

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

**The Westin Alexandria**  
Alexandria, Virginia  
May 4, 2015

**Approved August 4, 2015**

Proceedings of the American Lobster Management Board Meeting May 2015

TABLE OF CONTENTS

Call to Order, Chairman Daniel McKiernan.....1

Approval of Agenda.....1

Public Comment .....2

Approval of Proceedings February 2015.....2

Consider Draft Jonah Crab FMP for Public Comment.....2

Consider Addendum XXIV for Final Approval .....17

Report on Fishing for Energy Workshop.....19

Update on the Lobster Trap Transfer Database.....20

Update on Lobster Stock Assessment Progress .....22

Populate Jonah Crab Advisory Panel.....23

Other Business .....23

Adjournment.....30

INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of February 2015** by Consent (Page 2).
3. **Move to approve the document for public comment as modified today** (Page 12). Motion by Stephen Train; second by Bill Adler. Motion passes unanimously (Page 14).
4. **Move to establish a Jonah crab fishery control date immediately. The intention of the control date is to notify current and potential new entrants to the fishery, especially those who fish in jurisdictions that do not require a specific permit for harvest of Jonah crabs, that should the board establish limited entry programs for the Jonah crab fishery, eligibility to participate in the commercial fishery in the future may be affected by the person's or the vessel's past participation based on verifiable documentation of landings and effort and/or licenses possessed prior to that date** (Page 14). Motion by Stephen Train; second by Dennis Abbott. Motion carried (Page 17).
5. **Move to approve the addendum with the following options: Issue 1- option B; Issue 2- option B; Issue 3- include option 2.** (Page 19). Motion by David Borden; second by Emerson Hasbrouck. Motion carried (Page 19).
6. **Move to approve the addendum as written** (Page 19). Motion made by Bill Adler; second by Mark Gibson. Motion passes (Page 19).
7. **Recommend to the Policy Board to task the Gear Technology Working Group to work with industry to assess lobster ghost panel effectiveness** (Page 21). Motion by Cheri Patterson; second by Emerson Hasbrouck. Motion carried (Page 21).
8. **Move to approve Todd Richards Ellis from New Hampshire, Captain Jan Horecky from Massachusetts, William Purtell from Massachusetts, David Spencer from Rhode Island, Brian Thibeault from Rhode Island, Chris Scola from New York, and Earl Gwin from Maryland to the Jonah Crab Advisory Panel** (Page 24). Motion by Bill Adler; second by David Borden. Motion carried (Page 24).
9. **Move to request the Policy Board to send a letter to the New England Fishery Management Council reiterating our concerns for lobster and request a prohibition on all bottom tending mobile gear in closed area 2 from June 15<sup>th</sup> to October 31<sup>st</sup> north of 41 degrees 30 minutes** (Page 27). Motion by David Borden; second by Bill Adler. Motion passes (Page 28).
10. **Move to direct staff to initiate the process of developing an addendum to the Lobster FMP to prohibit all mobile gear in closed areas 2 north of 41 degrees 30 minutes should the area reopen** (Page 29). Motion by David Borden; second by Bill Adler. Motion tabled until August.
11. **Motion to table the motion to the August meeting** (Page 31). Motion made by Terry Stockwell and seconded by Dennis Abbott. Motion carried (Page 31).
12. **Adjournment** by Consent (Page 31).

# Proceedings of the American Lobster Management Board Meeting May 2015

## ATTENDANCE

### Board Members

Steve Train, ME (GA)	Emerson Hasbrouck, NY (GA)
Cheri Patterson, NH, proxy for D. Grout (AA)	Paul Risi, NY, proxy for Sen. Boyle (LA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Brandon Muffley, NJ, proxy for D. Chanda (AA)
G. Ritchie White, NH (GA)	Adam Nowalsky, NJ, proxy for Asm. R. Andrzejczak (LA)
William Adler, MA (GA)	Tom Fote, NJ (GA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Roy Miller, DE (GA)
David Pierce, MA (AA)	John Clark, DE, proxy for D. Saveikis (AA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Thomas O'Connell, MD (AA)
David Borden, RI (GA)	Rob O'Reilly, VA, proxy for J. Bull (AA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	Louis Daniel, NC (AA)
David Simpson, CT (AA)	Mike Ruccio, NMFS
Rep. Craig Miner, CT (LA)	Terry Stockwell, NEFMC
James Gilmore, NY (AA)	

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

### Ex-Officio Members

Bob Glenn, Technical Committee Chair	Jon Cornish, Law Enforcement Representative
--------------------------------------	---

### Staff

Robert Beal	Megan Ware
Toni Kerns	

### Guests

Kevin Chu, NOAA	Marin Hawk, MSC
Alli Murphy, NOAA	Meghan Lapp, Seafreeze, Ltd.
Dan McKiernan, MA DMF	Raymond Kane, CHOIR

## Proceedings of the American Lobster Management Board Meeting May 2015

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Edison Ballroom of the Westin Hotel, Alexandria, Virginia, May 4, 2015, and was called to order at 2:30 o'clock p.m. by Chairman Daniel McKiernan.

### CALL TO ORDER

CHAIRMAN DANIEL MCKIERNAN: This is the start of the American Lobster Management Board Meeting. My name is Daniel McKiernan. I'm the chairman and I'll be chairing today's meeting. The first is a call to order and any announcements. Bob Beal.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Thank you, Mr. Chairman; just a couple of introductions. There are some new faces around the table.

I know this isn't a coast-wide board and we usually wait to have a coast-wide board to introduce the new folks, but I figured we should introduce them now and commissioners can get to know them as the afternoon goes on. I'll probably make the same introductions tomorrow morning during menhaden when the room is probably a little more full.

I would like to welcome back Senator Brian Langley from Maine. We've got Eric Reid as a new proxy for Senator Sosnowski from Rhode Island. We've got Paul Ricci as a proxy for Senator Boyle from New York. We've got two new staff members. Megan Ware is up front. This is Megan's sixth day at the commission, so she is pretty new. Introduce yourselves to Megan.

Megan is going to be taking over lobster over the summer time period as she ramps up and gets to understand the lobster fishery a little bit better; but she will be the FMP Coordinator for lobster eventually. Max Appelman is back in the back there. Max has been here for about a month; so he is a little more veteran than Megan, but not a whole lot. Welcome both of them and introduce yourselves; and any

questions you have for them, they are more happy to get to know you guys.

One more thing; this board invited the New England Council to have a representative serving as a voting member of the board focusing on the crab issues, Jonah Crab. The New England Council appointed Terry Stockwell as their representative. Terry Stockwell is the current chair of the New England Fishery Management Council.

Terry has moved down to the end of the table; and Terry is going to be participating in this meeting as a voting member from the New England Council. He will not be participating in the Maine caucus; so he is will be wearing different hat at this meeting and handling the crab issues that way. The idea there is to have Terry serve as the connection between the New England Council and this board on crab issues since there are significant harvests of crab in federal waters. That's it.

### APPROVAL OF AGENDA

CHAIRMAN MCKIERNAN: Thank you, Bob. Next is the approval of the agenda. Are there any changes to the agenda? Brandon Muffley.

MR. BRANDON MUFFLEY: Mr. Chairman, I just want to, if I could, take Item Number 5, which is what I had on the agenda, to consider changes to LCMA 4 and 5 off the agenda. I have been working with Toni and the National Marine Fisheries Service to address this issue specifically to Area 4 separately and we will continue those discussions; so I don't think we need to have the discussion at this point at the board.

CHAIRMAN MCKIERNAN: Thank you, Brandon. David Borden.

MR. DAVID V.D. BORDEN: Mr. Chairman, I would just like a couple minutes under Other Business to talk about Closed Area 2, if I might.

## Proceedings of the American Lobster Management Board Meeting May 2015

CHAIRMAN MCKIERNAN: Certainly, David, we can make accommodations for that. Anything else?

### PUBLIC COMMENT

CHAIRMAN MCKIERNAN: All right, is there any public comment from the audience on any items that are not on the agenda today? Seeing none; we will move on. Toni, we're at number four, the Draft Jonah Crab FMP for public comment and the creation of a document that we hope we can approve today for public hearing.

### APPROVAL OF PROCEEDINGS

No; I failed to approve the minutes. Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman; that is what I wanted to ask to get it on the record.

CHAIRMAN MCKIERNAN: Is that a motion, Bill, to approve the minutes.

MR. ADLER: Sure.

CHAIRMAN MCKIERNAN: Second from Steve Train. Any objections? None; thank you.

### CONSIDER DRAFT JONAH CRAB FMP FOR PUBLIC COMMENT

CHAIRMAN MCKIERNAN: Toni, Item Number 4, the Draft Jonah Crab FMP.

MS. TONI KERNS: The Draft Jonah Crab Fishery Management Plan was on the supplemental materials and there are also copies in the back of the room. I'd like to note at the beginning of the document I realize that there are some missing pieces to the document. The plan development team is still pulling those together.

In particular, there is new information on final landings' information, because we are waiting for the 2014 landings that will be released any day now, to include those into the document. There was one state that was doing some

checking on their information; and as soon as we have that information, we're good to go.

There is couple of other figures that we need to update in and those will also be included in the document. We are considering this document today to be released for public comment. We would have public hearings over the summer. The board would then select final options at the August meeting for approval of the FMP. Jonah Crab has long been considered a bycatch of the lobster industry, but in recent years there has been increasing targeted fishing pressure and growing market demand for the crab. T

The majority of the crab are harvested by fishermen on lobster boats, using lobster traps. We believe since the 2000's, landings have increased almost sixfold if the data comes out the way I believe it will. With the increase in the demand for crab, a mixed crustacean fishery has emerged that can target both lobster or crab or both species at different times of the year based on slight legal modifications to the gear as well as small shifts in the areas the traps are being fished.

The mixed nature of the fishery makes it difficult to manage Jonah Crab as a completely separate resource from the American Lobster Fishery without impacting the number of vertical lines and traps capable of catching lobster in both state and federal waters. The status of the Southern New England Fishery is poor; and as part of that rebuilding plan, this board has been reducing the number of traps used to fish for lobster.

Additional traps targeting Jonah Crab with the potential to fish for lobster could negate these trap reductions and pose management challenges. NOAA Fisheries has also implemented lobster rulemaking based on the Large Whale Take Reduction Team recommendations to decrease the number of vertical lines in state and federal waters.

In order to reduce the risk of large whale entanglements, NOAA Fisheries has

## Proceedings of the American Lobster Management Board Meeting May 2015

implemented two regulations recently; and that is one looking at the minimum number of traps in a trawl; and, two, looking at season closures. Southern New England was able to not have to implement either of those regulations because we had done so many trap reductions; whereas, the Gulf of Maine Fishery had to do three-month closures.

The board doesn't want to have to have any negative impacts on the number of vertical lines in Southern New England because we don't want to have to implement additional measures due to that Large Whale Take Reduction Plan. A complete picture of the Jonah Crab Fishery in state and federal waters is difficult to ascertain due to the mixed nature of the fishery.

In the absence of a comprehensive management plan and stock assessment, increased harvest of Jonah Crab may compromise the sustainability of the resource. The plan development team identified the following issues when looking at this plan:

One; that the crab resource is not directly regulated in federal waters, rather incidentally by lobster regulations. There are no crab regulations in federal waters or permits and license requirements. The landings have increased rapidly in the past ten years; and without new controls, effort could increase in an unregulated manner.

With continued unregulated harvest of crab, the long-term availability for harvest could be compromised. No minimum size protections, no restrictions on the harvest of females or egg-carrying females and there is no spawning biomass protection. Buyers are positioning to discontinue selling Jonah Crab unless it is managed sustainably, which would impact the ex-vessel price for crab.

The lack of universal permit and reporting requirements makes it difficult to characterize the catch and effort in order to manage crab. A Jonah Crab is not distinguishable from a lobster trap; therefore making it difficult to

independently manage crab and lobster fisheries. Because crab traps are similar in design and function to lobster traps but are not regulated; there may be implications with the lobster fishery and the marine mammals, compromising the effectiveness of their management.

There is not a lot of information that we know about Jonah Crab; but the information that we do have has been pieced together from a patchwork of studies that either were looking at crab or looking at other species and found information on crab. They're distributed in the waters of the northwest Atlantic Ocean, primarily from Newfoundland to Florida. Jonah Crab are often confused with rock crab. Even though the species are biologically and taxonomically distinct, this confusion is due to overlapping habitat and the numerous regional common names attributed to both species.

This is a very important fact to remember, especially when considering the landings' information. The plan development team is no confidence in the landings' information of just Jonah Crab alone. We do believe that some of the Jonah Crab landings are accounted for under the rock crab landings due to the mixing of common names.

Oftentimes, depending where you're located regionally, Jonah Crab are called rock crab and rock crab are called sand crab; and so therefore in the dealer data base, Jonah Crab then get listed as rock crab. The life cycle is poorly described and what is known is compiled from the patchwork of studies.

Massachusetts, Rhode Island, Maine, and New Hampshire conduct inshore state water trawl surveys which are primarily focused on finfish and encounter Jonah Crab infrequently and thereby provides only minimal data. NOAA Fisheries conducts a trawl survey in federal waters, which collects data on Jonah Crab abundance and distribution.

## Proceedings of the American Lobster Management Board Meeting May 2015

This data hasn't been fully analyzed, but we do have some of it here to look at today. For the spring 2014 trawl survey from NOAA; it showed a record high abundance in the Georges Bank and Gulf of Maine regions. The 2014 data points are extremely positive outliers from the rest of the time series.

The spring survey in Southern New England has been stable over the time period, hovering the near median. The fall survey shows declining trends in Georges Bank since reaching the record high abundance in the early 2000's. Gulf of Maine has been fairly stable in the fall since 2000 and staying generally above the time series median. The fall survey has shown a recent increase in abundance in Southern New England.

This table shows the landings by state. If you can't see it up here, it is on Page 61 of the document. The point of this table is just to show that the majority of the landings are coming from the states of Massachusetts and Rhode Island. In the early 1990's ex-vessel values were approximately one to one-and-a-half million dollars.

Ex-vessel value increased in 2005 to \$3.5 million; and from 2007 to 2011 the value fluctuated from \$4.5 to \$5.5 million; and then it reached an estimated \$12.7 million in 2013. We can see this large shift in value in the fishery in recent years. As I said before, Massachusetts and Rhode Island make up the majority of the Jonah Crab landings.

You see here that Statistical Area 537 accounts for almost the majority of them. It is about 71 percent of all crabs landed in the two states; followed by Area 526 and 525. The monthly trends in landings – this is looking at just Massachusetts landings right here. There has been a change in the timing in the peak landings in Massachusetts for Jonah Crab.

From 2005 to 2011 the lowest landings occurred from August through December. Actually that is when the – yes, and then since

2012 landings have peaked from September to October. The red dotted line is the more recent landings and the blue solid line is the historical. In Rhode Island the landings for Jonah Crab mostly occur from December through March; and there has not been a shift in time for both states.

Typically this is when lobstermen are not fishing as hard for lobster and so we're seeing a trend of the time in the off period for the lobster where guys are going out and getting more Jonah Crab. That's providing more evidence for that mixed-use crustacean fishery. Then for gear types, the majority of the gear harvesting Jonah Crab are pots; almost 95 percent of the gear.

The purpose-shaded part of the pie is other; so those are likely to be misidentification in the dealer data base as what we're assuming; and then the dredges and trawls make up less than 1 percent of the total harvest. It is important for managers to respond quickly to increased harvest in U.S. waters. We have seen in other areas that have had high increases in fishing; that the Jonah Crab haven't shown downward trends.

In Canada Jonah Crab fisheries that developed, despite having prohibitions on landing females, having minimum sizes, TACs, both fishery-dependent and independent data have shown declines; so even in places where there are regulations with increases in fishing, they have not seen a good response from the fishery.

The plan development team identified how a fishery management plan with complementary federal regulations could potentially benefit the fishery. There is sporadic information gathered on the species, making stock assessments difficult. We don't have a stock assessment for Jonah crab; so having a fishery management plan would put in place monitoring requirements, which would help us gather this information to do so.

## Proceedings of the American Lobster Management Board Meeting May 2015

There is a lack of consistent state-to-state management measures as well as to state-to-federal regulations and goals and an FMP would allow us to have some consistency. An interstate FMP establishes a framework to address future concerns or changes in the fishery or population through allowing the plan to do adaptive management.

An interstate fishery management plan establishes a framework to address future concerns or changes in other species' regulations, for example, lobster regulations or regulations that come out of the Large Whale Take Reduction Plan. Goals and objectives of the plan; these goals and objectives are what the management measures that are being proposed are related to.

The goal is to support and promote the continued development and implementation of a unified coastal management program for Jonah Crab. It is designed to promote conservation, to reduce the possibility of recruitment failure, and to allow the utilization of the resource by the industry. The management program should be sensitive to the need to minimize social, cultural and economic dislocation.

There are six objectives in the plan: to protect, increase or maintain as appropriate the brood stock abundance at level which would minimize the risk or stock depletion and recruitment failure; to optimize yield from the fishery while maintaining harvest at a sustainable level; to implement uniform collection analysis and dissemination of the biological and economic information; and to improve the understanding of the stock status and the economics of harvest; to promote the economic efficiency in harvesting in the use of resource; and to ensure that changes in the geographic exploitation patterns do no undermine the success of the management program; and, lastly, to successfully manage the Jonah Crab in a manner that is compatible with the commission's management of American lobster in harmony with state and federal management of other trust resources.

The first management program we'd be looking at is data collection. The first option is just to have monthly reporting. The option applies to the harvester reporting of catch, landings and effort data. Fishermen with a VTR requirement would have to fill out their VTR for all trips. The plan development team recommends that the following elements be recorded daily by fishermen harvesting Jonah Crab, either directed or non-directed, and reported on at a least a monthly basis to the state or agency they are reporting to.

We recommend we have total number of trap hauls, total number of pounds landed – both of those by the statistical area – the number of days fished and the soak time for each trap. Next is looking at coast-wide mandatory reporting. This applies to both dealer and harvester reporting of catch, landings and effort data.

This is built off of similar reporting requirements that the lobster fishery has. There would be 100 percent mandatory dealer reporting and then X percent of harvester reporting. The board would have to decide what X percent means. There is an option for 100 hundred percent harvester reporting, 75 percent harvester reporting, 50 percent harvester reporting or 10 percent harvester reporting. Ten percent is equal to that of what is required by the lobster industry.

This would also be a two-ticket system to establish check-and-balance harvester reports and trip data. Catch estimates would be in pounds and dealer reports in landing weights would also be in pounds. Then the addendum identifies all of the specifics that would have to be on the trip report. Option 3 is exactly like Option 2 that I just went through, except for it also has fishery-dependent sampling included. This can come in either sea or port sampling.

The elements of that sea and/or port sampling program have not been determined. We would need the technical committee to determine

## Proceedings of the American Lobster Management Board Meeting May 2015

what that would be. Once we actually have a technical committee established, we could fill in those blanks.

So, proposed management; we have proposed management for commercial measures. The first issue is looking at permits. If left open access, a crab-only permit would have the potential to increase the number of traps in both state and federal waters. A limited access crab-only permit would constrain proliferation in traps fished attributable to non-lobster trap fishing.

Option 1 is no new permit requirements in this plan, but the states and agencies must maintain their current permit requirements. We would fill in for the public so they understand what that means. For states like Massachusetts and Maine, who have a crab/lobster permit tied together, they would continue to have to do so.

For other states that have just a separate crab permit and lobster permit such as Rhode Island, then they could continue to move forward with that. Option 2 is permit requirements are decided by the state for fishing or landings; and we would recommend to NOAA Fisheries that they require a permit to retain Jonah Crab taken from federal waters by any gear.

Currently there are no permit requirements in federal waters. Option 3 is participation in the trap fishery would require a lobster permit, and all traps had to conform to the specifications of the Lobster Management Plan; so things like ghost panels, the size of the trap. Landings of the Jonah Crab by non-trap gears would require an incidental permit, and they would be subject to the landing limits that would be outlined in the upcoming issue number six.

Option 4 under permits; participation in the trap fishery will require a lobster license or a crab-only permit. Other gear types would require an incidental permit subject to the landing limits identified in Issue 6. If this option were approved, the board would consider if crab trap specifications such as trap size, vents,

trap limits, trap tags would be necessary through a subsequent addendum.

Option 5 is participation in the trap fishery would require a lobster license or a new Jonah Crab trap permit. The Jonah Crab trap permit would be limited to the use of only traps designed to effectively target Jonah Crabs while minimizing the retention of lobster. In the absence of an approved design, no Jonah Crab trap permits should be issued.

Landing of Jonah Crab by the non-trap gears would still require an incidental permit, which would be subject to the landing limits outlined in Issue 6. If this option were approved, the board would consider if crab trap specifications would be necessary through a future addenda.

Issue 2, minimum sizes; there are a variety of minimum sizes that are proposed. They range from 4 inches to 5-1/2 inches. If we look at the information that we have from some sea sampling and port sampling, in port sampling we see that 34 percent of the crab that are caught are less than 5-1/2 inches; and in sea sampling we see that 98 percent of the Jonah Crab that are caught are five inches or less for females; and 31 percent are five inches or less for males.

We think the size range that we have proposed – and if you just go back, Mike – between 4 and 5-1/2 represents sort of what is being caught and what is being seen out there. Issue 3 is minimum size tolerance. It has a range of no tolerance to 10 percent tolerance for undersized catch. We realize that crab come in a large volume; and in order to determine whether or not everything is the correct size, industry has asked that we consider for a tolerance level. At times there may be one or two that have gone in by accident.

Language that we would like the Law Enforcement Committee to review is it is unlawful for any vessel or person to take or possess or have on board, land or offload any Jonah Crab which is less than X inches in the

## Proceedings of the American Lobster Management Board Meeting May 2015

longest shell diameter to the amount more than X percent of any batch unless authorized by a permit issued by the state or federal agency.

The enforcement personnel would sample one to five batches of Jonah Crab depending on the volume of crabs being landed or possessed at the discretion of that enforcement agency. A batch is just the shellfish in a separate container. Issue 4 is crab-part retention. Option 1 is crabs may be retained or sold in any form. Option 2; whole crabs must be retained and sold. The state of Maryland does have a small parts – it is a claw fishery, so that is why this option is here. It is a small fishery but important to the state of Maryland and is described in full in the document.

Issue 5 is prohibition of retention on egg-bearing females. If the minimum size were to be set correctly, then the option would not be an issue; but the PDT strongly discourages the use of Option 1. Option 1 is no prohibition on the retention of egg-bearing females. Option 2 is egg-bearing females may not be retained. Option 3 is no females may be retained and a 1 percent tolerance for females of which is the total percentage of the catch that is female cannot exceed 1 percent.

Issue 6 is an incidental bycatch limit for non-trap gear. Option 1; no coast-wide possession limit, so no possession limit. Option 2 is 200 pounds per day up to a maximum of 500 pounds per trip. Recreational measures; we have two measures; one, no coast-wide possession limit; or Option 2, 50 whole crab or a 100-claw possession limit for recreational fishermen. Issue 2 is exactly the same as the prohibition on egg-bearing females; either no prohibition or egg-bearing females may not be retained. Cherie has a question.

MS. CHERIE PATTERSON: How come there is no Option 3 there similar to the commercial where it indicates no females may be retained?

CHAIRMAN McKIERNAN: I think one of the themes that we expressed during our

conversations for this plan was the non-commercial fishermen include toddlers with beach buckets; and I think we were concerned about being overly restrictive to that sector of the public. That's certainly something we can move forward with, but this is primarily an offshore animal that is being taken in large quantities; so we didn't want to get too carried away.

MS. KERNS: De minimis; the de minimis requirements, there are two options; either having de minimis with commercial and recreational separate or recreational and commercial combined. They both look the same. For the preceding three years, the average landings constitute less than X percent of the average of the coast-wide landings for the same period.

The exemption that we would give to those states that are de minimis would be you wouldn't have to port and sea sample. The percentages would be 1 percent, 2 percent or 3 percent. There are other sections of the document that I have not gone over in full detail. They include a habitat section. It is minimal.

We don't have a lot of information on habitat, so therefore we don't have a lot to put in there; nor do we have a lot of recommendations for habitat except to do research on it to have better information – impacts of the fishery management plan, social and economic, the fishery and biological impacts.

There is an adaptive management program designed similar to those that we have in our other plans that allows us to do amendments on the plan that covers a full range of measures both for the fishery itself, designing trap things down the road, to make it easier for the board to make changes to the plan.

There is a section that describes the cooperation with the other management groups to describe what we've done for the New England Council. There is information on

## Proceedings of the American Lobster Management Board Meeting May 2015

the management and research for biological, social and economic and habitat sections. The biological section describes information that would need to be collected in order for us to do a stock assessment moving forward.

There is a section on protected species and the interactions with protected species that we have put together with NOAA Fisheries based on the last DEIS that they did for American lobster. That is everything that I have in the document. The plan development team hopes that the information contained in this document composes a wide range of options that would get us information to bring back to the board from those that are fishing for crab in order for you to make management decisions in the future.

We're looking for this wide range of information coming back for them, to get better information on the fishery that we don't currently have. We also, at the end of the meeting, are going to look at advisory panel members. We would have an advisory panel meeting as soon as we had panel composed if this document were to move forward.

CHAIRMAN McKIERNAN: Thank you, Toni. Can you clarify for the board what aspects of this document might change after this meeting and before we go out to public hearing.

MS. KERNS: I will be adding the landings' information for 2014; and that's spattered throughout the document where that would need to be updated, as well as ex-vessel value would be updated. The landings by gear type would be updated. If we can get the information finalized, we would also update some information on the number of reported trips directed on crab versus those directed on lobster; but that may be tentative. Lastly, we would add a figure that shows what a Jonah Crab looks like, if we can get one that is satisfactory to the PDT. I don't think the one I have showing is to the satisfaction of some of the PDT members.

CHAIRMAN McKIERNAN: Let's take some questions. Roy.

MR. ROY MILLER: Toni, I don't believe I heard whether measures, if eventually adopted, would apply to rock crabs as well. What is our intention in that regard?

MS. KERNS: The board has only asked for this to apply to Jonah Crab; so currently it would only be for Jonah and not for rock as well.

CHAIRMAN McKIERNAN: Cherie, did you have your hand with a question?

MS. PATTERSON: Yes; I have about three items here. Under Issue 2 with permits, you don't really have any justification for each of those minimum sizes. We feel that it is pretty important to have reasoning why the public is going to be deciding on these particular sizes.

They need justification; they need to understand what those are. Is that going to be part of that reference table and figure for them to be able to formulate their own comments and opinions based on those minimum sizes? It also would help the board to justify which options to support.

MS. KERNS: The reference tables and figures are in the document. The tables didn't get positioned here, but we will say which tables they are. It is discussed in the description of the fishery section already, which is Section 1.1.3, I believe; so I can reference back to those pages in the document.

CHAIRMAN McKIERNAN: Cherie, I think there are two issues that are in play here; and one is the size at maturity of the species and the other is the market standards that are currently in place. Bob, can you speak to the size-at-maturity information or is that something is still on –

MR. ROBERT GLENN: As far as maturity for Jonah Crabs go, it is a question that the PDT and also my staff has been trying to look into. There

## Proceedings of the American Lobster Management Board Meeting May 2015

isn't any published maturity studies specific to Jonah Crabs for the New England area. There was a published study from Southwest Nova Scotia; and they basically found a hundred percent maturity occurring up near the five-inch mark.

Then another study that is in the gray literature that was done off the Mid-Atlantic; and it shows that it is down around four inches. Presumably, the New England Region will fall somewhere in the middle. We have put out several grant proposals trying to get the funding to conduct a maturity study on Jonah Crabs that we could hope in the future would inform that better. Our expectations are that it would fall between four and five inches.

Along that line right now, the current market standard is – if you look at the size frequencies of what fishermen are landing for the market; the vast majority of crabs are – and I believe it is in the table in the document. I'm not sure which one, Toni, but a vast majority of crabs that are currently landed are over 4-3/4 inches right now; and over 95 percent are male crabs. The females are a lot smaller. Things like prohibitions on females and anything lower than a 4-3/4 inch minimum size would have negligible impacts on the current status of what is currently landed.

MR. ADLER: First of all, I'm looking at a sand crab up there in my world; so there needs to be a very good explanation with pictures as to what we're talking about. You just said we're not covering rock crab. Well, I think we are covering the rock crab; and so at the hearings you need to have a front view and a top view, whatever, to explain to the people going through this exactly what we're talking about.

I think we're talking about the crab that we call the rock crab, which is the one with the bigger claws. That to me is I see those, too, and they're thinner claws. That is the first thing; so we need that. Also, on the permit section, my question is, is the fact of an endorsement – rather than getting a whole new permit, an

endorsement an option or can it be an option were this to pass, because I think that would be – if you're going to do something like that rather than have these guys have to get another permit; that an endorsement might be worth it.

The declawing section, which was interesting, but I don't know what the stone crabs who have declawing, what their mortality rate is if you were to allow the declawing like they do of ripping off one claw but throwing the live crab back. I don't know what the mortality is on that; and I don't know if that information could be added to that section.

Also, I find that Page 20 to 23, actually to 24, is going to confuse the heck out of everybody when they read the thing and they go, you know, all this over a little crab; that we're going to have to do this, we're going to have to do that. I know you've got to put it in there and it is in there; but I just envision people getting carried away with how complicated everything between Pages 20 and 24 are, if they're adopted and everybody goes, oh, this is just – you know, this is too much.

The other thing is will the technical committee be able to get more of the information clear soon and eliminate some of the, well, little is known about this and we don't know about that and not known here, because I'm going to be listening to people going, well, go and find this out before you come back to us with this proposal. The same thing is going to be necessary while you would need to explain why passing this FMP will help get a stock assessment, because I've heard this before in other issues, other species where they go you go do a stock assessment first and then come back and talk to us. So, if it could be explained that this FMP will help having a stock assessment; that might stop some of those comments at any particular hearing. I think I'll stop there for now.

MR. EMERSON C. HASBROUCK, JR.: Thank you, Toni, for your presentation. I've got a couple of questions, and one of them is similar to the

## Proceedings of the American Lobster Management Board Meeting May 2015

issue that Cherie raised on size. I'm not sure I understood the response, really. Do we have accurate information on size at maturity or is it that it is just felt that a 4-3/4 inch minimum size is going to include males and females that are mature, because they will mature before that size? I'm looking for some clarification on that.

MR. GLENN: We currently do not have estimates of sexual maturity for Jonah Crabs for the New England Region; but we know that from studies that were done in the Mid-Atlantic as well as those in Nova Scotia that the upper and lower bounds of maturity in those two areas are the four and five inches. It would be our expectation that maturity ogives for Jonah Crab would fall in the middle; but we haven't been able to conduct a study yet.

CHAIRMAN McKIERNAN: Emerson, some of the issues that came out at the scoping meetings last summer, everyone recognized that there are market standards for this species and that very small few small crabs are being landed in the traditional markets. We heard stories and fears of growing harvest for bait purposes; that folks might take small crabs not for market but actually to use as whelk bait or other species. That is one of the objectives of creating a minimum size and not just to protecting the spawners and not just protecting the market situation, but to thwart a growing bait fishery.

MR. HASBROUCK: Yes; and markets change. Just there is very little demand now for smaller crabs, it doesn't mean that there might not be demand in the future for smaller crabs. Toni, you had also mentioned in one of the options about a Jonah Crab pot; somebody actually built a specific Jonah Crab pot or do we have a definition of a Jonah Crab pot or is that something that we're hoping somebody will develop here in the not too distant future?

CHAIRMAN McKIERNAN: Emerson, let me answer that. In most of the New England states, it is simply the same pot and fished under the same authority. There has been some work done in Maine. With slight

modifications, they were able to enhance the retention of Jonah Crabs and to some degree minimize the catch of lobsters; but it hasn't been pursued.

To my knowledge there isn't a viable directed Jonah Crab Fishery; but having said that, what we're looking at in Southern New England is a lobster management plan that is aggressively trying to control fishing mortality through trap controls. Unless we have a true definition of a Jonah Crab trap, in my view it has the potential to undermine the lobster management goals and the conservation goals attributable to vertical lines.

Based on the management side, in my view the actions that we're about to take with a 50 percent reduction in trap allocation over the next six years is really, really significant, but it won't mean anything if Jonah Crab traps are going out and are capable of taking lobsters.

We're serving this up in the plan not suggesting that we think the answer in the future is a Jonah Crab trap; but if there is a Jonah Crab trap, then it ought to be used and not lobsters. If there are people who are pursuing the Jonah Crab Fishery and jurisdictions that involved in this process feel the need to allow them to continue, it is going to be incumbent on them to figure this out; but in the northern New England states it is just one trap.

MR. HASBROUCK: So we're hoping that somebody within the industry is going to come forward and say I've modified my lobster trap in this manner and it is more efficient at catching Jonah Crabs and therefore we should be using this type of pot; is that kind of the intent?

CHAIRMAN McKIERNAN: It all depends on how you're trying to manage these two fisheries right now as one. Right now there is only one fishery and it is the lobster fishery. From all we can tell, 99 percent of the Jonah Crab landings are being taken by licensed lobstermen. We're dialing down participation levels in that fishery; and it is another question as to whether or not

## Proceedings of the American Lobster Management Board Meeting May 2015

we can dial up fixed-gear fishing pursuing Jonah Crab traps and not compromise the lobster plan.

I think we're simply setting the bar – we're challenging the industry and jurisdictions involved with this that if you're going to have traps outside of the lobster trap fishery, then it has to be something that is verified and documented. Right now it is neither; and that is one issue that I will raise with Toni.

This particular permit section, Option 1, which is sort of status quo, doesn't really speak, in my mind, to the real problems we have with status quo. For example, the National Marine Fisheries Service tells its lobster fishermen any trap on the boat is a lobster trap. It doesn't matter how it is rigged; it is a lobster trap.

But if you don't have a lobster permit, you're free to set Jonah Crab traps without a permit and without limits. There is a real gap in the rules right now in the fixed-gear fishing rules created by this incomplete management system so that we're trying to really shore it up and put things where they need to be.

MR. HASBROUCK: I didn't see anything in there about trap markings, you know, tagging of traps; was there any discussion about including markings specifically for Jonah Crab pots as opposed to the markings required for lobster pots?

MS. KERNS: If we move to a crab-only permit, in the options that have that, so Option 4 as well as under permits and then I believe Option 5; then in a future addendum the board would have to consider if they want to do specifications for traps; so that would trap sizes, vents, limits, tags and another other pieces that would go along with that.

It just really depends on how the board moves forward with regulating the permits for the fishery. Do they want to keep it tied to the lobster fishery or does the board want to allow for a separate trap fishery? I didn't put it up in

the presentation because the table is just incredibly too small to see on the board; but on Page 63, Table 5 describes the current state regulations.

You can see that the states of Maine, New Hampshire and Massachusetts and Connecticut all regulate their crab fishery tied to their lobster fishery. The one state that has a large volume of landings that does not do that currently is the state of Rhode Island. Then in federal waters there is no crab permit; but in order to retain the lobster, any gear that allows you to retain lobster or catch a lobster, then you have to have a lobster permit.

MS. PATTERSON: Yes; under Issue 4, crab-part retention; under the Option 1, I would suggest just putting crab parts in that definition; for example, crab parts such as claws and legs may be retained and sold in any form. Under 4.2, I had this question earlier about the recreational fisheries management measures.

Because New Hampshire has its recreational industry very well tied in with the commercial industry with similar regulations, I would recommend putting in Option 3 where no females may be retained might be an enforcement issue for us without that option presented.

MR. STEPHEN R. TRAIN: Toni, I think you've done a fabulous job getting this out. There was an awful lot of information that you had to siphon out of different sources for a fishery that has not been managed. This document, as broad as it is, has an awful lot of stuff in there. I'd like to see it go forward to public hearing and whittled down further from there.

I do have two issues personally with it. I have a large problem with the claw landings or the parts' landings. I know Maryland has a fishery on it. I would like to see another way to allow that to continue only in Maryland and not keep the document to include it. A parts' landing allowance in the document scares the hell out of me.

## Proceedings of the American Lobster Management Board Meeting May 2015

The other part is the directed crab fishery. If we have a very small issue with a few people that don't have a lobster license, there has got to be a better way to handle that than to allow the document to include a directed crab fishery aside from the lobster fishery. It is important to me that we tie these together, period.

MR. BORDEN: Mr. Chairman, just in terms of comments, having participated with you and the PDT on about six different calls on the document, I totally concur with Steve's point that I think the document over the last couple of weeks has really come together and is a tremendous improvement over the earlier versions of it. The one suggestion I would make is that under minimum sizes, just for the sake of consistency make all of those increments the same at a quarter of an inch; so there would be a size at every quarter of an inch.

The other suggestion I have goes along with Toni's recommendation, which is she is going to be updating this document, I think the document can continue to be improved if the PDT gets to work with the staff and the chairman of the board and kind of fine tune some of the language. I think some of the confusion, particularly on the permits, can be resolved pretty easily. I would hope if we're going to pass a motion and send it out to public hearing; that Dan and the PDT have the ability to do that.

CHAIRMAN MCKIERNAN: Can we get a motion to approve this plan with amendments as outlined by Toni that will be coming forward for those of those final details. I've got Steve; a motion to approve the draft addendum.

MR. TRAIN: **Do you want me to word it or do you want just put what you just had up there? I move to move this forward – I don't know, however you want to word that.**

**CHAIRMAN MCKIERNAN: Move to approve the document for public hearing as modified today by the board. Second from Bill Adler. Terry, did you want to speak?**

MR. TERRY STOCKWELL: Mr. Chairman, before the board votes to move this out for public comment, I just wanted to provide a few comments from the New England Council. I wanted to begin by thanking the commission and the board for allowing the council's participation. Toni attended our winter meeting in January and briefed the council on the development of the document to that date.

I'm just going to highlight a few of the discussion points that the council had at that time. One was the council noted that the Jonah Crab Fishery is almost entirely a federal waters fishery, which is within the council's responsibility. The council noted that there are some catches in the red crab and other fisheries, but they're very small relative to the trap fisheries.

There is the concern about the potential of increased gear conflicts and concern about the impact on the ongoing final development of the Omnibus Habitat, concern about bycatch issues. If managed by ASMFC, it wouldn't fall under the new SBRM. Our general counsel advised us that there might be some legal nuances, but he didn't elaborate.

Consequently, the council voted to make Jonah Crab management a 2016 priority. It was passed in the New England Council by a vote of 14-0-1. For those of you who follow the council process, the council makes its annual decisions on priorities in the fall; so this will go into the hopper with the rest of the council business. Again, thank you for allowing the council to participate in the process.

MR. MICHAEL RUCCIO: I just wanted to echo our support for the document moving forward for public hearing. We've been full participants in the PDT process, and we've had a lot of conversations with folks through the development. I would like to echo the support for Toni and the folks on the PDT for saying that I think the document has improved substantially over the past few drafts.

## Proceedings of the American Lobster Management Board Meeting May 2015

That said, there are still some things that we have our eye on, I guess, and we'll be looking for. Some of them have been raised here. I think the claw-only fishery without understanding what the discard mortality is for crabs that have been declawed; it is difficult to understand how that would work in practice and how that wouldn't undermine any conservation objectives for the stock.

Not knowing the size at maturity I think makes it difficult to rationalize a minimum size for the fishery if it is going to be predicated on biological implications alone. If it is a market factor, then fine, I think those things will come out in public hearing or perhaps more work with the PDT. As I said, we do look forward to it going out for public comment and look forward to further discussion.

MR. ADLER: Mr. Chairman, I just wanted refer to what Terry said and ask whether that means that the federal council is going to develop a Jonah Crab Plan like we're trying to do here; and if so, are they going to listen to us for a change?

MR. STOCKWELL: I wish I could give you a straight answer, Bill. I read you the motion that was made in reference to making Jonah Crab management a priority, but it may or may not rise above the bar this fall. As you probably know, the council does have a Red Crab FMP; so there is concern and interest from some of the council members for pursuing a Jonah Crab FMP as well.

MR. BORDEN: I'd just like to follow up with Bill's comment and say that the plan development team – and actually Mike's comment that the plan development team I think went out of its way to try to address the concerns that have been voiced both at the council meeting by council members and the National Marine Fisheries Service staff and included a much wider range of options so that those issues were addressed.

CHAIRMAN MCKIERNAN: All right, if we don't have any more comments; can we take a vote on the motion. **I will read the motion: motion to approve the document for public comment as modified today by Steve Train and seconded by Mr. Adler. All in favor; opposed; null; abstentions. It is unanimous, it looks like.**

MR. TRAIN: Mr. Chair, I have another motion related to this. I believe staff has it. If we could bring it up, I think it is important at this stage. If I get a second on that, I'll explain it.

MR. DENNIS ABBOTT: I'll second.

CHAIRMAN MCKIERNAN: Would you like to read it on the record.

MR. TRAIN: **I move to establish a Jonah crab fishery control date immediately. The intention of the control date is to notify current and potential new entrants to the fishery, especially those who fish in jurisdictions that do not require a specific permit for harvest of Jonah crabs, that should the board establish limited entry programs for the Jonah crab fishery, eligibility to participate in the commercial fishery in the future may be affected by the person's or the vessel's past participation based on verifiable documentation of landings and effort and/or licenses possessed prior to that date.**

CHAIRMAN MCKIERNAN: And the second is Dennis Abbott. Any discussion? Steve, do you want to discuss it at all?

MR. TRAIN: Some of the discussion that came up earlier was that some people didn't necessarily have a current lobster/crab permit and that the federal government didn't require one fishing in federal waters. Although some states required you to have a lobster/crab license to land, some did not. So there were people fishing that may not – or may have been fishing that may not have had a license. To ensure we don't have a ton of them run out of the woodwork and say they were one of them,

## Proceedings of the American Lobster Management Board Meeting May 2015

we need some sort of documentation that they either had a license or have landed Jonah Crab.

MR. ADLER: I'm not opposed to this because control dates can be moved around. Having a license, the intention of this would be, if we did establish it and it stayed, that lobster fishermen with lobster permits would basically be okay; and if they landed some crabs, no numbers, that they'd be okay; is that the intention here?

MS. KERNS: Bill, the way that the motion reads it says "landings and effort and/or licenses", so I read this as you don't even necessarily – depending on what the board decides in the future, you have the option of you don't even have to prove that you landed. You just have to prove that you had the necessary license. That is how read the "and/or". Steve, if that is correct or incorrect, let me know.

MR. TRAIN: The intent is not to take away anything from anybody currently in the fishery with a license. The intent is to prevent claims that I am in the fishery from people that have no license to actually in it. If somebody can prove they've landed without a license because it is allowed in some states, then they would be in. But if they cannot, the only way they would be in is if they have the lobster/crab license.

CHAIRMAN McKIERNAN: And I would point out that they would be in something, and that something is what the board will decide going forward as one of the permitting options.

MR. RUCCIO: Mr. Chair, I think you've captured it very well. All this does, in my mind – and I will state that this is something we support. If you're going to discuss potential limitation of the fishery, I think it is always wise to have some control date consideration. This just lays down a marker that doesn't commit the commission to any particular course of action in terms of how it utilizes that date.

I think as this is currently crafted, it just puts people on notice that we might treat history differently after this date; and then before the

date, it puts people on effective public notification that if you have been participating, maybe it is time to think about getting your records in order and make sure you have things.

This doesn't preclude if there is any kind of limitation program that goes in place a fully vetted and developed process for limited entry that would include qualifying criteria, potentially appeals, those kinds of things. This in no way, shape or form crafts that program ahead of time or makes any kind of predeterminations about how that will go.

This just sets down kind of a line in the sand that says history may be different before and after that line; so you're on notice. We've used this for a number of fisheries that have eventually gone to limited entry, and I think it is good practice and good policy to have these if you're going to consider limited entry; not that you even have to. Once you have the date, you can use it or not; but it is better to have it now than to not have it, I think.

CHAIRMAN McKIERNAN: Thank you, Mike; that was well put. Mark Gibson.

MR. MARK GIBSON: I support the motion. I think Mike just well spoke to what I would have like to have said; so it is worth the motion.

CHAIRMAN McKIERNAN: Any other comments on the motion? Yes, Craig.

REPRESENTATIVE CRAIG A. MINER: Just a clarification; so by establishing this date – I'm thinking that many of these fisheries are going through transition – is it the intention that Connecticut didn't have anybody that was appropriately licensed, they would be unable to get someone licensed after that date?

CHAIRMAN McKIERNAN: The default condition in most states is lobstermen with authorized vessels and tagged traps have been landing Jonah Crabs. I think going forward that is an outcome that the PDT would like to see go forward. What you're seeing on the board is in

## Proceedings of the American Lobster Management Board Meeting May 2015

those instances where someone is outside of the realm of lobster-permitted fishermen and might have been fishing legally but had no permit and no reporting requirements, or whatever, this establishes a baseline that if they've been doing it prior to this date, they might have some consideration in the future depending on what outcome we come up with in the permitting schemes.

REPRESENTATIVE MINER: I guess I'm just thinking that we don't – I was saying to Dave Simpson when I was a kid I think these were a nickel and now they're not a nickel. I don't know what the market price is that drives people to do things that they don't currently do today. I'm just a little concerned about a state that I don't think has a market for this – at least it isn't an industry that I'm aware of in Connecticut – being foreclosed in the future, especially when we've chased them out something else.

CHAIRMAN McKIERNAN: This particular control date wouldn't foreclose that. What would foreclose that is one of the permitting options, but the permitting options that you see here all – many of them, if not all of them, attempt to accommodate the traditional lobster fishery to take Jonah Crabs. Emerson.

MR. HASBROUCK: I'm a little confused on the intent here. If somebody has a lobster license but has not landed any Jonah Crabs; are they covered under the control date? That is the first part of it. The second part is if somebody is landing in a state that doesn't require a permit; so they have history, but there is no permit; are they going to be excluded? If perhaps the chairman or the maker of the motion could help clarify that for me, it would be appreciated.

MR. TRAIN: The intent of that motion is that both of those people would be allowed in the fishery. If they currently possess a lobster license or a lobster/crab license, depending on the state, or if they documented they have landed crabs in a place that did not require a permit to do so, then they would be protected

in this fishery. That's the intent of the motion. It would be the speculative entrant from some place that has not participated in the fishery that would be excluded because of this control date.

MR. HASBROUCK: So we would allow all of those people who currently have lobster permits but who have never landed one pound of Jonah Crabs; we would allow them to participate in the future in a Jonah Crab Fishery; is that correct?

CHAIRMAN McKIERNAN: I think we're getting ahead of ourselves in terms of debating the final aspects of a limited entry scheme. This is simply the control date that landings or participation after, immediately, presuming today or whenever NMFS could adopt a complementary measure, those landings wouldn't count toward future participation if the limited entry scheme were so constructed.

You can see in the document we're trying to wrap our hands around this fishery that is difficult to document in some jurisdictions because there isn't a permit requirement. It is my experience as a former lobster biologist and someone knowledgeable of the lobster fishery, if someone is commercially lobstering in Southern New England and has never landed a single Jonah Crab, I'd be shocked. Any other questions? Brandon Muffley.

MR. MUFFLEY: Just the one question; so the people who are being notified are those that hold some sort of federal or state lobster permit; those are people that we're considering being notified of this issue, because it is just saying here we're going to notify current and potential new entrants. I'm just looking for clarification on who exactly we're notifying. New Jersey doesn't have anything specific to Jonah Crabs, but obviously we have lobster permit holders; so that is who getting notified on this?

CHAIRMAN McKIERNAN: I mean, that is part of the challenge that we have is that we hear

## Proceedings of the American Lobster Management Board Meeting May 2015

stories that there is a sub-component of the industry that doesn't have a lobster permit and has not had to report in their jurisdiction but may have been active. If we can't find them, you're right, it is hard to notify them; but I think as a general notice to all commercial permit holders; that is what I would recommend.

If you have a general mailing, you could do it to all permit commercial permit holders to let them know that Jonah Crab landings after this date may not be considered in the future going forward. This is rather broad, but again it is only being done, as Mike Ruccio described, as a line in the sand so that in future we can take an action that might use this date.

MR. RUCCIO: To Mr. Muffley's point, should this pass, we would work with staff to develop a Federal Register Notice that formally establishes the date; and it would likely be the date that we publish it in the Federal Register. We would then send notification of that to current lobster-permitted, current lobster dealers, kind of cast a wide net.

We'd have kind of our roll-out machinery that would go into effect and try to cast a wide net so people are aware of this. Then that could be retransmitted through whatever permit system or whatever notification system you have in your state and in other states. Without the requirement for a permit federally, it is a little bit more challenging to target the messaging; but I think with technology the way it is now, we would get that out fairly effectively.

CHAIRMAN McKIERNAN: Anyone else? All right, can we vote on the motion? All in favor of the motion – yes, 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN McKIERNAN: All right, let's vote on the motion. All in favor raise your hand; any opposed; any null votes; any abstentions. **It passes ten to one no with one abstention.**

MS. KERNS: I just have a couple of questions for

those states – so we have gotten permission for the PDT to make some changes to the document. I think that we can do rather quickly. I'm looking towards a couple of my PDT members. We have a couple of requirements – as Bob said before under the Herring Section – to have the document out for 30 days before the first hearing and then we have to have the document out for 14 days after the final hearing.

Depending on how much time we take to update the document, it may start to get close to those deadlines, so we'll have to be careful in order to try to have as much information to the board in time for meeting materials, which I'd like to do to not have all of this on supplemental materials. If we do require additional time, then some of this information may be on supplemental materials.

David, do you think that we can probably get there pretty quickly? That is a nodding of the yes head. Then we'll find out from which states who want to have public hearings in an e-mail, but we'll have to set those up rather quickly as well in order to meet the time frame. So if we could just work with staff in doing that as quickly as possible, we'd really appreciate it.

CHAIRMAN McKIERNAN: Bill Adler, do you have a question?

MR. ADLER: Yes, actually going back to the motion we just passed; and when you say immediately, so therefore today's date is immediately; is this the official date of the control date?

CHAIRMAN McKIERNAN: NOAA Fisheries is going to publish a proposed control date through the Federal Register, so it would be on their own schedule. Any other participating states that don't have any permit limits or any limitations might want to notify their fishermen as well.

MR. ADLER: All right, so we're not establishing today's as the control date; correct?

## Proceedings of the American Lobster Management Board Meeting May 2015

CHAIRMAN McKIERNAN: That's right. Jim Gilmore.

MR. JAMES J. GILMORE, JR.: Mr. Chairman, just a clarification. I think the vote was ten/one/zero/one.

CHAIRMAN McKIERNAN: All right, Toni, let's move on to Item Number 6. Craig.

REPRESENTATIVE MINER: Well, it kind of goes to my point. I mean, in terms of public notice, if this date is going to become a date that some future this fishery is going to be based on, I don't know how you can do it today. Maybe that is just the world I grew up in, I don't know, but it just seems to me that without any notice there isn't a fisherman today that can change anything from where they are today.

It almost seems inherently unfair; that's all. I mean, if we were going to make motion to establish a date at some point in the future where you could allow transactions that may actually be in the works right now; that is different than having something that established that date today. That is kind of my opposition; but I guess that's over.

### **CONSIDER ADDENDUM XXIV FOR FINAL APPROVAL**

MS. KERNS: The next agenda item is Addendum XXIV. To remind the board, Addendum 24 is looking at compatible regulations between state and federal in particular for the trap transferability rules. NOAA released trap transferability rules; and some of those that were released were not consistent with state measures.

Addendum XXIV looks at providing consistency between state and federal measures for these plans. We are in the last step of the addendum. Today we are considering options for final approval by the board. The final approval will be a roll call vote. The first issue under this addendum is looking at the conservation tax.

The commission's plan has a 10 percent conservation tax on full and partial business transfers. The federal plan only had a conservation tax on partial business transfers. A tax for full business transfers was not necessary to prevent the activation of latent effort and that regulations provide sufficient controls for latent effort.

Therefore, we have two options. Option A, which is status quo under the commission plan, having a 10 percent conservation tax on full and partial business transfers. Option B is to remove the conservation tax on full business transfers. Option 2 is to look at trap increments. The final federal rule had traps transfers could proceed in ten-trap increments. The states had adopted various transfer requirements that differed by management area; so the number of traps that you could move at one time varied by state and area. The federal regulations allowed for fewer traps to be transferred at one time, allowing for more flexibility for a federal permit holder in the trap transfer process.

The two options that were considered is trap increments remain the same or trap transfer increments in ten traps for all areas where trap transferability programs exist. Issue 3 is looking at the dual-permit transfers. A person who has a state and federal permit for the same area may only transfer traps to a dual permit holder from the same state in the commission plan.

The federal plan allows a permit holder to purchase and sell traps that have a dual permit with anyone with a qualified allocation in Area 2, 3 or the Outer Cape Cod Area; so allowing someone from different states to transfer traps, basically. The two options that we have to consider; Option A, which is dual permit holders may only transfer traps to dual permit holders in the same state as it is in the commission plan; or, Option B, to allow dual permit holders to transfer allocation with dual permit holders from other states as was in the final rule.

## Proceedings of the American Lobster Management Board Meeting May 2015

We went out for public comment in this document. As a reminder, we did not hold public hearings. We only sent out the document out for comment to be received. We received a total of five comments; four from individuals and one from a group from AOLA. For the conservation tax, only one individual favored Option 1, to remain status quo; and three individuals favored to have a removal of the conservation tax on full business transfers.

Option 2, which is the trap transfer increments, all the comments that were received were in favor of moving to a ten-trap transfer increment. For Issue 3, dual permit holders, all the comments that were received on this issue asked for the allowance of the transfer of traps from dual permit holders to be allowed from any state. Questions?

I do want to note that when the document went out for public comment, on Page 6 the examples for Area 2 and 3 were reversed; so that a transfer for Area 2 should have read a transfer must be comprised of a minimum of 50 traps and in units of 10 traps. The upgrading requirement will apply to the transfer – for example, a 20-foot vessel shall only transfer traps to a vessel under 23 feet. The upgrading portion of this example is from Addendum IV, which is way, way, way back; so just to be noted that that upgrading part applied to Area 2 and not to Area 3. It is fixed in the current document that went on the briefing materials.

CHAIRMAN McKIERNAN: Any questions? David.

MR. BORDEN: I actually don't have a question, Mr. Chairman; I'm ready to make a motion when you're ready.

CHAIRMAN McKIERNAN: Are there any questions on the draft addendum? All right, David.

MR. BORDEN: Just a one-minute statement before I do. I just remind everybody that the intent of the regulations is to synchronize the

state and federal regulations. I would note that this will simplify and standardize the administration for all the state agencies if we do it correctly. **I would like to make a motion that we approve the addendum with the following options: Under Issue 1, Option B, which would remove the 10 percent conservation tax for full business transfers; under Issue 2, Option B, that traps be transferred in all areas in ten-trap increments; and then under Issue 3, include Option 2, an allowance to state-to-state dual-permit transfers.**

CHAIRMAN McKIERNAN: Is there a second on the motion; Emerson. Any discussion on the motion? Motion to approve the addendum with the following options: Issue 1, Option B; Issue 2, Option B; Issue 3, include Option 2. Motion by Mr. Borden; seconded by Mr. Hasbrouck. All right, are we ready to vote? All in favor of the motion raise your hand; opposed; abstentions; null votes. **It passes unanimously.**

MS. KERNS: The compliance schedule that was outlined that went out for public comment is that approving this document would be effective immediately upon approval of the addendum. It would be expected that when the states did their FMP reviews and state compliance reports for the coming year; then these changes in management measures would be either actively be a proposed change if it is needed to be done; or added if you needed to add it to your transfer rules for those states that have transferability programs. Not all states have them; so it would only be necessary for those states that have transferability rules, and we would include it in the compliance reports.

CHAIRMAN McKIERNAN: So now we need a final vote on approval of the final addendum. **Motion to approve the addendum as written; Bill; and second, Mark Gibson. Do we need a roll call on this one, Toni? All right, no abstentions; no opposition; we'll assume it is unanimous.**

## Proceedings of the American Lobster Management Board Meeting May 2015

### REPORT ON FISHING FOR ENERGY WORKSHOP

CHAIRMAN McKIERNAN: The next item is Fishing for Energy Workshop Report.

MS. KERNS: There were several states and staff that attended the Fishing for Energy Workshop. This was a workshop that was put by NFWF through funding via the NOAA Marine Debris Program. I believe I'm doing that correctly. There were members from Maine, New Hampshire, Massachusetts, Rhode Island at the workshop.

One of the items that we discussed was derelict fishing gear and specific was lobster traps and other fish traps. A study was presented that looked at how effective hog rings are for the ghost panels. I'm going to let Bob go quickly through that study and then I'll discuss the recommendation from the working group.

MR. GLENN: Historically, I believe it was in the late seventies, the requirement for a ghost panel was put into place. The method of attachment was to use a non-stainless steel ferrous hog ring. Based on observations from guys using them in the field, the assumed half-life of a hog ring was somewhere between 60 to 100 days they figured when it would rust out over time; and that would disable the trap and make it ineffective at catching lobsters and fish.

Subsequent to that, in the last several years several agencies, including us at Massachusetts CMF, have done some studies on ghost gear and also some retrievable efforts on ghost gear. Kind of counter to that observation, what we found is that lobster traps, when abandoned on the bottom, that the escape panels as well as the escape vents that are attached with non-stainless hog rings tend to persist for multiple years.

From our study, we saw that they continued to stay attached for well over two years. Then from other subsequent gear retrieval efforts where trap tags were on the traps, they were finding lobster traps in Massachusetts Bay and

off the coast of Maine that had trap tags that were six, seven and eight years old where the ghost panel and/or the escape vent had not worn through.

There was a combination of oxidation not occurring on the hog rings as well as bio-filing which kept in place. Based on those results, the National Fish and Wildlife Foundation funded a study by a researcher, Kurt Cousins from William and Mary.

He looked at the degradation rates of hog rings. One of the primary observations, when talking to lobster industry members who actively fished the hog rings, was that our observations that we were seeing from our other studies didn't make sense because they constantly have to replace hog rings.

Their observations were that something is not right here. We have to replace these all the time, every couple of months, and it doesn't make sense that you're seeing them persist. This researcher conducted a study, and he looked at degradation rates of hog rings on ghost panels of traps that are actively fished as well as traps that are just abandoned on the bottom and compared those over time.

In a nutshell, what he found is that over the course of the study; that the pots that were actively fished, that were being brought the surface and allowing that process of oxidation to occur lost their weight as a measure of degradation at a much faster rate than those who were simply abandoned and left on the bottom of the ocean and then checked at the end of the study.

What this does is it kind of brings into question some of the basic tenants of what we have for gear requirements for the lobster plan, and that is the requirement of a ghost panel and escape vents. Those are important aspects but they're certainly not acting as historically and anticipated that after being lost for a couple months; that they would rust out and become inactive. Actually what the evidence suggests is

## Proceedings of the American Lobster Management Board Meeting May 2015

that they continue to persist for quite a long time.

MS. KERNS: So then we got to discussing the study and some of other studies that have been going on. We wanted to see how could we get this discussion going further, include industry; and then if there are solutions or recommendations, how can we move them forward.

It was suggested that we use the Commission's Gear Technology Working Group in conjunction with members of industry to assess the effectiveness of the ghost panel; so review some studies that are out there that are looking at ghost panel use, have industry come forward with some of the other methods that they've been using to attach ghost panels or to provide escapement; and then come back to the Lobster Board for any recommendations that they determine and discuss.

In addition to fishermen, we thought it would be appropriate to include some of the trap makers as well in this discussion. The Gear Technology Working Group is a technical committee under the Policy Board; so if this is something that interests the Lobster Board, that would need to move through the Policy Board and then be tasked via them.

**MS. PATTERSON: Yes; I would like to recommend that we move this to the Policy Board to task the Gear Technology Working Group to work with industry to assess lobster ghost panel effectiveness.**

CHAIRMAN McKIERNAN: Cherie, that is a motion you're making?

MS. PATTERSON: Yes.

CHAIRMAN McKIERNAN: Is there a second on that motion; Emerson. Any discussion on the motion? David Borden.

MR. BORDEN: I don't have any objections to the motion, but I just wonder whether or not it

is comprehensive enough. I just point out that we've got all these fish pot fisheries that are taking place up and down the coast, and we're in the process of rebuilding a lot of these populations. I just use as an example black sea bass where it is not uncommon for somebody to catch a nine- or ten-pound black sea bass in New England waters these days. I would just urge us if we're going to review this, I think we ought to review it in a more comprehensive manner and maybe look at the implications of some of these other pot fisheries and maybe kind of standardize whatever we come up with. Thank you.

MR. HASBROUCK: Mr. Chairman, I've received funding through NFWF and NOAA Marine Debris Program. Over the past several years we've been actively conducting a program with Long Island Sound lobster fishermen to retrieve derelict lobster pots. We've retrieved well over 10,000 abandoned and derelict lobster pots out of Long Island Sound.

We are finding that in many cases the hog rings don't degrade as quickly as anticipated. We've got quite a bit of data on that. The other thing that we find that when the gear is not actively fished and when it is abandoned, it tends to settle into the sediment, especially if it is soft sediments there. We've also found that the pots, where the escape panel is, even if the hog rings have degraded, the panels don't fall off because the pot has settled down into the sediment as well. That is just another issue. I may be able to bring some information to this working group once it gets going.

CHAIRMAN McKIERNAN: Those are great observation and I'm sure the group would benefit from your input. All right, any other discussion? **Seeing none; let's take a vote on this motion. All in favor; opposed; abstentions; nulls. It is unanimous; thank you.**

### **UPDATE ON THE LOBSTER TRAP TRANSFER DATABASE**

That moves us on to update on the Lobster Trap Transfer Database. I'm going to speak to that.

## Proceedings of the American Lobster Management Board Meeting May 2015

We've been working monthly with the states and the National Marine Fisheries Service to create through the ACCSP a database that is attempting to house all the trap allocation data for the permit holders on the state and federal level. These are those who have allocations; so it is not all lobster permit holders.

For instance, most of the Maine and New Hampshire fishermen wouldn't be in this database at the current time; but it is those who have trap allocations through the various plan addenda that we've done previously; so it is Area 3, Area 2 and the Outer Cape. Just briefly to describe this; it is very challenging because as you all know the National Marine Fisheries Service has its own permitting rules and they have a different perspective than the states.

They typically permit vessels and most states are permitting individuals. We're working very hard to try to reconcile where we know it is the same entity, to combine all those data elements into one, which means asking in some cases the states to incorporate in their data those elements that the federal permit might have and vice versa for the federal government to incorporate those items that the state permit would have.

For example, in my state of Massachusetts we took a lot of effort a year ago to add company name to every lobster permit holder who had an allocation; because in most cases that's how the National Marine Fisheries Service had them. Then had them down as company where we had them down as the person. Then it means making sure that the vessel registration or the documentation is spot-on, is exactly right. That is what we've been doing to date.

Now we're going to be coming up with these forms for fishermen to apply for transfers of allocations. We expect to have everything ready by September 1<sup>st</sup>. That is when fishermen can start applying for these trap allocation transfers. They'll have to have it completed by

November 30<sup>th</sup> for us to work that out. It is going as well as can be expected.

It is hard to have all these jurisdictions working on multiple datasets to try to make it consistent. What it also means is going forward if a fisherman or a vessel owner who wants to make a simple change to their permit might see a little bit of a delay if they also have a state permit with a trap allocation.

The two permitting entities, the people down at the staff level that deal with fishermen on a daily basis, are going to have to a much stronger sense of coordination about people changing their permits. In some cases we've worked very hard to reconcile these records so that if someone has a state and federal permit and they want to go to NMFS and say replace the vessel, well, the state needs to know about that before we in this trap allocation database group will consider to approve that, because there are some negative consequences.

The plan says that if you have a state allocation and a federal allocation, you can't split them into two different businesses; so that's really what we're trying to accomplish there. The ACCSP staff has been very good to work with over these last few months, and all the states are doing their best to get this online in time. That's my report. Next is the Lobster Stock Assessment Update. David Borden.

MR. BORDEN: Mr. Chairman, not a question but in my new capacity, I handle a lot of questions from fishermen. I really would suggest that we follow kind of an intermediate step here. I totally agree with everything you just said, but I think it would be really helpful if the commission, working with NOAA, could write like a general permit letter that would go out to the industry and basically say this is what we are attempting to accomplish and this is what the timelines are. Don't put all the details in it; just let them know when things are going to transpire, because there is a lot of confusion in the industry about when something is going to take place. I think it would help.

## Proceedings of the American Lobster Management Board Meeting May 2015

CHAIRMAN McKIERNAN: Yes; I'm sure with NOAA we would be doing that. Because this whole process is so involved, I'm sure we'll have some outreach. Mike, did you have a comment.

MR. RUCCIO: I just wanted to say that this is where our staff sometimes makes us look really good. They're already on that. We have the materials kind set and ready to roll out that does quite a bit of I think what you want to see in there, Dave, to try to announce that the program is now at the point where we can start taking applications, remind people of the timelines, has some answers to the frequently asked questions that we expect about the process.

We've just been waiting to kind of get to the point where we felt that the transfers were something that could be supported in terms of the database, and I think we're just about there. While I have the mike, I just wanted to very quickly thank – there have been a lot of people that have been involved with this from a lot of states, federal agencies ACCSP and a lot of staff have done.

If it wasn't clear from what you heard from the Chair that this is a very large lift, a lot of complexity and moving parts and a lot of people have been working really hard on it. The fact that it has gotten to this point is a testament to the work they've put into it.

CHAIRMAN McKIERNAN: Thanks, Mike; and I just want to clarify if I misspoke. September 30<sup>th</sup> is the expected deadline for folks to get their applications into the agencies. That gives the agencies October and November, two months, to approve it; so that by the time we are issuing new permits for the calendar year, which we do at the state level, folks will have their new allocation adjusted accordingly.

### **UPDATE ON LOBSTER STOCK ASSESSMENT PROGRESS**

CHAIRMAN McKIERNAN: All right, to Toni on the stock assessment.

MS. KERNS: Staff is working to set up or finalize the assessment peer review. It is going to either be in Rhode Island or Massachusetts, somewhere easy commutable to Woods Hole where we have a modeler that is on a survey that week; so we're trying to keep him close to home so he can go back and forth every day in order to prepare for his survey work.

The modelers are doing an amazing job, and I'd like to thank you all for your staff time and their ability to work on the assessment, in particular Bob and Kim and Larry Jacobson and Burton Shank from NOAA Fisheries who have been working extremely hard to model the document. Since we no longer have commission staff working on the assessment, they have stepped up to the plate and done a lot of work and we greatly appreciate it. We will have the peer review to present to the board at the August meeting.

MR. ADLER: At the August meeting; therefore, what are you going to have, the stock assessment?

MS. KERNS: Yes; the stock assessment and peer review report to the board, because the peer review will occur the week of June 8<sup>th</sup>.

MR. ADLER: Okay, so the thing basically will be finished and presented to us in August?

MS. KERNS: Correct.

CHAIRMAN McKIERNAN: Any other questions? Bob Beal.

EXECUTIVE DIRECTOR BEAL: Mr. Chairman, talking with Pat Campfield earlier today, I think they're leaning toward Newport, Rhode Island, for the peer review; so it is pretty accessible for the Woods Hole folks. It easy to get in and out of Providence.

## Proceedings of the American Lobster Management Board Meeting May 2015

### POPULATE JONAH CRAB ADVISORY PANEL

CHAIRMAN MCKIERNAN: The next item on the agenda.

MS. KERNS: We have some advisory panel members to consider and approve for the Jonah Crab AP. We apologize; the nomination forms did not translate and make it on to the meeting materials; but they were on your meeting materials for the February meeting, so you did see them before. This agenda item was put off until this board meeting from February.

We have AP members from New Hampshire, Massachusetts, Rhode Island, New York and Maryland to approve. If states have additional advisory panel members that would like us to consider, please e-mail those nomination forms to Tina or Megan. We can have the board review those at the August meeting, but those folks could still participate on the advisory panel meeting that we would have for the draft FMP.

CHAIRMAN MCKIERNAN: Terry Stockwell; do you have a question?

MR. STOCKWELL: Mr. Chairman, with my Maine DMR hat on, we do have a nominee from Maine. However, his application is in a mail snafu because the DMR offices have switched from Hallowell to Augusta. I had hoped to have brought it with me today, but we'll get in the mail to you.

MR. THOMAS O'CONNELL: Just one modification, Mr. John Gurley, since he applied has sold his business and is no longer interested so just remove his name from the motion.

MR. ADLER: So with that adjustment; is that what you're looking for is a motion to approve the ones above except for Mr. Gurley. **Is that what you want is a motion to approve?**

CHAIRMAN MCKIERNAN: Yes.

**MR. ADLER: I'll make it.**

CHAIRMAN MCKIERNAN: All right, is there a second; second by David Borden. **The motion is to approve Todd Richards Ellis from New Hampshire, Captain Jan Horecky from Massachusetts, William Purtell from Massachusetts, David Spencer from Rhode Island, Brian Thibeault from Rhode Island, Chris Scola from New York, and Earl Gwin from Maryland to the Jonah Crab Advisory Panel.** Motion made by Mr. Adler and seconded by Mr. Borden. **Any objections? Hearing none; we will consider it unanimous.**

### OTHER BUSINESS

CHAIRMAN MCKIERNAN: Other business. Mark Gibson.

MR. GIBSON: I just wanted to return to the stock assessment. We're going to get the report and the peer review. Even if there is not likely to be much good news about Southern New England, what is the expectation of the board's likely action in response to that? Are we going to be thinking about taking some kind of response to that at the summer meeting or take longer to digest it? How do you see that playing out?

CHAIRMAN MCKIERNAN: That's the \$64,000 question. It will be presented to us in August. I assume we'll probably have to come up with new possible thresholds. Bob, what is the thinking of the stock assessment folks? What can we expect?

MR. GLENN: To use the politically correct answer to that, Dan, is that prior to the peer review I think the committee would be happier if I didn't offer those suggestions.

CHAIRMAN MCKIERNAN: We'll see, Mark. Any other business? David.

MR. BORDEN: Mr. Chairman, I'll try to keep this brief and I note that we're ahead of schedule. I just wanted to talk a little bit about the last New England Council Meeting and the Closed Area 2 discussions. I think everyone will recall

## Proceedings of the American Lobster Management Board Meeting May 2015

we raised I think two meetings ago. The commission sent a letter to the council basically requesting that the council keep Closed Area 2 closed to mobile bottom-tending gear during the period of time when the lobsters are in the area.

I think as everyone will recall, a number of industry representatives had come forward and basically said that there were large concentrations of egg-bearing females in the area. In fact, the board asked the technical committee to review this issue. Bob Glenn as the chairman of the PDT responded; and the response basically was that up to 80 percent of the lobsters in the area seasonally are egg-bearing females.

Actually and more importantly from my perspective – and Bob can speak to this himself better than I can; but the scientific understanding in the Gulf of Maine between the inshore fishery population and the Georges Bank population is really evolving in this stock assessment. I think once we actually get the stock assessment, what we're going to see is that there is a definite connection between these two parts.

The significance of this is the council has this habitat amendment, I think as everyone knows, and one of the options in the habitat amendment is to open Closed Area 2. If that happens, conceivably we could have a large number of mobile gear boats go in there right at the height of the season when egg-bearing lobsters are in the area.

This is not a trivial matter for the commission. The commission has the responsibility under the Atlantic Coastal Act, working with NOAA, to manage the lobster resource; and the council has their own responsibilities which are to manage habitat with NOAA; but they're different responsibilities. The reason that I'm raising this is at the last meeting Dr. Pierce made a motion, which got tabled until June –

CHAIRMAN McKIERNAN: Do you mean at the last council meeting or –

MR. BORDEN: At the last council meeting made a motion to prohibit mobile gear in any portion of Closed Area 2 north of 41 degrees 30 minutes during the period of June 15<sup>th</sup> through October 31<sup>st</sup>. As I said, that motion got tabled until the June meeting. What we have here is that there are a lot of moving parts that are going on simultaneously; and I'm a little bit concerned that the commission is going to lose its opportunity to comment on this issue.

As I said, we submitted a letter to the council. Unfortunately, the letter didn't include specific dates on when we thought that the mobile gear should stay out of that. If as Bob Glenn stated in his memo to the board up to 35 percent of the entire egg-bearing female population from the Gulf of Maine and Georges Bank is in Closed Area 2 in the summer months, I think the last thing anyone around this table wants to see is a group of mobile gear boats go in there and work during that time period.

The inshore fisheries that are dependent upon this egg production basically employ 6,000 fishermen and are worth \$400 million. This is a big issue I think for the board. What I'd like to suggest here is that we ask the Board Chair to work with the executive director and the commission chairman and send another letter to the council specifically requesting that the council keep any portion of Closed Area 2 north of 41 degrees 30 minutes closed during the time period of June 15<sup>th</sup> to October 31<sup>st</sup>. I would be happy to make that as a motion. That is one suggestion. I've got a second suggestion, but I think it will be good to take these up separately.

CHAIRMAN McKIERNAN: At this point we're just discussing; you haven't made a formal motion yet? You're just looking for feedback?

MR. BORDEN: Yes; I'd like to hear a reaction from the board members. If people are supportive, I'll make a motion.

## Proceedings of the American Lobster Management Board Meeting May 2015

CHAIRMAN McKIERNAN: Okay, any reaction from the board? Bill Adler.

MR. ADLER: First of all, I thought the lobstermen and the dragger men came to an agreement up in this area of Closed Area 2 with regard to the egger situation and the gear conflicts; and they came up with an approval of when they would be there and when they're weren't. I remember while NOAA was able to control the dragger solution; they couldn't control the lobster; so we here put something forward make the lobster guys conform to the agreement.

Okay; done deal. Now, what I'm listening to is that whether the feds haven't opened it up under those conditions or not; then I remember Dave saying that the scallopers weren't included in the agreement. I think what we're looking for is if they open Closed Area 2 where north of whatever; that the scallopers and the draggers must comply with those dates where they stay out. Dave can elaborate, but I believe this is what the idea is. If I'm not correct, Dave, let me know.

MR. BORDEN: In terms of the otter trawl's ground fishermen is a better way to characterize it; the ground fishermen and the lobster industry negotiated an agreement and put that in place. The agreement essentially prohibits mobile gear in the area from June 15<sup>th</sup> until October 31<sup>st</sup>. That agreement in fact was updated about a month ago.

This morning I sent a copy of the updated agreement to Toni. She has it and she can distribute it to everybody. Bill is correct; this whole issue basically comes down to the scallop industry fishing in the area. We've had ongoing discussions between the Atlantic Offshore Lobster Association and the scallop industry.

We've got a framework for an agreement, but the scallop industry essentially – and I'm not here speaking on their behalf; but they refused to sign the agreement because they need

guaranteed access into the area in the spring when the eels are going up. In order to do that, they have to get the council to approved closed-area access days earlier.

As Terry can speak to better than I can, the council has already directed the Scallop Committee to do that. I mean the pieces are all kind of moving in the right direction, but I'm just a little concerned and I think we have to be very specific on what we want going – as the Lobster Board going into this council meeting. That's the reason I'm suggesting we send another letter.

MR. STOCKWELL: Thank you, David, for bringing this to the board. To recap a very long day and a half meeting a couple of weeks ago, all action on Georges Bank was suspended and deferred until the June meeting. We didn't get there. I mean around this table all the state directors have been supportive of expanding the otter trawl agreement with the scallopers.

In fact, Dr. Pierce made a motion to in fact to remand that the scallopers develop an agreement with the lobster fishery or the council is going to do it for them. The one kind of yellow blinking light I have is that the public comment period for the Habitat Omnibus is beyond us. We've had over 200 public hearings, 170,000 public comments. We can vote to send a letter from the board, but I think it is going to resonate with all the commissioners sitting around the table that serve two functions. I'm just not sure what attention the letter is going to get.

MS. KERNS: David, the updated agreement, does it have the same dates and lat/long information that Addendum XX had. It is just new signatures?

MR. BORDEN: It is all the same. The only thing that really changed; there was some confusing language about implementation protocols and so forth; and that all got taken out of it.

## Proceedings of the American Lobster Management Board Meeting May 2015

MS. KERNS: As David referenced, we do have Addendum XX which looks at the commission's side of this agreement, saying when we would pull lobster traps from the specific area within Closed Area 2. At the council meeting, commission staff that are at the meeting, we can bring up the regulations that we have listed as current lobster rules and regulations as part of the discussion through that motion and anywhere else that it would need to be brought up. I don't know if that is helpful enough. I'm trying to find a balance here between the public comment period being closed and rules and regulations that we already have in place that changes would impact our plan.

MR. BORDEN: Just to follow up both on Terry's point and Toni's point, the public comment period is closed, but I mean sending the council a letter on this issue isn't going to hurt. In other words, it is at least we take the position of what we want, because we were a little vague of what we want.

We basically said close the area during the time period when the lobsters are there. I would note that when Bob Glenn and PDT gave their recommendation, their recommendation was don't open the area. I think it would behoove us all to have a clear record of what we would prefer. Terry is right, the public comment period is over. The council will read the letter and they can act accordingly.

CHAIRMAN MCKIERNAN: Ritchie White, do you have a comment?

MR. G. RITCHIE WHITE: I support Dave's motion. I wonder if the process is that the Service has to approve the council's recommendation; should this letter not go to the Service?

MR. BORDEN: To Ritchie's point, I would suggest if we're going to send another letter, it would go both to John Bullard and to Terry.

MR. RUCCIO: I think you can certainly do as you will with the letter. I don't want to dissuade

you from doing that. You can certainly cc John, but at this point the council has yet to take final action; so the Service hasn't formally entered into that period where we're in review of their recommendations.

Although it might have merit in terms of letting us know your mind at this point, for the eventuality of when we review it, it is still very much in the council's forum. Terry, correct me if I'm misspeaking or mischaracterizing this, but I think addressing it probably to the council at this point is a better bet.

MR. STOCKWELL: I certainly would support moving this letter along. To Dave's point, it isn't going to hurt; but John Bullard is a member of the council so he is going to get receipt of this letter wherever it is addressed. One suggestion I would have is that the letter moves ahead in time for the June 1<sup>st</sup> Habitat Committee meeting, which was just scheduled today; so the Habitat Committee will have it in their hands by then, and that might help push the development of an agreement between the scallopers and lobstermen before the council meets at the latter part of June.

CHAIRMAN MCKIERNAN: Okay, so I'm hearing some support around the table. Can we take 60 seconds and put the motion up on the board, David, that you can read.

**MR. BORDEN: Yes; I'll read it to say move to request the commission to send a letter to the council and reiterate our concerns in regard to the lobster resource and request the council to keep Closed Area 2 closed from June 15<sup>th</sup> to October 31<sup>st</sup> north of 41 degrees 30 minutes.**

CHAIRMAN MCKIERNAN: All right, give us a few seconds and we'll try to get that up on the board. Are there any comments or questions while we put this together? The first version I heard of the motion didn't sound like the second version so we should take a look at it up on the board. Bill Adler, did you have a question or a comment?

## Proceedings of the American Lobster Management Board Meeting May 2015

MR. ADLER: Just a comment. Dave may have put it in but closed to all mobile-tending gear.

CHAIRMAN MCKIERNAN: Well, let's take a look at what he has got and maybe we can refine it. All right, we have the motion on the board. David, do you want to read it and make sure it is yours?

MR. BORDEN: Yes; move to request the Policy Board to send a letter to the New England Fishery Management Council reiterating our concerns for lobster and request a prohibition on all mobile gear in Closed Area 2 from June 15th to October 31st north of 41 degrees 30 minutes.

CHAIRMAN MCKIERNAN: David, should that be phrased "bottom-tending mobile gear"?

MR. BORDEN: Yes, please.

CHAIRMAN MCKIERNAN: Okay, we have the motion. Do we have a second on the motion; Bill Adler has seconded the motion. Discussion? David Simpson.

MR. DAVID SIMPSON: I understand this and we do have a place here because the commission has got the lead on lobster; there is, what, \$50 million worth of scallops in that area; is that the right number? People should be aware of that. Does it require such an extreme measure or recommendation from this group or do we let those fisheries try to work out some kind of agreement so that the broader fishery gains some value here?

MR. THOMAS FOTE: Dave, I look at this more as a placeholder; that we're putting our concerns in there. Our responsibility as a commission is to protect lobster and the lobster habitat. We're just letting the council know that we have serious concerns over this and it may be worked out. Sometimes the New England Council forgets about our recommendations or understanding especially when it came to winter flounder; so that is why I think it is a good place to put a placeholder.

MR. BORDEN: Mr. Chairman, I was just going to quickly follow up on David's point because I think he made a good point. If this motion passed and the council agreed to implement it and NOAA agreed to implement it, then what would happen is the mobile gear fleet would have 7-1/2 months in that area to prosecute their fisheries. Now, there are other constraints that would come in like groundfish spawning periods and things like that, but none of us have any control over that. That is not something within the purview of the Lobster Board. Thank you.

CHAIRMAN MCKIERNAN: All right, any other comments on the motion? Do we need to caucus? No, need to caucus; **let's vote on the motion. All in favor of the motion; all opposed to the motion; abstentions, 4; null votes. The motion passes seven to zero to four to zero; seven in favor, none opposed, four abstentions, zero null votes.** All right, that's it for other business. David.

MR. BORDEN: I've got actually one more motion I would like to make; but before do it, with your indulgence, I would like to ask Mike or Terry just very quickly explain the process the council will go through in terms of they're going to meet in June.

Then my understanding is the staff will take maybe six or eight weeks to finalize the amendment. Then that amendment will go to the National Marine Fisheries Service, and that will start the internal review process. As part of that process, as I understand it – and I'll ask Mike if he could explain whether or not there is a public comment period and when that might take place.

CHAIRMAN MCKIERNAN: You're talking about public comment on the council's action?

MR. BORDEN: Final action and I think –

CHAIRMAN MCKIERNAN: Mike, can you speak to that?

## Proceedings of the American Lobster Management Board Meeting May 2015

MR. RUCCIO: Sure, happy to. This is a formal amendment from the council; so amendments under Magnuson have kind of two prongs that end up occurring. One is the agency is, as it is outlined in Magnuson, required to make a decision on the approvability of the measures. It often gets a little bit confusing because there is an approvability set of documents that goes forward in the Federal Register. Then there is rulemaking, which would be a proposed and final rule to actually implement the measures.

These kind of get kicked off at the same time. It is a long-winded way of saying there are public opportunities for comment once the agency has received and kind of accepted the council's recommendations and then put that forward; and those will be, one, on the overall approvability of the amendment in total or in part, because we can either approve, partially approve or partially disapprove any discrete component within the amendment.

Then the actual measures that would implement the amendment; so, for example, if there is a recommendation to change how Closed Area 2 is handled, that would be a specific measure that would be proposed by the agency or an example of the measure that would be proposed by the agency that could be commented on. There is both a broad and a discrete opportunity for comment on the rulemaking that the agency would conduct.

MR. BORDEN: Okay, one of my concerns here – and I'm not trying to be Nervous Nellie – is we've got a meeting this week and the council is going to meet in June, and they're going to take action. As Terry can tell you and Mike can tell you, their action is going to focus almost exclusively on the habitat requirements of the Magnuson Act and the groundfish protection objectives of the habitat amendment.

I'll just give you a scenario. They make their decision in June and then we don't meet until August; so that is basically two months. One of the alternatives that we have is similar to what we did for the fixed-gear sector. We could

begin an addendum that essentially would prohibit mobile gear fishing in this area that we just described in the prior amendment.

And then as we do with all our fishery management plans forward a recommendation to NOAA right on the same timeline that the council recommendation was going forward. I actually crafted a motion on this that the staff has, if they put it up. **It is to move to direct the staff to initiate the process of developing an addendum to the Lobster FMP to prohibit all mobile gear in Closed Area 2 north of 41 degrees 30 minutes during June 15th to October 31st should the area reopen.** If I get a second, I'll just discuss it for one minute and then we can dispense with it, hopefully.

CHAIRMAN McKIERNAN: Second from Bill Adler.

MR. BORDEN: Okay, I think the advantage of passing this motion is I do not anticipate that the ASMFC staff would do any work on this other than simply consolidate material. We have two or three things that are all going to take place in the next month. The council is going to finalize their position; and if they adhere to our request, then there is no need to do an amendment.

The second point is, as Bob Glenn stated, the stock assessment is going to be finalized and it is going to be peer reviewed. Part of that stock assessment is going to get into a very detailed review of this issue of connectivity between the inshore and the offshore stock; so you'll have the most up-to-date science that's available. The third thing that is going to take place is New Hampshire Fish and Wildlife has initiated a sampling program for this area to document the relative abundance of both eggers and v-notched lobsters in this general area. There is going to be a tremendous amount of very current scientific information that has come forward.

By passing this motion, it would be my intent to not preempt the council. The council is going to

## Proceedings of the American Lobster Management Board Meeting May 2015

make their decision based on habitat and groundfish; but if they choose to open the area and not adhere to the first request, then I think it is incumbent upon us to do an addendum similar to what we did for the pot fishery and basically eventually forward a recommendation to NMFS to close the area.

Now, that would put NMFS in the position where they have two different recommendations from two different bodies; but that is totally acceptable from my view because the council has very different responsibilities than we do. We have the responsibility for managing the lobster resource, and we should take that very seriously. I hope this motion passes. Thank you.

MR. STOCKWELL: I'm not as pessimistic as Dave is that the council isn't going to address the Closed Area 2 issues. I'm going to be voting against this because my sense is that this is way premature. Should the council at the June meeting fail to respond to the comments from the state directors, the commission and a number of the other public comments that we've received over the recent months, then this would be a very appropriate action. We've got new staff here, a stock assessment that is about to be unfolded, and I think moving ahead and directing staff to only expand their workload by a little bit is a little bit too early.

MR. WHITE: I guess I don't understand on what authority we could do this. How can we keep a directed fishery that we don't manage in federal waters out of an area? I guess I don't understand our authority to do that.

MR. BORDEN: It is a good question, Ritchie. I actually agonized over that myself. It is almost identical to the addendum we adopted for the fixed-gear fishery. The commission basically doesn't have an enforcement presence 180 miles offshore. If this were to pass, the significance of it would be that the commission would have finalized a position with a vote, adopt an addendum; and then as is part of

every addendum, we have a section in there that speaks to the federal actions that are required.

Under that section we would ask NOAA to promulgate appropriate rules in federal waters to support that; and they would do that over the duration. That is the way we have handled all of these other rules. This would be an Atlantic Coastal Act contingency that clearly lays out our responsibilities to put together appropriate management actions and clearly gives NOAA the authority to promulgate rules in federal waters. The specific language is "in support of ASMFC actions".

MR. GIBSON: Mr. Chairman, I hate to do this to my esteemed colleague, but I find myself agreeing with the chair of the council that we seem to be getting out ahead of ourselves on this. I have some serious questions about jurisdictional matters. I would like to hear from general counsel and folks like that before I embarked on – this seems to be solely an action that would be configured solely in federal waters.

I don't know that we've ever done that before with lobster. Maybe we have, but we always had, it seems to me, state waters' connections. I think we're getting way out ahead of ourselves and not respecting the process that they need to go through particularly at the next Habitat Committee meeting. I don't think I can support this at this time.

CHAIRMAN MCKIERNAN: David, given some of the comments that you've heard and some of the jurisdictional questions, would you like to withdraw the motion until the August meeting or table it and talk about it in August?

MR. BORDEN: My suggestion, Mr. Chairman, is to table it until the August meeting.

CHAIRMAN MCKIERNAN: All right, very good. Terry, did you want to speak?

**Proceedings of the American Lobster Management Board Meeting May 2015**

**MR. STOCKWELL:** No; I'd make the motion to table the motion until the August meeting.

CHAIRMAN MCKIERNAN: Okay, second on the motion. Dennis Abbott seconds the motion. Any need to discuss? All right, all in favor. **It sounds like it is unanimous, 12 votes.**

**ADJOURNMENT**

CHAIRMAN MCKIERNAN: Okay, any other business? All right, the meeting is adjourned.

(Whereupon, the meeting was adjourned at 4:55 o'clock p.m., May 4, 2015.)