of things.

Then do you get more into the multiple jurisdictions, especially when you're starting to tie them together, the federal permits, and that still isn't a hundred percent determined. As we sort of started talking about it, most of the program partners weren't really ready to put this into a system yet. The interaction between the

program partners, as I said before, hadn't been a hundred percent established.

In general most of the regulations weren't ready; so what we did was we decided that we would scale back the initial system. We started to look at what then the basic requirements are. The system will track current and past allocations. It will allow transfers between permit holders; and in its current incarnation it will allow transfers between permit holders in the same jurisdiction.

It will connect federal vessel and state fishermen permits. This is the so-called dual permit. We're going to use the SAFIS data base structures as they already exist. One of the advantages of putting the system into SAFIS is that it will connect to our existing permitting records; and it will also require that the permit records for each jurisdiction be correct, accurate and kept up to date, which has always been an ongoing problem working in the system.

The permitting records are used by the dealers and commercial fishermen as part of their selection criteria and making sure that all of the records line up correctly; especially for any of you who work with this data much has always been an ongoing problem. Having it connect into the existing SAFIS data base will help resolve some of that.

It will also allow us to have a pretty quick read on how effective your management measures have been since almost all of the landings that are associated with these permits come in through SAFIS one way or the other. Just to show you a little bit of what the basic system screens look like, this is an allocation screen. This is our standard transfer screen as it is currently envisioned.

It is just a snapshot of the prototype and it basically shows you the process that you follow on the left side. Down the left alley is basically the process that you follow to initiate the transfers. The way the system is currently designed, it is set up as an administrative system so that there is no ability for the fishing public to log into it.

It is designed to be used by state or federal level administrators who know who is whom and who knows what the rules are. Basically, as you see just down the left alley, you select who your seller is, you select who is receiving it. You process it and confirm the transaction. In addition, what it will do is it will notify any other jurisdiction that has an interest in the particular transaction that a transaction is pending.

In its initial incarnation it will require them to go through all of the folks. In later incarnations, once we have our rules straightened a little bit better, it may just send out an informational message. Basically what happens in this particular case, if this gentleman has a permit in another jurisdiction, the jurisdictional administrator will be notified in that process.

The transaction cannot be completed until it is approved by the other administrator. That way everybody knows what is going on and it prevents surprises. One of the big discussions was making sure everybody was able to see what was going on. At least at the beginning we decided this was the best way to go ahead and move forward with that.

Now, keep in mind this is a prototype screen. This particular version of the system is about to be disassembled because the basic data base designed required some modifications based on our most recent discussions, but this is basically how it's going to look. We'll probably use the same look and feel even when we design it against the new data base. In addition, we've had a round of what do you need out of the system, what kind of reporting does it need to be able to provide.

It will be able to provide you partner-specific allocations, and we'll probably build several reports that do that, that show who has how many allocations or how much allocation is set in each of the lobster management areas. We may be able to do some forecasting so if you cut it X percent, this is what it's going to look like and that sort of thing.

But, number one on everybody's list was I need to know who has what where, and that's essentially what this is. In addition, right now this system will not limit the view. If you log in as Connecticut and you want to see who is doing what in Rhode Island, you're going to be able to. We have worked through some of the confidentiality issues; most specifically with Connecticut, who is not allowed to release their records to the public.

We're going to allow the administrators for the other jurisdictions access to those records. The next piece, it will provide a complete permit and allocation history. This required a little bit of doing because we had to create an entity that is the allocation. Because the allocations can move so much, it is going to be a little bit of wizardry to make sure that we're able to do that; because as I heard several times, this is a very complicated fishery and it is very difficult to automate.

Then finally we'll allow complete allocation views so you could see what a particular individual has across multiple jurisdictions or a particular vessel. Although right now none of the states are permitting the vessels, we will be associating state vessels with the state fishermen permits. This is just a quick look at one of the reports that we've got.

Basically this is a transfer document, and this shows what a transfer looks like. Then at the very bottom it shows that you have a pending transfer that is waiting. This is the transfer history on this particular individual. There will be many, many of these. Again, this built on the current prototype and we're in the midst of overhauling that.

We actually expect to promulgate a new data base design next week, and then we'll be building new objects on top of that. After a good bit of discussion, we've decided that we're going to pilot the system in Massachusetts. Massachusetts is the most ready. They have the regulations in place. The folks in Massachusetts are very familiar with the SAFIS data base, and it should be relatively easy to bring in their permits and their allocations.

After we get Massachusetts data up, they'll begin to do transfers within Massachusetts initially. Connecticut may be providing some data on the first round. They may not be actually executing the transfers, but the data will be available in the system so that folks can see across this jurisdiction.

Currently this is our timeline. As I said before, we'll be promulgating the data base design in the next couple days. Then after that we'll start building the objects, the screens on top of that. Massachusetts is planning to deliver their allocation data by November 15th using a standard transfer format that we have developed.

It is very similar to the one that is used to bring in participants and permits into the SAFIS system now. We expect to have the pilot system available in mid-December. The bug fixes obviously are going to happen as they're needed. We expect it to be buggy; they always are when we first roll it out. We'll do more comprehensive systems' reviews prior to new loads or the season seasons.

So probably mid to late summer in 2014 we'll go through the whole thing and make sure that it's doing what folks want and plan on making modifications as needed. Again, we'll look at where we are in early calendar 2015 so that we know that we're actually taking care of business. Obviously, we'll add additional agencies as they get ready.

I don't have a timeline for that specifically because most of you are not a hundred percent sure when your regulations are going to be published and put into effect. The same is the case for NMFS NERO at this point. I can't build the system based on business rules that don't exist; and so we have to have – and I know the regulations are often tinkered on their way into becoming final. We want to be sure that we correctly automate the rules.

This has always been one of the hangups, well, I need the system; but we need the rules; but I need the system; but we need the rules and so get a chicken and egg kind of thing. Basically we've decided to go ahead and deploy a fairly

simple default system and then expand it as we need to, as folks come into the system.

The NOAA Fisheries integration is going to be a little more complicated because we have to be able to correctly link them with the existing state permits; but again our data base design will cover this. We've got a mechanism built into the system to link the state permits with the federal permits.

As I said before, possibly we're going to expand this into other states. I've talked to a few of you already before the meeting and we're looking at bringing in some additional states as we move forward. One thing I need to emphasize to this board; changes in the regulations will impact the system. If you make a significant change in the rules, it will have to be built into the system. A good example is this cap that you're dropping 5 percent every year.

It will require some kind of mechanism built into the system so that a system administrator can process that drop; and right now there isn't one. I mean this particular change isn't actually that complex to implement, but you have to keep in mind that it is already a complicated system and that more layers of complexity will make it more difficult to automate, and that tends to cause more mistakes; and also at times it is difficult to interpret the requirements. Most of you have been working with this for a long time and you sort of know it inside and out and backwards; but coming into it cold was an interesting experience. That is where we are right now. Do you have any questions?

CHAIRMAN GROUT: Are there any questions for Mike? Bob Ballou.

MR. BALLOU: Thank you, Mike, for the presentation. I'm trying to understand the sequence starting out with a pilot in Massachusetts followed by other states being able to opt in as soon as they're ready with their regulations. That's what I heard you say. When would be the earliest that other – I assume the pilot needs to commence and conclude first; or, no; that is going to happen parallel with other states being able to opt in?

MR. CAHALL: Yes; essentially we'll pilot the system. We'll work out the bugs with Massachusetts, but the within-state transfers are identical in between the jurisdictions, so there is no reason we can't bring in additional folks as they get ready. I expect Connecticut will be next. I don't have a date yet from John Lake in Rhode Island; but that's the order of the states, I believe.

MR. BALLOU: Well, it's actually on another topic. Mike, I think I heard you say that with regard to confidentiality Connecticut was the only state that did not allow the information to be released publicly. Did I understand you correctly and is it only Connecticut that's a factor here in terms of trying to make this data base more publicly accessible?

MR. CAHALL: Well, there is more than one factor in making the system public. It is my understanding, and I may be incorrect, but Connecticut has very strict regulations of their permitting records. Most of you, your permit records are a public record, and so we can release those to the public.

At that point there is no public face to this system. It is intended to be use at an administrative level. To kind of go past with the discussions you all had a little bit earlier, there is no mechanism in the system – in its current version and in the design specifications that we have that provides for any kind of public interface. I recognize the desire to be able to somehow display potentially available allocation; but at this point that is beyond the scope of the current system.

REPRESENTATIVE WALTER KUMIEGA, III: How would you respond to a freedom of information request?

MR. CAHALL: By sending it back to the state partners. We'll handle it exactly the same way we always handle those sorts of things. We don't own the data that is in the system. The data that is in the system belongs to the partners.

MR. McKIERNAN: I just want to make comment and thank Mike for a great report. If

there is any skepticism on the board about why this has taken so long; once we finally got in this, we realized how difficult it was to make these systems compatible. We always talk about NMFS permits vessels and states permit named individuals; and so be it.

But when you then try to manage the entities and you try to line up these two permits to the entity, it is really, really challenging. One of the reasons Massachusetts is not going to deliver the data for another few weeks is because I'm having staff go in and tease out of the federal system the pieces of the records that need to be in the state system.

So specifically if Bill Adler, for instance, has a state permit with us but he also has a federal permit, I want to get Bill Adler's permit information that's in the federal system into the state system so we truly line them up. We haven't had that in the past; and that is part of the administrative challenge. All of the states permit slightly differently. That is their prerogative; but when you try to do something that creates consistency, and for a data base you need consistent formats and consistent protocols. Part of the exercise is to make sure these two independent records are lining up and identifying the same entity.

MR. BEAL: Mike, on your last slide you mentioned that changes in regulations would require changes in the data base; and you had the 5 percent example that was talked about earlier. Can the data base handle that or accommodate that now if the administrators go in and do that manually? It's obviously more labor-intensive, but there is a way under the current framework to implement some of those rules without a whole lot of programming work on your end; is that correct?

MR. CAHALL: Because of the complexity of the rules, we've designed the data base as simply as we could. The more complex your data base design is, the less flexible it becomes. What we've done is we've designed a very simple system that basically does a dual track. It tracks the fisherman on one track and the vessels on a

separate track; and there is not a lot of interaction built into it.

The truth is, yes, absolutely, the administrators will be able to go in and individually reduce everybody's cap by 5 percent if they choose to. If these kinds of transactions are the sorts of things that happen occasionally, it might be worth it to consider adding it. I would expect that this working group is going to continue to exist for the life of the system, and we're going to have to talk about additional requirements over time.

Another consideration is staff time for ACCSP and the costs of doing implementation and making the changes. We got a slug of money a few years ago to build the system; and once we've got it up and running and deployed, that slug of money is gone. If there are significant changes that are required, the board will have to request the commission to go find funding to pay for the changes to the system.

MR. SIMPSON: And just because it has come up a couple times and just to explain in terms of Connecticut's confidentiality rules; if you remember Area 6, 90-some percent of our fishermen fish in, and that's history based allocation. For many fishermen, their trap allocation was based on landings and reported effort in our logbook system.

That data being confidential, the interpretation to this date has been that the trap allocation derived from those logbook calculations, you know, calculated number of traps fished, is also confidential; but I think it is something that we need to overcome whether by statute or regulatory changes so that we can manage the system and address some of the issues that I brought up earlier in the conversation. But who has a permit is currently clearly available public information. It is just their allocation.

CHAIRMAN GROUT: Okay, thank you, Mike; we appreciate that.

UPDATE ON FEDERAL MANAGEMENT ACTIONS

CHAIRMAN GROUT: The next agenda item is we're going to have an update from NOAA Fisheries, Allie Murphy, on the federal management actions that are going on.

MS. ALLISON MURPHY: Thank you, Mr. Chairman, and thank you to the board for the opportunity to be here today and provide you with this update. My name is Allison Murphy, Allie Murphy, and I'm relatively new to working on the Lobster ISFMP. I have been asked to help out Pete Burns while he works on the much more complex transferability final rule, to work on rulemaking to implement management measures in the Southern New England stock.

As you're all well aware, in 2009 a study indicated that the Southern New England stock was at a low level of abundance and experiencing recruitment failure, which was preventing the stock from rebuilding. The board approved Addendum XVII in February 2012 with the goal of reducing exploitation on the Southern New England by 10 percent.

Addendum XVII included area-specific measures for Areas 2 through 6, which I've got summarized on the next slide. In August 2012 the board approved Addendum XVIII to rescale the fishery to the size of the Southern New England stock through trap reductions in Areas 2 and 3. So, again, I've summarized the measures in Addenda XVII and XVIII on this slide.

V-notching, minimum size and seasonal closures were all included in Addendum XVII. The mandatory v-notching of legal-sized egg-bearing females was approved for Areas 2, 4, and 5 with the caveat that additional seasonal closures may be implemented if v-notching is determined insufficient to meet the conservation objectives.

Second, a minimum size was approved for Area 3; third, seasonal closures were approved for Areas 4 and 5 that included a two-week grace period for the removal of gear from the water. Finally, in Addendum XVIII the board approved

a 50 percent reduction over six years in Area 2 where in Year One there would be a 25 percent reduction followed by 5 percent reductions in Years two through six.

Then in Area 3 an overall 25 percent reduction was approved with 5 percent reductions in each of Years one through five. This past summer we published an advanced notice of proposed rulemaking, seeking comment on these upcoming measures. In total we received four comments generally supporting the action. We also received a few comments on the transferability program, which highlights the interplay between these two programs.

Most of the management measures in that previous slide are relatively easy and straightforward to implement. However, the timing of the trap reductions with trap transferability is a little bit more tricky. On this slide I've tried to display two scenarios; both where a vessel owner with an allocation of 200 traps is attempting to transfer in 30 additional traps.

The resulting allocation depends on the order of implementing trap reductions and trap transferability. Under the first scenario, which is the NMFS preferred scenario, trap reductions would take place first followed by trap transferability. As you can see in the bold at the bottom of the slide, this results in an additional two traps being allocated to that owner over the second scenario.

We intend to discuss both of these scenarios in the upcoming proposed rule. I am here with you today to seek guidance and comment during our upcoming comment period on which alternative you prefer. As for a timeline going forward, we anticipate publishing a proposed rule implementing these measures later this fall and winter, and that would have a 30-day comment period. We expect a final rule to publish some time the winter of 2014.

We expect the mandatory v-notching and minimum size and area closures to be effective for the start of 2014. The effectiveness of the trap reductions would be implemented

concurrent with the trap transferability program to mitigate the effects of the trap cuts. I want to thank you for the opportunity to provide you with this update and see if there are any questions.

CHAIRMAN GROUT: Thank you, Allie. Are there any questions for Allie on this? Bob.

MR. BALLOU: I'm curious as to the process for providing commission feedback on the question that was asked regarding the timing of transferability via trap reductions.

CHAIRMAN GROUT: We were just discussing that. Toni.

MS. KERNS: I'm not sure if the board remembers, but we did discuss timing and the reductions that occur in the areas. In board discussions we had stated that the reductions would occur first and then the transfers could be done. When the agencies sent the letters to the individuals telling them how many traps they had in the upcoming fishing year, that trap reduction would already be there for the reductions that occur on an annual basis.

During the transferability timeframe, which as everybody remembers is only about a one-time period, they would be using that letter that the state sends out saying these are the number of traps that you'll have for the upcoming fishing year which are available for transfer. For the Area 2 trap reduction, which has the 25 percent reduction from the get-go, that needs to occur first and then transfers can come off of that. That is what we had said.

I think that's even how we worded the motion for how transferability came online, that it was tied to first the allocations, then the reductions and then the transferability. I'll have to go back and double-check that. In terms of how we can provide comments to the National Marine Fisheries Service on this issue, the board can request to the Policy Board to provide comments that are consistent with the management plan that we have in place on this.

MR. PENTONY: Yes, just to clarify in case there is a little confusion. The reason we wanted

to give the board a preview of what we anticipate being in our proposed rule, particularly raising this issue that we were hoping for some additional clarification. Given the timing of things, we expect the proposed rule to publish and the comment period to close before the next scheduled board meeting.

This was essentially a way to preview to the board what will be in the proposed rule – what we anticipate being in the proposed rule; so that if members of the board wished to provide comment, they have an idea of what and when to expect to see our proposed rule.

CHAIRMAN GROUT: As I understand this, the public comment period is going to open and close before our next board meeting. We entertain any further comments now at this board meeting beyond what is in our management plans on this; but if board members want to provide comment in between, once it's published, you could send it to Kate and then we can incorporate that into the commission's comment letter.

We would also need a motion here to request the Policy Board, as I understand it, to provide comments on the proposed rules once they come out. That is sort of our process right now. If you have any comments right now beyond what is in our management plans, provide them now. If you want to provide comments after the rules come out, provide them to Kate. This process here at some point is going to need – if we're going to comment on this at all, we're going to need a motion to the Policy Board requesting that we make comments on this when it comes out. Toni, do you have more?

MS. KERNS: I think that in several boards, sometimes if we're in concurrence that we want to send a letter, you don't actually have to write a motion up on the screen if you don't want to. You can just have agreement that you want to send a letter to the National Marine Fisheries Service commenting on the proposed rule when it comes out. We will send it to the full board to see prior to sending.

CHAIRMAN GROUT: So we wouldn't need to go to the Policy Board with this letter?

MS. KERNS: You do need to go to the Policy Board, but you don't actually have to have the motion here. You can just bring it to the Policy Board as the chairman of the Lobster Board if you don't want to do a motion.

CHAIRMAN GROUT: Is there consensus that we want to comment on this and do you want me to bring this to the Policy Board that we'd like to have a letter written when the rules are published? Yes, Walter.

REPRESENTATIVE KUMIEGA: I have a clarification question. In this example the person who was selling the 30 traps, they would have been subject to the same 5 percent reduction to their allocation; so I don't see how it matters when the reduction – everybody is going to get cut 5 percent, so I'm not sure that I understand what difference it makes when it comes. There is no transfer tax as part of this proposal?

CHAIRMAN GROUT: Yes, there is. Allie; do you want to respond to that?

MS. MURPHY: I think with this example I was just trying to show that one scenario benefits the buyer and one scenario benefits the seller. The first scenario would benefit the buyer, the person continuing in the fishery. I did not factor in any tax here. I was just trying to show a clean example.

MR. ADLER: On this particular scenario, I thought we were trying to put the transferability in before the trap reductions or at the same time. Wasn't that what we were trying to do?

MS. KERNS: We were trying to get it in as soon as possible; but when we went back and looked at the timeframe of how the proposed rule would come out, we knew that the allocations would come out first. Once we did the allocations, then we needed to do those initial reductions to not have as much latent effort come out with the allocations. If you don't take the reduction first, before allowing

transferability, there is latent effort that can be on the table and you could bring more active effort back in. That's why we said we would do the reductions first and then allow the transferability to occur.

MR. BURNS: Mr. Chairman, just to clarify, the board and the industry has made it clear to us that even though we've got transferability as one action and the trap cuts as something different, the trap cuts make transferability that much more immediate and necessary so that the industry will be able to mitigate the impacts of the trap cuts.

That is why, as Allie's slide points out here, we're trying to time these two rules together. We're trying to do them together as best as we can because both of these things are linked. What we're trying to do here is really be able to put both of these things in together, one in consideration of the other. And so as the commission's addendum – I think it's Addendum XVIII says you can have transferability and the trap cuts in the same year. Having the trap cuts first might make a lot more sense because then that allows somebody to be able to transfer traps to mitigate against the impacts of the cuts.

If you have transferability first, some of these people are already going to be at their cap. They are not even going to be able to buy up, so they're only going to be reduced and then they're going have to wait until the following year, because it's going to be an annual process, to be able to buy back; and they'll have to spend that whole year at a lower trap allocation with potential economic problems that go with that.

Our intent here is to try to line these up the best we can, and so we've got our final rule for the trap transferability and for the allocation and qualification process for Area 2 and the Outer Cape underway, which we hope to get in place by the end of the year. Then we'll start our qualification and allocation process for Area 2 and the Outer Cape; and then we'll be able to start developing the process for trap transferability in consideration of the trap cuts that would likely go in lockstep.

MR. McKIERNAN: I think the answer to the question comes in lining up the various deadlines that fishermen and the agencies have for executing any of this. As I understand it, we have a trap transfer application period; we have a permit year period; and we have a trap tag ordering period; and so we have to line all of these three up.

For example, if the transfers have to be submitted by November 1st and the permitting year starts January 1st, the question is when are we going to allow the trap tags to be ordered; because at the very end of all of this is the practical administration of trap tags. We just have to figure out those details.

For Massachusetts, we've been allowing people to order trap tags with their renewals, which can happen as soon as they get their renewal application, such as Thanksgiving or early December.

They can order their tags for the following year, and this has been a real aid in alleviating the bottleneck at Stoffle.

We just have to figure out which of these days are firm and then change our administrative deadline. It seems like the permitting period is somewhat firm; that's January 1st for most states. The trap transfer application period is firm in the addendum, right, or it could be amended. Then it becomes, okay, when are we going to allow the trap tags to be ordered, because that's administrative. I don't have an answer, but those are the three things you have to line up.

CHAIRMAN GROUT: Is there anything else on this item? As I understand it, I didn't see any objections here and we will bring that issue about asking the Policy Board for permission to write a letter on the comment on the proposed rules when they come out. Again, if you have any comments on it, please send them to Kate. Bill.

MR. ADLER: Mr. Chairman, I don't know if this is where it is. I saw "federal" so I immediately pick up my federal piece of paper

here. Is this the place to mention something about the Omnibus Habitat Amendment or should that be somewhere else?

CHAIRMAN GROUT: It's under other business. Okay, that should be it. Thank you very much; and again the Service, I thank you very much for giving us this heads-up. It is very much appreciated because I know it's outside of the rule-making process. Item 8, we had a letter from the National Marine Fisheries Service requesting that the commission work with the state directors and the large whale take reduction team to try and address some gear-marking differences between the different areas.

We had a conference call in July and Kate is going to give a brief review of what went on at that conference call and we're probably going to want to respond to the council's letter to us on this. It will be another request to the Policy Board.

REVIEW OF LOBSTER GEAR-MARKING REGULATION INCONSISTENCIES

MS. TAYLOR: The council had sent a letter to the commission discussing the inconsistencies and related safety concerns of the offshore lobster gear-marking regulations. The council believes that some of the current gear-marking requirements may be unobservable on the water's surface and in some cases are not followed.

Specifically some of these regulations deal with the single buoys for three or less traps; three-foot stick on only one end of the traps and trawls in Massachusetts waters; the use of sinking ground lines that pull surface markers under water; and no middle surface markings for traps in a trawl less than 6,000 feet long.

As the chairman mentioned, state and federal agencies got together for a call and discussed this over the summer. The highlighted concerns were trawlers getting hung up on the gear that is not marked; some inconsistencies dealing with implementation or inability to deal with responding to the inconsistencies between the

states and include that Maine regulations within twelve miles are set in statute.

For New Hampshire, they can address landings of fish in federal waters, but cannot do at-sea enforcement. They have seen increased fishing effort in three-plus miles offshore. They do not have mobile gear in territorial waters. It is fixed-gear only in state waters. In Massachusetts, the requirements for fixed-gear fishers to fish buoy lines in federal waters only in order to reduce impacts to whale habitat.

These regulations were previously out to twelve miles, but they were removed so they can only regulate activities in federal waters only if not in conflict with federal regulations. The federal regulations say that you have to rig your gear consistent with the regulations from the state that you're fishing from.

The working group did discuss some recommendations to maybe improve the inconsistencies between the states and potential ways to better have these regulations be consistent. This includes there might be some benefit to synchronizing gear markings either between three to twelve miles or twelve miles plus offshore.

The working group favored talking with the LEC to get more information on the problems and enforceability in the twelve-plus mile zone. The states also discussed that they will try to distribute their gear-marking regulations to the other states to keep the states informed on the dates of any lobster-related meetings where they can disseminate this information so that new fishermen are aware of the regulations that are in place and ensure that the regulations that are in place are being enforced and followed. The next steps would be if there are any additional recommendations to be discussed by the board and potentially send a letter back to the council

CHAIRMAN GROUT: Are there any questions on this or any comments from the states that participated in this and the agency? As I said, my intent would be to put together a draft letter responding to the council with some of the summary of actions that Kate had up in the

previous slide and write a letter back to the council saying this is what we're going to do. Dan.

MR. McKIERNAN: Based on my recollection of the conference call, Terry Stockwell and I thought this would be a good discussion point for either the LCMT or maybe bring it up to like the Maine Fish Forum to get some of the other lobstering areas that are there to talk about coming up with something.

I do think that there is a need for federal regulations in the three to twelve mile zone that are consistent and that people can live with. We amended our rules a few years ago when a certain well-known whale plaintiff tried to make the case that we were responsible for whale entanglements in federal waters because our regulations required buoy lines to be put on lobster gear. We said, no, that's not the case.

That is how we came to have no rules in the three to twelve mile zone, but I clearly there needs to be some kind of consistency. I would be happy to try to coordinate that and maybe take it up to Maine Fish Forum if that is a convenient way to do it.

CHAIRMAN GROUT: Yes, I think that's one, Maine Fish Forum, any lobster meetings, LCMT meetings we wanted to bring that forward. As you said, as far as New Hampshire state rules, the way we're set up we can't make rules for the three to twelve miles right now. All our rules only apply zero to three miles.

MR. McKIERNAN: To follow up, I'd also bring it to Bill's annual weekend. I didn't mean to sell his short.

MR. ADLER: I'm trying to figure out whether the comment is there is not enough buoy marking or there is too much buoy marking. When the whale comes in, we talk about less buoys and yet when you try to see visual you're talking, well, we need more buoys. I was getting confused as to which way they were thinking here.

CHAIRMAN GROUT: Well, clearly when it came to whales, as you know they're looking for less lines. I think what the council was trying to bring forward to us is the concern of mobile gear fishermen not being able to see buoys out in federal waters. Joe.

COLONEL JOSEPH FESSENDEN: The council has a Law Enforcement Committee and we meet quarterly. This issue has been on our agenda a couple of times. You may want to refer it back to that group. Representatives from New Hampshire, Maine, Massachusetts, Rhode Island and Connecticut all attend this meeting. The feds have regulations outside three for marking gear requirements.

Up in Maine it is a huge issue for us because a lot of these requirements require high flyers and most of our fixed-gear fishermen don't use high flyers because they fish relatively inshore. It is not tied to a twelve-mile limit. Basically there is a provision in the federal regulation that requires a certain distance from shore you have to have high flyers and the orientation of gear, how it is set. I know a lot of the smaller draggers there, especially fishermen from New Hampshire that complain regularly about Maine fishermen not marking their gear. It is a law enforcement issue, I think.

CHAIRMAN GROUT: Unless there is any objection to it, I will bring this as another letter that we're going to ask the Policy Board permission to move forward with; just responding the council's letters.

OTHER BUSINESS

CHAIRMAN GROUT: Seeing no objections; we will move on to other business. First of all, Pete, you had a couple items that you wanted to bring up.

MR. HIMCHAK: I will dispense with the easier one first. The lobstermen in New Jersey, all thirty of them, are having second guesses about the closed season they selected under Addendum XVII. That was the phase one of Southern New England rebuilding; 10 percent reduction in exploitation.

We opted for a closed season of February and March in Areas 4 and 5 with mandatory v-notching that was approved by the technical committee and the board. They're thinking that maybe some other season may be more to their liking I guess in 2014. I guess I have two questions.

First of all, is it possible under Addendum XVII to change a season in 2014 without even – I mean, we haven't even evaluated the effect of the initial closure and mandatory v-notching to see if we reached the 10 percent reduction. I have asked ASMFC staff if this is even a possibility. I'm not sure what the answer is but the technical committee would certainly have to get involved in this; and they are so encumbered by the stock assessment at this point that we may be asking an awful of them.

In addition to that, in order for New Jersey to change the closed season in Area 4 and 5, it would impact the states of New York, Delaware, Maryland and Virginia. I'm bringing this up I guess for initial reaction maybe from the board on changing a closed season while we're still essentially evaluating Addendum XVII.

I can speak with the individual state directors during the week to see if in fact – I mean, you're asking five states now to make a regulatory change before next February; and you'd have to get the LCMTs to meet and come up with a common season. It is a heavy lift; but if other states are hearing from their lobstermen that they're not happy with the February/March closure, I'd like to hear that. The ASMFC staff has already told me what I'm up against with the technical committee; and the other state directors, I'll be looking for their advice during the week. That's Issue Number One.

MS. KERNS: I think I have an easy response for you, Pete. That was a conservation equivalency proposal so you could come back with to us with a new season; and I assume it would still be tied to your v-notching. We could have the technical committee evaluate it and we could come back and the board can consider it in February; or, if the board were to choose to do so, they could consider via an electronic vote.

Again, it's likely that your approval would be some time in the January or February time period, which would be a short timeframe for all these other states to make changes to their regulations for this coming fishing year. As you said, all the other jurisdictions would also have to change their regulations in time to make this change happen. The addendum does state it is for the entire area and not for individual states for this particular conservation equivalency.

We would not need technical committee review if you came forward with one of the seasons that you proposed in the previous conservation equivalency plan because several seasons were considered. You could do that. We would have to see if we can get some timeframe to prioritize for the technical committee.

We did say that the technical committee's priority would be to work on the assessment and so that would take away from their assessment timing. This summer the technical committee will have to evaluate of the states' conservation equivalency programs and report back to the board in August on how those programs worked for 2013. We'll do that once we have all of the final landings' data for last year. I think you're really highly dependent on the other agencies' ability to promulgate regulations that quickly.

MR. HIMCHAK: Thank you, Toni, and I will individually meet with the other state regulators to see if they do have any intention to change a season and then it it's administratively possible. And if it's not, then we can't do it. I think I have my answers. Issue Number Two, apparently the importation of lobster parts into New Jersey, that sixth tail segment, just before the telson, has to have a 1-1/16th inch measurement.

We put that into effect at least 25 years ago because, again, it was, well, we don't want people mutilating lobsters and bringing in parts. Our lobstermen have to land whole lobsters. Now, what we have found out – and maybe some other states have also – is that we get an awful lot of inquiries about essentially shipping lobster parts into New Jersey for markets; not just the tails but the claws and even the legs.

We did another study on the carapace length versus the measurement of the sixth abdominal segment and did a regression analysis. At the time the 1-1/16th was put in our carapace length was 3-1/4, which is now in the Gulf of Maine, Area 1. What we have decided to do is actually a legal-sized lobster in New Jersey at 3-3/8th should have a corresponding tail segment length of 1-1/8th, so we are making that change by regulation; so if you want to ship lobster tails into New Jersey, our enforcement guys will have new gauges. They will go out and make sure that they are 1-1/8th inches and not 1-1/16th. That is important for other states to know. We should have this in place by January 1st. Are there any questions?

MR. McKIERNAN: This is an issue that I've been working on for about four years in Massachusetts. Maine has made a lot of strides in the processing of lobster parts, and this is all positive for the markets. Furthermore, we have the Canadians who are catching more lobsters in total than we do as the United States. We have the NAFTA Agreements.

There are a lot of really complicated trade issues here. I think in light of what is going on with the striped bass addendums where we're now tagging fish and we're asking the dealers and even the restaurants in some cases to still be having tags. This is a ripe area for ASMFC to start looking at regarding conservation standards and how they start affecting interstate commerce. In Massachusetts I was up against a single legislator, who is very influential, who allowed a law to go forward that limited tails to three ounces.

It didn't allow us to market claws or sell claws at all despite my pleadings and explanation that some of this stuff that is coming into the state is MSC-certified. If the law enforcement officers in a state aren't being challenged by any significant compliance issues about a product, it probably ought not to be regulated. This is a ripe area for the commission.

We tend to stick to the where, the when and the how and who can harvest; but once it's harvested and starts to get processed, it is a

whole different set of stakeholders that we don't necessarily deal with, but we're making rules or individual members are making rules that can be quite burdensome, and I think that we need to look at that.

I would like maybe law enforcement in the future work with the board to talk about standards for possession on some lobster parts. If I had a position from ASMFC that the following should be allowed – and I understand that if you have a different minimum size, then you need to uphold that minimum size in your state for live lobsters; but if it's processed and it's stamped product of Maine, for instance, and you clearly know where it's coming from and it's MSC-certified; does it really make any sense to prevent from going across state lines?

I hope that we can deal with this in the future. I'm glad Pete is making that progress; but when we looked at that particular regulation, we said to our legislature we don't want a sixth segment tail height. It is burdensome on law enforcement and it really doesn't have any positive conservation benefits.

To remind everybody, I think when New Jersey enacted that rule, it was legal to take a tail off of the lobster and come in with a bucket of parts; but the plan now, since the plan was adopted twenty years ago or eighteen years ago, prohibits the landing of parts by lobstermen. The enforcement needs to happen on the water, at the dock, going into the shop and not when it gets into commerce.

MR. PATRICK C. KELIHER: I think for the state of Maine – and I appreciate Dan's comments – I think "burdensome" is the right term here. It becomes a commerce issue; it becomes access to markets. With the expansion of the fishery here and with the expansion of the fishery in Canada, access to markets and the market as a whole becomes incredibly important; and to have states enact rules that become burdensome to other states when it's not about a management issue, it's about chain of custody. When you can show true chain of custody, it shouldn't be an issue as far as legality. I would New Jersey would be able to

work with the commission and work with member states to identify proper chain of custody to not burden other states.

MR. HIMCHAK: Just as a point of the why, the statement of the problem or the background for doing this is that we were getting inundated with an awful lot of calls about shipping a lot of products into the state. If we only have thirty guys that harvest about 900,000 pounds of lobsters and the markets get glutted and they're not making much money as it is, we're doing it for their best interest primarily. Lobsters can still be shipped into New Jersey; they just have to comply with that 1-1/8th measurement.

MR. KELIHER: Then this becomes a commerce issue for commerce across state lines. There could be some federal interactions as far as ability to ship. This doesn't sound like a conservation issue. It sounds like a market issue.

CHAIRMAN GROUT: Okay, is there further discussion this? We have one other item under other business. Dave Borden.

MR. BORDEN: Mr. Chairman, I'll try to be brief in the interest of time. The point I'd like to discuss is Closed Area 2. I think most of the board knows that the commission previously adopted Addendum XX that dealt with this issue. The concern here is that there has been an area that has been closed by the New England Council for groundfish protection reasons for approximately 20 years.

During that last 20 years there has been a sizable offshore lobster fishery that has developed in the area; and it's a seasonal fishery that occurs in that area. There are also sizable numbers of egg-bearing females that are in the area that migrate through the area. The concern that I just want to flag for the board's attention is that both NMFS and the New England Council have various proposals to reopen the area for the mobile gear sector.

The commission addressed the groundfish portion of the concerns by putting a closed season in the area, which the closed season

effectively allows the lobster industry to have access to the area for one-third of the year and then they have to get all their gear out of the area; and then the groundfish industry can access the area.

At the point that the area is open to the mobile gear fleet, the majority of the egg-bearing females have migrated through the area, so it's kind of an ideal situation. We allowed both user groups to access the area in order to harvest the available resources. We need the same type of dialogue and discussion and action to take place with the scallop fleet.

We're kind of in an ideal situation in this regard. We've got three members of the commission that serve in a dual capacity as commission representatives, Terry Stockwell, Dave Pierce, Doug Grout. I spoke to Doug about the issue, and he has scheduled this issue on the executive committee meeting of the New England Council.

Since that also includes the council executive director and the regional director of NMFS, I've basically asked them to explore different ways to either resolve the issue or set up a dialogue that promotes a resolution of the issue so that we avoid a gear conflict and impacts on the lobster resource.

I'm just flagging this. If anyone has concerns, I'd be happy to discuss it, but Doug has already taken the action of scheduling it on the executive committee. I'd ask the other representatives who already have duplicate capacities here, Dave Pierce and Terry Stockwell, to support that action. Thank you.

CHAIRMAN GROUT: Thank you very much for that; and as Dave mentioned, our letter that the commission sent to the council after the last meeting is an item on the executive committee's agenda in November. Bill Adler.

MR. ADLER: First of all, back on what Dave was just talking about, if you remember there was an agreement with the ground fishermen in Area 2; but it took the ASMFC to put that agreement in place for the lobster side of the story, which we did. I would assume that

something along that line would probably have to happen again, which is fine. I mean I think that works.

While we're there, the Omnibus Habitat Amendment, I just wanted to mention a couple of things they had mentioned here about possibly closing area. My question was can the federal people close an area to lobstering in federal waters if in the Omnibus Habitat Amendment an area is being closed to lobster fishing. Can they do it?

Now, there have been two things I have listened to; one where they could and the other one they couldn't. First of all, they went and they put some more rules on the Outer Cape fishermen in federal waters that was not part of any addendum that we ever did, but they did it through their federal process without basically running it to us first to do it.

That was one case where they did it. The other side of the picture was they wanted the ASMFC to do an addendum to enforce the Closed Area 2 on the lobster fleet. In one case they said, well, we can't do that you have to; and then on the other side they put more rules in that wasn't in any of our addendums. It is sort of a question if the Omnibus Habitat Amendment does move through and it has closed a lobster area; can they do that or do they have to do it through us?

CHAIRMAN GROUT: I think I know the answer to this, but, Pete, would you like to speak to that or not?

MR. BURNS: It seems like kind of a convoluted question; I'm not quite sure.

CHAIRMAN GROUT: I think the questions is could the National Marine Fisheries Service, on their own through some management process, either the council or the large whale take reduction team – as I remember that example comes to mind and one of the proposed rules put a closed area to lobster traps, prohibit lobster traps in certain areas in federal waters. It certainly seems like they have at least been proposed in the past. Mike looks like he wants to jump right into this. Thank you, Mike.

MR. PENTONY: I can't give you a definitive answer in part because it depends on the management nexus and what the rationale is. If the council is proposing an area to be closed to all fishing and it had a sufficient justification and a rationale as to why any type of fishing gear, fixed, lobster traps, midwater trawl, any type of fishing gear that would undermine the management objectives, then that would be the rationale and we would certainly entertain that for approval.

I can provide some explanation on some of the differences in the actions you've seen in the past. For example, Closed Area 2 was closed to protect spawning aggregations of groundfish, and the gear restrictions were to any gear capable of catching groundfish. Lobster gear was an exempted gear; so during the development of Closed Area 2 and the history of Closed Area 2, lobster gear was not prohibited from Closed Area 2.

To impose restrictions or parameters on lobster fishing in Closed Area 2, we needed to work with the commission to get that through. But if the closure was enacted for other reasons to protect all habitats from any gear that might touch the habitat, then there would be different rationale at play and different considerations given.

CHAIRMAN GROUT: Thank you, Mike; that does clarify things for me. Dave.

MR. BORDEN: Mr. Chairman, I would like to ask Mike a question, if I might, or any other representative from NMFS. I'm just a little bit uncertain how a council as part of the Omnibus Habitat Amendment plans on addressing the issue of gear conflicts. We're in this awkward situation where the council has regulatory authority over groundfish and scallops and the commission has the lead authority over lobsters. I'm just wondering how we link up these regulatory bodies so that we don't end up with a massive gear conflict that might result from opening areas or even closing areas. How is that process going to be worked out by the council?

CHAIRMAN GROUT: Well, that was what I was going to ask at the executive committee meeting, but, Mike, if you want to give us a heads-up.

MR. PENTONY: Well, personally I can't speak for the council. As you all know, the council has independent thought and ability to work through these things. What I can speak to, although I think it's not going to directly answer the question, is the process that the agency would take and the things that we would look at in reviewing any council proposal under the Magnuson Act.

One of the required elements of an FMP or an FMP amendment is a Fishery Impact Statement. If you look at the statute of the Magnuson Act, a Fishery Impact Statement is supposed to look at the potential effects of the proposed action on other fisheries. That seems like a clear opportunity for the council to look at potential gear conflicts that might develop as a result of the changes that are proposed in Habitat Omnibus Amendment.

Because that's a required element of an FMP amendment, it would be something that the agency would look at in reviewing the amendment for compliance with the Magnuson Act and other laws. If there was insufficient consideration to the impacts of the action on the lobster fishery, for example, that would be something that we would have concern with. Therefore, we would encourage the council to give full consideration of those impacts and address them and mitigate them to the extent possible.

ADJOURNMENT

CHAIRMAN GROUT: Is there anything else? Seeing none, I'll take a motion to adjourn.

(Whereupon, the meeting was adjourned at 11:55 o'clock a.m., October 28, 2013.)