

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

**Radisson Plaza-Warwick Hotel  
Philadelphia, Pennsylvania  
October 22, 2012  
Approved February 19, 2013**

**TABLE OF CONTENTS**

**Call to Order, Chairman Douglas Grout.....1**  
**Approval of Agenda.....1**  
**Approval of Proceedings of August 7, 2012.....1**  
**Public Comment .....1**  
**Review Federal Rule-Making Timeline of Additional Transferability Measures.....1**  
**Discussion of Draft Addendum XIX for Public Comment.....3**  
**Discussion of LCMA 1 V-Notch Defination.....4**  
**Technical Committee Report on Bottom-Tending Gear Impacts on Lobster .....9**  
**Fishery Management Plan Review .....17**  
**Appointment of Advisory Panel Membership.....19**  
**Other Business .....22**  
**Adjournment.....24**

## INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move that the board adopt Addendum XIX for public comment** (Page 4). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 4).
3. **Move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster fishery and sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing females and prevent gear conflicts. Limited changes to the agreement by the industry could be made through board action** (Page 12). Motion by Bill Adler; second by Bill McElroy. Motion carried (Page 17).
4. **Move to approve the FMP review, including the requests of North Carolina, Virginia, Maryland and Delaware for de minimis status** (Page 18). Motion by Bill Adler; second by Steve Train. Motion carried (Page 18).
5. **Move to appoint James Willwerth, New Hampshire, to the Lobster Advisory Panel** (Page 19). Motion by Dennis Abbott; second by Bill Adler. Motion carried (Page 19).
6. **Move that permit holders who fish both LMA 4 and LMA 6 must remove pots from the closed LMA, but they may fish in the open LMA during that time period** (Page 19). Motion by Jim Gilmore; second by Bill McElroy. Motion defeated (Page 19).
7. **Move to have the technical committee review the impact of the most restrictive measures in Addendum XVII for dual-permitted New York fishermen by the next meeting** (Page 19). Motion by Adam Nowalsky; second by Pat Augustine. Motion carried (Page 22).
8. **Move to have the Lobster Board recommend to the Coordinating Council that the ASMFC Biological Sampling Proposal be elevated to funded status** (Page 23). Motion by Mark Gibson; second by Bill Adler. Motion carried (Page 24).
9. **Move to adjourn by consent** (Page 24).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)

Steve Train, ME (GA)

Doug Grout, NH (AA)

G. Ritchie White, NH (GA)

**Dennis Abbott, NH, proxy for Rep. Watters (LA)**

D. McKiernan, MA, proxy for P. Diodati (AA)

William Adler, MA (GA)

Rep. Sarah Peake, MA (LA)

Mark Gibson, RI, proxy for R. Ballou (AA)

Bill McElroy, RI (GA)

David Simpson, CT (AA)

Lance Stewart, CT (GA)

Rep. Craig Miner, CT (LA)

James Gilmore, NY (AA)

Pat Augustine, NY (GA)

Brian Culhane, NY, proxy for Sen. Johnson (LA)

Peter Himchak, NJ, proxy for D. Chanda (AA)

Tom Fote, NJ (GA)

Adam Nowalsky, NJ, proxy for Asm. Albano (LA)

Roy Miller, DE (GA)

John Clark, DE, proxy for D. Saveikis (AA)

Bernie Pankowski, DE, proxy for Sen. Venables (LA)

Tom O'Connell, MD (AA)

**Bill Goldsborough, MD (GA)**

Russell Dize, MD, proxy for Sen. Colburn (LA)

Jack Travelstead, VA (AA)

Bill Cole, NC (GA)

Bob Ross, NMFS

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

### Ex-Officio Members

**Joe Fessenden, Law Enforcement Representative**

**Josh Carloni, Technical Committee Chair**

### Staff

Robert Beal

Toni Kerns

Kate Taylor

### Guests

Peter Burns, NMFS

Bonnie Spinnazola, AOLA

David Spencer, AOLA

Nicola Meserve, MA DMF

Neil Mendelsohn, MA FWS

Janice Plante, Commercial Fisheries News

Kelly Denit, NMFS

Galen Tromble, NMFS

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Radisson Plaza-Warwick Hotel, Philadelphia, Pennsylvania, October 22, 2012, and was called to order at 9:25 o'clock a.m. by Chairman Douglas Grout.

### **CALL TO ORDER**

CHAIRMAN DOUGLAS E. GROUT: Okay, the Lobster Board will convene. My name is Doug Grout; I'm the chairman of the Lobster Board.

### **APPROVAL OF AGENDA**

CHAIRMAN DOUGLAS E. GROUT: The first item on the agenda is approval of the agenda. Are there any additional items to the agenda? Mark Gibson.

MR. MARK GIBSON: Mr. Chairman, I would like to suggest that at the end of the meeting under other business, time permitting, that the board have a discussion about the commission's proposal to ACCSP for lobster port sampling.

CHAIRMAN GROUT: Okay, we'll add that under other business. Are there any other items that members of the board would like to bring up under other business; any other changes to the agenda? Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, I wanted to perhaps discuss something about Closed Area 2 and the offshore. Is that under other business or can it be or whatever you need to do?

CHAIRMAN GROUT: It could either be under other business or we're also going to have an item where Josh Carloni, our technical committee chair, is going to provide a report from the technical committee on bottom-tending gear impacts on lobsters. If that dovetails with a request that we made of him because of the item under Closed Area 2, we could bring it up at that point if you have something.

MR. ADLER: Thank you; maybe that would be appropriate.

CHAIRMAN GROUT: Okay, any other items that anybody would like to bring up? Okay, any objection to approving the agenda as amended here with just one extra item under other business? Okay, we also have proceedings from our August 2012 meeting.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN DOUGLAS E. GROUT: Are there any changes to the proceedings? Is there any objection to approving that? Without objection, the proceedings of the August 2012 meeting are approved.

### **PUBLIC COMMENT**

CHAIRMAN DOUGLAS E. GROUT: Public comment; this is our opportunity for any items that are not on the agenda for someone to make a public comment. Is there anybody out there that would like to make public comment for something that is not on the agenda? Okay, seeing none, let's on. Toni and Bob Ross will have a discussion on federal rule-making timeline and development of progress of additional transferability measures.

### **REVIEW FEDERAL RULE-MAKING TIMELINE OF ADDITIONAL TRANSFERABILITY MEASURES**

MS. TONI KERNS: After the last board meeting where we discussed Draft Addendum XVIII and then finalized Addendum XVIII with the trap reductions, the board asked a subcommittee of board members to go through the measures that were not included in XVIII. Those were the transferability measures that included things such as trap banking, different trap caps, aggregate caps, single caps, et cetera.

That subcommittee got together and started to do some clarification work, and we are moving forward with that information. I had asked Bob Ross to put together information for the board on the timing of upcoming federal rulemaking so that the board is well informed on that information. The subcommittee will come back to the board in February with a draft addendum that will have all of the transferability measures for Area 2 and 3 clarified for board consideration for public comments.

MR. BOB ROSS: Briefly I'd like to give you a real snapshot of what we have accomplished so far this year. We were recommended by the board to implement a limited access program in Lobster Management Area 1 based on working through the Area 1 LCMT and the commission process that culminated in Addendum XV, I believe.

We completed our final rulemaking in June on that action and have sent out notification to about 1,700 Area 1 permit holders indicating their likelihood to qualify based on the information we had at hand. That program is moving along very well. We've got

well over 90 percent of the applications back in hand, and at this time, in fact, have sent out notices to about 1,530 or 40 Area 1 permit holders, information that they did, in fact, qualify for continued access into the trap fishery in Area 1.

The application timeframe ends November 1<sup>st</sup>. We have reached out to all the impacted New England states and have tried to be in fairly routine conversation with them on this program. We think internally that it has worked very well to date.

Moving on to the topic of today's agenda item, this involves an action that is a multi-faceted action that has seemingly been going since the creation of the lobster management board. Basically what this action would do is based on recommendations from the states we would limit access in Area 2 and the Outer Cape Area based on historic participation criteria that were provided to us by the commission through various addenda.

The first step would be for NMFS to qualify and allocate individual trap allocations to federal permit holders fishing in Area 2 and the Outer Cape. Then as a followup to that, once those two areas have been qualified and allocated, we would then move on with the second phase of the process which would be to turn on a transferable trap program for three areas, for Area 2, the Outer Cape and Area 3.

Where we're at now on that process for a timeline, we are aggressively moving forward with a proposed rule; again bearing in mind that we were delayed in this action in part due to the determination of the recruitment failure in Southern New England. Back in May 2010, we had at that point issued an extensive environmental analysis of our action.

It was a draft environmental impact statement. That coincidentally came out the same month that the technical committee identified their recruitment failure for Southern New England. During the course of our public hearings as well as extensive discussion at the board level, we were advised – again reminding the board that at that time the recommendation was a five-year closure of all lobster fishing in Southern New England.

Based on the initial technical committee recommendations and recommendations from the board, we held off on moving forward with the Area 2, Area 3, Outer Cape action pending the outcome of the board's actions to address the Southern New England resource recruitment failure. We now again have been active in the process of developing

measures to address that Southern New England determination via the board's approval of Addendum XVII and then the follow-up recent August approval of Addendum XVIII.

Where we're at now is we feel that we have confidence in the direction that the board is heading towards addressing the Southern New England recruitment failure. Our intention now is to go forward with a proposed rule to be published by the end of this calendar year, which will spell out in detail our approach towards qualifying and allocating individuals in Area 2 and the Outer Cape. We have worked with the impacted states.

We feel that we have set up a program that will allow us to expedite this review so that we align our federal permit holders with what the key Area 2 and Outer Cape states have done, primarily using the same approach and the same data that the states used to qualify their applicants. We know that there have been some follow-up transfers.

We have again worked with the states to try to develop a program that will allow the states to make recommendations to NMFS on why those transfers went forward and the benefits of NMFS doing everything in its power to align the current trap allocations that we find from these dual state/federal permit holders.

Most of that would hinge off a reliance on the state fisheries agencies to justify their actions and provide recommendations to us for concurrent alignment of the permit holders and their trap allocations. We feel this would avoid a lot of appeals and disconnects going forward. We also intend to have a mechanism, if there are disconnects between the allocations, to work with the individual states and the impacted permit holders to resolve those disconnects.

Moving forward we're looking at a proposed rule by the end of this year. We hope to have a fairly long public comment period on this rule because it is a very complicated action. Then following that public comment and assuming general support for the direction we've headed in – because again we have tried to mirror what the commission and the states have recommended to us – we hope to have a final rule out by the beginning of the next federal fishing year, which is May 1.

At that point the rule would be final. Thirty days after that rule is final, we could move forward with the first step, which is to qualify and allocate a limited access program in Area 2 and the Outer Cape.

We assume that program will take a significant part of the 2013 fishing year. One of the concerns we have is even though we could potentially qualify a large component of the permit holders in these two area, we would not be receptive to turning on the transferability aspect of our plan until we feel the majority of the impacted permit holders in these areas have in fact been qualified by both the states and the federal government.

The reason in part for that is as soon as the transferability turns in based on mainly Massachusetts' experience in the Outer Cape area, there is an immediate rush to transfer a lot of traps. Our concern is if we turn it on as each individual permit holder is qualified, then the early qualifiers will have more access to the available transferable traps than those permit holders who various reasons we are not able to immediately qualify at the beginning of our program.

One of the issues we will looking for in our public comment process is at what level of qualification, 90 percent, 85, 95 percent of the entire pool of dual state/federal permit holders, will we need to have qualified and allocated through a limited access program before we would turn on the transferability aspect.

Should it be all 100 percent of all permit holders would need to be capped and limited and then we begin a transferable trap program or is there some lower number? Again, we will articulate this in greater detail in our proposed rule. Our assumption again is that there will be issues; that we do feel that the majority of those issues will be addressed through close cooperation with the impacted states, but we still feel it will take a good part of the 2013 fishing year.

Our intent at this time is to begin the transferable trap program for those areas with the beginning of our 2014 fishing year. That is also bearing in mind the same time that Addendum XVIII turns on the trap reduction programs for Area 2 and Area 3. Again, we're very much aware of the timing and the pending implementation of measures specified in Addendum XVIII to follow up with additional trap reductions for these areas.

By turning on transferability, the impacts of trap reductions could be mitigated through the ability of the permit holders to reach out and build up their business again or in fact for others to sell out and leave the fishery. That is a brief summary of our timeline to move forward with, first, the Area 2 and

Outer Cape Limited Access Program and then the initiation of a dual transferable trap program for those three areas. Thank you.

CHAIRMAN GROUT: Are there any questions for Bob about that right now? Okay, seeing none, thanks again. Next, Toni, we have an addendum we need to consider for action.

## **DISCUSSION OF DRAFT ADDENDUM XIX FOR PUBLIC COMMENT**

MS. KERNS: One of the issues that the subcommittee of commissioners looked at was whether or not any of the measures from Addendum XVIII would need to have immediate implementation in order to align with the federal rule-making process. One issue that committee found that needed to be addressed was the Area 3 trap transfer tax for full and partial business sales.

As a reminder, this issue was included originally in Addendum XVIII and did go out, as I'm going to go over it, in Addendum XVIII for public comment prior. The board did approve and finalize Addendum XVIII and it only contained the consolidation program for Area 2 and 3, and it was the trap reductions that were addressed in that addendum.

It proposed a uniform trap tax as a part of it for Area 3 but did not specifically address it in Addendum XVIII. NOAA Fisheries, as Bob Ross just went over, will begin the public comment process for the transfer programs for Area 3 and Area 2 this winter. If the board is going to consider changes to the Area 3 transfer tax, it would need to provide public comment to NOAA Fisheries during that comment period.

It is possible that the comment period would be closed before the next board meeting in February, so the subcommittee of commissioners thought it would be best if we move forward with an addendum to allow the board to consider and finalize the Area 3 transfer tax before that public comment period closed so that we could have alignment on what the Area 3 transfer tax was with the National Marine Fisheries Service.

This addendum solely addresses that Area 3 transfer tax. Currently there are two taxes for Area 3 for conservation. One is for partial business sales and that is a 20 percent tax. The other is for full business sales and that is a 10 percent tax. Option 2 proposes that the conservation tax be consolidated and it is 10 percent for both full and partial business sales.

This is to help with ease of administration as well as that Area 3 has gone through several iterations of trap reductions and feels that with those reductions and having a 10 percent tax, it will address consolidation of the fishery. If the board does approve any changes to the FMP, it would need to decide whether or not it would make recommendations to NOAA Fisheries.

The subcommittee of board members did recommend that any changes be recommended to NOAA Fisheries. If the board does move forward with this document, the plan development team proposed the following timeframe. The board would consider the approval of the document here at this meeting. The public comment period would be open for 35 days.

Because we have already done hearings on this issue, the plan development team did not recommend to do additional hearings but just have it open for public comment. The board would consider final approval of the draft addendum through an e-mail vote some time in December; and if the board approved any changes, that we send a letter to NOAA Fisheries commenting during that comment period. This timeframe and the e-mail vote is strictly to address making sure we get a comment letter to NOAA Fisheries during their comment period for that issue. Does anybody have any questions?

MR. ADLER: So basically, as I read this over, this addendum is just to make things simpler; a 10 percent trap tax instead of the 20 and the 10. I understood your scheduling and I don't see the difficulty in sending this out as you proposed. If it does go out, how would the federal government change their thing? Would that be problematic? Let's say it goes out, we approve it December; does this throw any problems at the federal government to change the 20 to the 10? Maybe Mr. Ross could answer that.

MR. ROSS: Yes, this would actually help us by creating the administrative record that the commission does in fact want to go in this direction. What this would also do is standardize the transfer tax across all three areas. Area 3, Area 2 and the Outer Cape would then be consistent, which would benefit our regulatory process. We would support such an action.

CHAIRMAN GROUT: Are there any other questions for Toni? Do we have anybody who would like to put a motion on the table? Bill McElroy.

MR. WILLIAM A. McELROY: **Mr. Chairman, I would like to move that the board adopt Addendum XIX for public comment.**

CHAIRMAN GROUT: Seconded by Bill Adler. Is there any discussion on the motion? Yes.

MR. ADAM NOWALSKY: Mr. Chairman, I would just recommend that staff make a change in 3.1, Paragraph A, where it talks about downsizing the fleet. I believe "fishery" is the term that has been used throughout the rest of the document and what we've focused on here. If there is a particular reason staff chose to use the term "fleet" in this instance, I'd be happy to hear. Otherwise, I'd suggest we use "fishery".

CHAIRMAN GROUT: Do you have that, Toni?

MS. KERNS: Yes, I do.

CHAIRMAN GROUT: Okay, any other discussion on this motion? Seeing none, do you need time to caucus? I'm not seeing anybody that is indicating they need time to caucus, so we will move forward with a vote. All in favor of this motion raise your hand, 11 in favor; all those opposed, none; abstentions; null votes. **The motion carries unanimously.**

#### **DISCUSSION OF LCMA 1 V-NOTCH DEFINITION**

CHAIRMAN GROUT: Next on the agenda is a discussion of Conservation Management Area 1 V-notch Definition. I believe the technical committee is going to have a report. We asked them to evaluate a potential change in the V-notch definition and to give us a report on what the effect could be. This is in Area 1, just for you folks.

MR. JOSH CARLONI: This is the report the technical committee put together. It is a review of the LCMA 1 v-notch measures; the proposal by Massachusetts. The technical committee used sea-sampling data collected from both Maine and Massachusetts to assess the impacts of the one-eighth inch proposal. Both data sets had limitations.

The Maine data set, though it was done, had good spatial coverage that was done in both 511 and 512 statistical areas. It was limited in that it was done over a two-month time period. Massachusetts had good temporal coverage in that they sampled over a three-year time period, although they were limited in that the data all came from the southeast corner of Stat Area 514, which is on the LMA 1 and OCC Border.



The technical committee could not agree on the best way to analyze this data, so we did two separate analyses. The first one, and maybe the easiest to understand, is a three-step process. Basically the technical committee calculated the percent of legal-size females that would be currently protected with a zero tolerance.

Then we calculated the percent of legal-size females that would be protected under the eighth of an inch definition. The difference between the two, you just subtract the one-eighth inch from the zero tolerance to get your final number. Basically if 50 percent of legal-size females were protected by a v-notch under zero tolerance and 40 percent were protected under the eighth of an inch, your difference would be there would be a 10 percent conservation loss, so 10 percent of those animals would then be available for harvest.

This is just a table showing that analysis. If you look over to the percent difference column, you will see that Maine is the first row, the 2008, and they found that there would be a 12.7 percent difference; whereas, in Massachusetts, their three years of data, 2009-2011 – there is a typo in there. That should say 2010 and then 2011 – it is about 3 percent difference; so 3 percent fewer legal-size females would be protected, and in Maine they estimated 12.7 fewer legal-size females.

The second analysis that we did was basically looking at the v-notch population onto itself, meaning that the percentages were independent of the number of legal-size females. This was done by determining the total number of v-notched lobsters observed during sea sampling and then calculating the percent of that total that were marked with a notch of less than an eighth of an inch.

An example would be if you went out and found that there was a thousand v-notched lobsters under zero tolerance, what percent of that thousand would be protected with an eighth of an inch. If it was 200, then 20 percent few females would be protected with the eighth of an inch. What Maine found is that of their v-notch population, 33 percent would have a notch less than an eighth of an inch and then be available for harvest.; whereas, in Massachusetts that number ranged over the three-year time period from 13 to 16 percent.

The technical committee could not come to a consensus to provide a final recommendation to the board. Some members supported the proposal while others did not. Some technical committee members

strongly feel that the available data does not accurately characterize the effects that this proposal could have on 514 and that the Maine from Maine was limited in the amount of time the data was collected over.

Massachusetts' members feel that since that data was collected on the border of LMA 1 and LMA OCC, it may not be representative of things happening to the west and north of that region. Finally, Maine and New Hampshire are currently collecting additional v-notch data with regards to the eighth of an inch policy, and that would be available for review in 2013.

CHAIRMAN GROUT: Any questions for Josh? Dan.

MR. DAN McKIERNAN: Thanks, Josh, good report. My first question has to do with Table 1 where you show Maine sea-sampling data back in 2008 – and I understand those were five trips taken during the winter, in a narrow time period, as you said – the number 38.1 percent is the proportion protected under a zero tolerance definition. Since Maine is collecting sea-sampling data year round and many years, is that number typical of Maine's incidence of v-notched lobsters, 38 percent?

MR. CARLONI: Yes, it is. In New Hampshire and Maine it is pretty similar that it is roughly 40 percent of legal-size females are protected by a v-notch.

MR. McKIERNAN: I think what is going on here is there may be a subjectivity that goes into the denominator. Maybe we're a little bit low down our way and maybe you guys are a little bit high up your way in terms of the perfect flipper interpretation of zero tolerance. I'm not sure all of those lobsters are actually v-notch but would fall into this very conservative interpretation of any damage to the flipper. I guess that is my question and my comment for now.

MR. CARLONI: That may well be. It seems as though the technical committee just doesn't know what is going on here. That was brought up as a possibility, and it was a thought that in Maine you get just a little nick in a flipper and it could be considered a v-notch. In New Hampshire there is just the smallest nick that some fishermen will consider a v-notch. In Massachusetts maybe you guys aren't seeing that and that may just get thrown over as nothing. That is a possibility. There are also other possibilities that some members of the technical

committee just feel that additional data would be very beneficial in this case.

MR. G. RITCHIE WHITE: I have a question but it is probably not for Josh about the statement of the problem, so is that something you would want to hear later or do you want me to ask the question?

CHAIRMAN GROUT: Let's see if we go beyond what Josh's report is before we get into the statement of the problem. Does anybody else have questions for Josh on the report? Seeing none, then we have a place for a statement of the problem.

MR. WHITE: I'm still not clear on why this is a problem, and I guess I'd like to hear from Massachusetts why it is a law enforcement issue when zero tolerance, to my understanding, has been successfully enforced in Maine and New Hampshire for years without any problem. To my way thinking, an eighth inch is going to be more difficult to enforce than zero tolerance. Now you're measuring is it an eighth, is it close to an eighth where zero tolerance, if there is any mark on that flipper it goes back. It seems to me like this will create more enforcement problems and not less.

MR. McKIERNAN: I'm not a professional law enforcement officer; but if a fisherman sees a nick but doesn't think that nick was related to v-notching or mutilation and brings it in and the officer either busts him or does not bust him for the violation, that is a very subjective rule. I can't think of any other rule that this commission has on its books that is so subjective as a so-called zero tolerance.

Because it no longer has shape, it no longer has size and it is sort of like pornography, I know it when I see it, but let's be really transparent about this. I understand that Maine's Lobster Advisory Committee and Maine's law enforcement back in the spring discussed this and it was captured in the Commercial Fisheries News that we're talking about some serious penalties for possession of v-notched lobsters.

When some of these rules are vague or subjective, I think there are a lot of folks in the law enforcement community or even in the courts that aren't real comfortable assessing serious penalties to some of these marginal cases. But also let me be clear we're in favor of v-notching; we embrace v-notching.

You can see in the data that the proportion of our female population that is v-notched has gone up dramatically. We have also seen a recovery in Area

514 with increases seen in our ventless trap work and in our landings over the last few years, and a lot of that coincided with stronger year classes that came about after v-notching was mandated. We support this program, but the problem is we have different standards among the different LMAs. We just think it would be cleaner and if it wasn't a significant conservation loss in this one portion of the Gulf of Maine, then we think that it should be entertained.

MR. WHITE: It sounds to me like it is an industry buy into this program that is needed because you stated that the problem is a fisherman bringing in a lobster that has a nicked flipper that he doesn't think is a v-notch. If industry buys in and they see the nick, it goes over the side as in New Hampshire and Maine. It seems like there is no issue in court, there is no issue with the law enforcement person if the industry has bought into zero tolerance and is not bringing those lobsters back to interact with law enforcement.

CHAIRMAN GROUT: Is this in direct response to that? Okay, because I do have Terry Stockwell.

MR. McKIERNAN: I appreciate that point, Ritchie, but the problem is in commerce and our dealers we don't have the zero tolerance definition. I believe your state does and I believe Maine does, but we don't. It is more difficult. Because you have got these various standards, you can't go into a fish house and enforce that as a violation, so that is where is kind of falls apart.

MR. TERRY STOCKWELL: Following up on Dan, I can't think of any other rule in the state of Maine that has more support of the industry. Following the Lobster Advisory Council Meeting that Dan reported on, they voted unanimously to support zero tolerance. This zero tolerance was again reiterated through Commissioner Keliher and Colonel Fessenden to all the marine patrol officers and in correspondence to our industry.

Maine remains adamantly opposed to changing the definition of the zero tolerance v-notch definition. The technical committee's lack of consensus, the upcoming potential delay in the lobster stock assessment, the unknown impact on the lobster resource which in the state in the Maine is our number one coastal economic driver, this is not the time for the state of Maine to even consider any changes.

MR. ADLER: The fishermen do support the v-notch program. They did and it is proven because they

have actually done it when it wasn't at first mandatory. The proof was that they did support this and have done it. The statistics bear that out that they did jump on board this program.

The problem is interpretation when it is so vague that the wording is now it is a v-shaped notch of any size or a mutilation – mutilation; what is mutilation – mutilation of that flipper that could have hidden a v-notch. Okay, so we asked the judge what is mutilation, was this flipper mutilated? It's round; was it a mutilation, was it a V?

We have difference law enforcement officers interpreting it at the beach or at the landing in different ways. One guy says that it was a V; the fisherman says, no, it wasn't. We had one case where the law enforcement said that's a V, and fisherman said, "Well, I'm sorry I have to say this, but that is a male, if you look underneath."

The problem we also have besides what Dan indicated about it is a landing law and not a possession law is we happen to be at the junction of Area 1, Area 2, Area 3, Outer Cape. It would be great if we could have three and a half of those four areas with the same definition that could be better enforced.

Other states perhaps have one definition; fine, that is wonderful. We happen to have all those others, and we just was thinking that it would clearer – we still support it – be clearer if there was something that everyone could stick a little thing in – and they do exist – that says an eighth of an inch. The statistics that came out in the report did indicate that it wasn't going to be a big deal.

Since the stock is healthy, everyone is v-notching, that this little adjustment could make enforcement better rather than, well, the warden is not around today or nobody wants to do that. Make it simple just like a gauge; it is a short or it isn't a short. I think that this was the reason that the fishermen in our area are very upset, they're frustrated. They're frustrated because there is no definite decision that could stand up in court and all they're trying to do is make this better without hurting the resource. I'll stop there for now. Thank you.

MR. PETER HIMCHAK: I had a question. Are we going to get a Law Enforcement Committee Report on this? They don't have it on their agenda this week. Boy, I'd sure like to hear about the enforcement ramifications here.

CHAIRMAN GROUT: We don't have a report from them; but if the board would like, we could potentially task them with evaluating this.

MR. PETER HIMCHAK: Well, a follow up, Mr. Chairman; isn't it premature for the board to take action on this without referring it to the Enforcement Committee?

CHAIRMAN GROUT: We're not taking action on this. This was simply a technical committee report. There was no action item here.

MR. STEPHEN R. TRAIN: Mr. Chairman, both Dan and Bill referred to questioning is this a V or is this not? I'd say I probably throw – three days ago I probably threw 700 lobsters overboard that were notched or nicked or bent or twisted or deformed. The answer to the question is this a V or not is, yes, it is a V every time. If it is not a perfect flipper, it is a V.

It is not, well, did somebody notch this or is this caused by natural. No, it is a V. That is what half the lobsters we punched and thrown back are. They were never notched, but now they're protected and they're back in. I think Ritchie said it very well; and if the fishermen don't believe in it in your area, that is the problem because the fishermen in our area by a vote of the Lobster Advisory Council in Maine are 100 percent behind it at this point. There are some disgruntled people but we're supporting this, and I would hate to see the Area 1 definition changed because of that.

MR. McKIERNAN: Yes, it is not my intent to change the Area 1 definition for all jurisdictions. It is really just to give each state options; and I would urge, if we ever got down the road to that point, that Maine and New Hampshire would want to maintain that I guess for cultural reasons. We understand the v-notching practice and the biology of regeneration.

It is hard to swallow a perfect flipper rule. I think I can accelerate this debate or this discussion really quickly and boil it down to the essential points. This is a long-standing issue in Massachusetts. I guess I was somewhat inspired by seeing that this was getting some traction at least I thought in Maine, and so I tried to schedule this for an LCMT discussion at a spring meeting. Just prior to the LCMT discussion, I learned that members of the technical committee from always one state were advising members of the LCMT not to vote to approve this because if you did you were going to have to pay back the conservation

– whatever the loss was on paper, you were going to have to pay it back.

I didn't expect that and so I posed the question to the board or the plan coordinator or to the chairman who makes a call on that because in our view the Gulf of Maine Lobster Stock is clearly very healthy. We think this is a minimal change. It would only affect an area that covers 10 percent of the landings; and is it possible to get this enacted for enforcement purposes and compliance purposes if it risk the stock?

If it is not going to result in any significant change in the stock status relative to F or abundance, is this something the board can approve in the future over the objections of some members, but what is the test?

CHAIRMAN GROUT: Well, one, I think we've had a report from the technical committee and obviously there is some disagreement or at least they could not come to a consensus at this point on what the effect is. Two, I think we have heard some concerns from at least one state that we're about four years out from a stock assessment, and it looks like we're going to be six years out and so that the status may or may not be changing.

I think once we get some consensus from the technical committee on what the impact to the stocks would be and then find out what the current status of the stocks would be and to see if indeed this change will have minimal impact, I think there is something that could be considered by this board. I mean, it can be considered at any time.

Dan, I see your issue and I have always said to you that I respect the problem that Massachusetts has – it is very unique – and that is you have got three different v-notch definitions in the state, and that to me is also an enforcement issue. In addition to having the technical committee continue to try and evaluate this thoroughly – and a couple of states now are adding on to collect information that the technical committee feels is needed to try and evaluate this, New Hampshire and Maine are doing that – maybe Massachusetts could expand on that into the entire area of 514 and so we would have a complete Area 1 evaluation of what the impacts would be.

At that time the stock assessment may be moving forward and we may have information on that; and if we could task the Law Enforcement Committee with also looking at this issue, one, from the perfect – your concern that you brought out, the problem with interpretation of the flipper rule, to see if there is if

there is an issue there; and, two, is there an issue with having three different v-notch definitions in one state.

I mean, clearly, to me I think that would be an issue. It is just like having three different minimum sizes within a state. It is a multiple thing. At least from a point of the Chair – and I don't know how the rest of the board feels – I think we need to task our technical committee to start collecting the data that is needed to try and do an interpretation of what the impacts would be here and then also task the enforcement committee with a very clear task to look at it both from the multiple v-notch definitions in a single state and also are there problems with interpretation of the perfect flipper rule. Is there any objection to that? Bill.

MR. ADLER: I don't want to belabor this; I just want to leave this hanging in the air. First of all, what is a perfect flipper rule; what does the word "mutilation" mean; what does a V-shaped notch of any size mean? Those are some of the things which are open to interpretation and then we get into each word and what it means. Fishermen are supportive of v-notching, as I said. They do it but they also are supportive of having something like the eighth inch. I'll leave it hanging in the air. That is where we're coming from. Thank you.

MR. MCKIERNAN: Doug, could you foresee an outcome where one state could have this different rule, the other states could keep it more conservative, NMFS could go to the eighth inch for the Gulf of Maine, but the individual jurisdictions of Maine and New Hampshire could maintain zero tolerance and life would go on?

CHAIRMAN GROUT: You're asking for my personal opinion on this as opposed to the board's. I see we have lobster management area teams. We specifically changed our management a number of years ago from a coastwide this is what it is going to be to letting the Lobster Area Advisory Councils or these Lobster Management Teams come up with measures that would meet the conservation standards that we need for our lobster management.

I can see where if there is – you might have a rationale for going to a sub-area LCMA. It sounds like this is an issue in the northern part of Massachusetts of Area 1. Maybe there would be some rationale with creating another sub-area and that they would say, okay, we're going to go to an eighth inch and there might be some other conservation management measure that they'd have to do or maybe not to accomplish this.

I don't think you can have two management measures in a single LCMA. Is there any other discussion on this item at this particular point in time? Okay, seeing none, thank you for that, and I'm sure this won't be the last we hear of this. Josh, you have another report for us. Toni has a comment on something.

MS. KERNS: I just want to let the board know that staff is passing out a letter in reference to Bill had asked for an additional item be added under this trawl gear impacts, and this letter is an agreement that the offshore lobster fishery has come to with the offshore trawl fishery regarding Closed Area 2, which we will get into after Josh goes through his report. That is what this document is being passed out for.

CHAIRMAN GROUT: And just to give you a quick overview of how we got to this, there was some evidence of large amounts of berried female activity and catches in Closed Area 2. This is Groundfish Closed Area 2 out on Georges Bank. We had tasked the technical committee with coming up with a report on the impacts of mobile gear on lobsters just to help us make our decisions on this item.

### **TECHNICAL COMMITTEE REPORT ON BOTTOM-TENDING GEAR IMPACTS ON LOBSTER**

MR. CARLONI: Here is the report that the technical committee came up with. What we did is we first looked at the available literature out there on this subject to address the effects that mobile gear has on lobsters. The first study that we looked at was conducted by Connecticut DEP. Just to give you the major summary, the findings showed that major damage or immediate mortality varied seasonally for trawls from zero to 14 percent.

The results suggest the damage was more a function of shell condition and temperature. That is just showing that lobsters were more susceptible to damage and mortality when they were soft, at times of the year when they had just recently molted. They also looked at egg-bearing females and found that they incurred no greater damage or mortality rates than non egg-bearing females. However, they did not look at egg loss.

A couple other studies found the same thing; that lobsters were more susceptible to damage when they were soft, and those studies above show that. The technical committee also looked at scallop dredges. There was a study done in the Gulf of St. Lawrence. They basically looked at an area that had scallop

fishing in the past and then an area that had not had scallop fishing in the past. They did some drags through each.

What they found was the area that did not have scallop fishing in the past, 11.7 percent of the lobsters were either retained or injured. They were slightly vague as to how many were injured of the retained amount. The authors in that study concluded that damage to American lobster from scallop dredges was minimal.

It is important to remember that all of these studies are area-specific. Georges Bank is very unique in that there are a lot of large lobsters, and the gear selectivity will be different. The speed at which they tow will be different. Most importantly I think is the size in the scallop dredge survey is a paper that we looked at. The mean size was 72 millimeters, and that is only the 25<sup>th</sup> percentile out at Georges Bank.

That brings me to the conclusion of the technical committee that we do not feel comfortable applying these results to Georges Bank due to the unique situation out there and request that three to five years of additional information be collected, which would be monthly or seasonal rates of newly molted versus hard shell and damaged lobsters from experimental trawling and traps that capture all size classes; monthly or seasonal estimates of major damage from commercial or experimental trawling and traps; and data characterizing tow duration, deck-handling practices, and net size for the proposed mobile gear fishery. Thank you.

CHAIRMAN GROUT: Are there questions for Josh? As I hear the summary there is that there is some information about potential damage to lobsters by some gears, but they may not be applicable to what is out in Georges Bank; and you feel before you can make definitive statement as to what the impacts would be, we'd need something specific to that area?

MR. CARLONI: Yes, that is correct. Due to the large size of lobsters out there, the type of gear, the gear selectivity, we didn't feel comfortable using the results from those papers at Georges Bank.

MR. ADLER: Thank you for that report; however, a couple of things. First of all, we know that there is damage. I've looked at numerous studies, maybe not out on the Georges Bank, but I mean numerous studies by biologists about the damage that could be done. Now, we have situation here where the federal government is likely to open a part of Closed Area 2,

and there has been documentation of heavy amounts of eggery at certain times.

Because of the concern of the offshore lobstermen for these eggery – and we know that it is not good to be rolling over eggery or lobsters, actually, the brittle creature that it is with nets. However, there were discussions and there was an agreement, which is great. Here we have the groundfish fishermen who possibly could be going in there if the federal government opens it up or part of it, anyway, and we have an agreement between them and the lobstermen. This has been ongoing for centuries here where we have these back-and-for battles, but we have agreement. I'm interested that NMFS is insisting that the agreement be approved by the commission through an addendum before they can or want to put it into effect, which would be a peace thing, and it may open up in May of 2013 and, maybe 2014.

It depends on the federal movement, but we want to try to protect the eggery that are out there at certain times, and here we have an answer. We have an agreement between two parties to do something, and all they needed is whatever the blessings are that have to come from the federal government.

But also apparently NMFS would like this agreement of some sort to come to the commission or through the commission. Now, I don't know the proper way to approach this – I do have a motion – and they said through an addendum. I want to go back perhaps to you, Mr. Chairman, or maybe to Toni, and is this what we should do to give our blessing to something which has been agreed to, which can bring peace out there if they open it up. How do you want me to handle that?

CHAIRMAN GROUT: I think maybe having a – maybe Bob Ross would like to provide a little input here on this as to why he feels an addendum as opposed to some letter from the commission asking this. Why do you feel that it is important for us to go through a management process; because, again, this is something that would have to be put in place out in federal waters?

All we're going to be doing is essentially recommending to the National Marine Fisheries Service that they implement these measures out in Closed Area 2. Bob, maybe you could give us a little background as to why you feel it is important that we go through an addendum process.

MR. ROSS: I apologize; I do not routinely attend the New England Council meetings and that is the origin

of a lot of this closed area issue. What I am aware of is this there is an action underway to request that not just Closed Area 2 but multiple closed areas be reopened over the course of the next year or two.

Now, in this case we have an industry group who has – and I commend them on this action – worked aggressively with the groundfish fleet to work out a potential agreement that would avoid gear conflicts as well as mitigate biological impacts to lobster in Closed Area 2. However, as I indicated, there are several aspects to this.

The first action would be on NMFS part to allow the groundfish sectors to enter into these closed areas under their sector plans, which would in fact be equivalent to codifying their rights of access. But, there are other areas here besides just Closed Area 2 that are being impacted where lobstermen also fish; specifically the Western Gulf of Maine Area as well as the Nantucket Light Ship as well as Closed Area 1.

These areas touch parts of Areas 1, 2 and 3. Also bear in mind that federal vessels that have only a federal lobster permit do not have federal mandatory reporting requirements; whereas, many of the states do, at this point, have federal vessel mandatory reporting requirements. The other issue here is policy and procedure. First, we want to ensure – I think we're all aware that lobster is a commission-managed fishery, primarily.

Lobstermen look and follow the commission process. They do not look and follow the council or the NMFS process as a primary point of concern relative to how their industry is going to be managed.

Again I backtrack here; the policy is that the commission addresses these measures for its impacted constituents. It goes through its public review process, its public comment process, and then makes recommendations to the National Marine Fisheries Service to develop complementary regulations.

As we're seeing at the earlier addendum, Area 3 is entirely in federal waters, and yet the commission did generate an addendum to address a conservation tax in Area 3, which would then follow normal policy as a recommendation to NMFS to then go forward and do its rulemaking to address the commission recommendations.

I think here you have multiple benefits to the commission reaching out on this issue. This is not just to deal with sectors. Again, I apologize, I may

not have full information here on the council action, but there is also a habitat omnibus process moving forward that will also address further expansion potentially of reopening these areas.

The initial reopening is only for the non-habitat parts of these various closed areas. The commission has also approved an action that will be tied into a habitat omnibus that will look at reopening the entirety of these closed areas, including major swaths of habitat protected area. I look at this as, first, outreach to all impacted lobstermen who may and do not routinely a council process, including those in Area 1 and Area 2.

I also feel that the states may be in a better position to provide information on the impacts to their permit holders rather than the federal government. Specifically, I looked for Area 2 we capture about 70 percent of federal permit holders in the Closed Area 2. For Area 3 vessels, about 70 percent do have VTR reporting requirements.

You move that issue to the Western Gulf of Maine area, which straddles Massachusetts, New Hampshire and Maine, the number of vessels that have the federal mandatory reporting requirement drops dramatically. The states in this case may be more able to provide the council process with the information it needs to make a good determination on whether reopening these areas would or would not adversely impact lobster participants or the resource.

The second, and just as importantly, and not to diminish the efforts by the Offshore Lobstermen's Association, but this is a private entity. This is not a state government, this is not the commission, this is not the federal government. For us to implement an agreement like this – and I have vetted this through our process – we would need the commission's public process to be able to incorporate this into the federal regulatory process rather than just receiving a letter from the impacted constituents, in this case the Atlantic Offshore Lobstermen's Association, or a recommendation from the commission without fully ensuring that all impacted permit holders in these areas would be impacted – would be aware of the issue, first, and then be willing to abide by whatever we codify as followup to your action.

I think there are multiple benefits here. This isn't a short-term process. We have one action that will move forward to open some of these areas just to the sectors, but a followup to that is the broader aspect of this habitat omnibus that would open potentially these entire areas. Again, we're not just talking Area

2; we're talking Caches, Western Gulf of Maine, Closed Area 1, Nantucket Light Ship.

Are your constituents aware of this? If not, I think the commission's public process would most effectively reach out to these potentially impacted individuals. I also feel that the states involved could potentially help both the council and NMFS by ensuring that we have the best available data to make our decisions. That is why NMFS would urge the commission to become involved in this process and as a partner in this process but also to move through their public process to ensure that when NMFS receives this recommendation, it has been fully vetted through its constituent base. Thank you.

CHAIRMAN GROUT: Thank you, Bob, and just so you know, the reason this is focused on Closed Area 2 was because the constituents brought us concern about large numbers of egg-bearing female lobsters in that Closed Area 2 that is currently closed. I think that was one of the driving forces behind this agreement because there is a lot of lobster gear out there.

We've shown to this board via letter I sent back in January that there are large amounts of egg-bearing female lobsters out in that area. The volume is at such a level that in some months it actually exceeds the harvest. With that, does that answer your question, Bill, as far as why the National Marine Fisheries Service is hoping we'll do this through the addendum process?

MR. ADLER: Okay, Mr. Chairman, first of all, what I'm getting at here is the fact there is the possibility that they're going to open up that area. I don't know about the other areas. That would proceed along in another manner, maybe. We have one area that could be opened. We have one area that has been designated or has eggers, and we have this same one area that has an agreement.

Now, I don't know how you make the agreement legal or whatever, because I know in the state of Massachusetts if we had an agreement, which we did at one time on the raised footrope in Cape Cod Bay where they wanted traps moved out at a certain time so they could go whiting fishing, the fishermen did get together and they did make an agreement. For a couple of years without a regulation, it worked.

Then I'm sorry to say it was a lobsterman that screwed up, so the state made it a regulation. Transfer that out to here. We have an agreement, and I don't know the process that the federal government

would use to sanction that to make it real; and what I'm looking at here is something Bob Ross just said, which was to have the commission move through its process.

What is that process? Basically what we're trying to say is we agree with the agreement or – and I don't know how you do it. It is a federal thing but apparently the federal government needs some help from us, the ASMFC, to say, yes, we support this fishermen agreement. That is what I would have made for a motion, and I'll still make it, basically is that we initiate this addendum to outline the agreement with the Area 2 Offshore Lobster Agreement; and however that is worded, I don't know how you put that into an addendum, if that is what we have to do to give to NMFS – because NMFS had said you should go through your process and they were looking for an addendum, apparently. Do you want me to give the motion which simply says we're basically blessing this; I don't know.

CHAIRMAN GROUT: I would look for a motion just to get this up on the board so that we can debate it at this point, and then we will have discussion. Go ahead.

MR. ADLER: Okay, can I make the motion, then? **Okay, I move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster industry and the sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing female lobsters and prevent gear conflicts.**

CHAIRMAN GROUT: Is there a second to that motion; Bill McElroy. Is there discussion on the motion? Terry Stockwell.

MR. STOCKWELL: Before I comment on the motion, I want to thank Bob for his explanation. I think I understood most of what you're talking about. What I wanted to provide the board here was a little context on the New England Fishery Management Council's activities at this point. I'm going to speak as the chairman of the Groundfish Committee.

As Bob was saying, there are two different actions that are being proposed. One is Groundfish Framework 48, which will provide some mitigation measures for the collapse of the ground fishery in Fishing Year 2013. One of those options is to make a sector request to open up a groundfish mortality area; not the habitat areas, but the groundfish mortality areas only.

That includes Closed Area 2. The habitat omnibus timeline is probably we're looking at an implementation in 2014, but the groundfish action would be the spring of 2013. That all being said, I would disagree with the motion on the board. The industry has gone a long way towards developing almost an unprecedented agreement between the mobile and the fixed gear in a specific area.

If I think anything this board needs to do, it would be to vote to support it in concept and move it along to the agency because as part of the council's development of the groundfish framework, there is very specific language included for potential gear conflicts.

It is when considering sector requests for access to closed areas, the regional office should include consideration of the potential for gear conflicts, shifts in fishing effort out of the closed area and impacts on protected species and lobsters.

To the lobster fishery and the scallop and the ground fisheries credit, they have seized that opportunity and they're codifying it into an agreement that could go into the sector rules. What I would agree would that we let this play out and see whether or not the agency agrees to any of the sector requests and then consider an addendum to work through the mechanics of how we implement possible changes to the habitat omnibus; because compared to the upcoming groundfish mitigation, that is going to be a fundamental different way that the Gulf is managed.

MR. ADLER: So, Terry, all we're trying to do here is do whatever needs to be done to make this agreement for that area work. This is what apparently the National Marine Fisheries Service said the commission needs to do. Now, are you saying that the council can do this, make the agreement official which is worked out so that when you and if you open up, this agreement goes into place; how do you do it?

MR. STOCKWELL: Good question, Bill. What I'm saying is that if the agreement moves forward, it would be the agency would adopt that as part of the sector operations' plans. My concern is by codifying into an addendum on a first try of the industry to work out an operating agreement we have taken the flexibility out of their ability to fine tune their operations' plans. I think we need to give the industry the flexibility to work with themselves in order to perfect their agreement, and I'm concerned that an addendum will lock them into something that



will take altogether another string of meetings and an extended timeline to amend.

CHAIRMAN GROUT: I'm going to take comments on this, but, Bonnie, you wanted to make some comments on this so that people could understand where this agreement is coming from and why there is potentially a need. As I understand it, there needs to be something in place that the National Marine Fisheries Service can put rules as apply to the lobster fishery because we have – in the sector agreements the National Marine Fisheries Service is going to be approving the sector agreements that are going to potentially have these measures in here.

We already have this agreement that has already been put place, but there is nothing at this point because the councils don't manage lobsters even though we can make a recommendation that they consider those things. I think they're looking for something from this board that says, hey, we think this is a good idea and that we should have the offshore lobster fishery out of Closed Area 2 for a certain number of months. If I can get Bonnie to bring that up – to that point and then we will have Bonnie come up and try and explain.

MR. STOCKWELL: Mr. Chairman, to that point, I understand the need for that. We do an addendum; it is a minimum of two meetings; the agency works quickly. Would this in fact be in place for fishing year 2013 for the groundfish sectors? If so, then I think we would need to perfect this motion by having a date certain that it would expire to let the industries again see whether or not they want to amend their agreement for the following year.

MS. BONNIE SPINAZZOLA: Mr. Chairman, when we heard that Closed Area 2 was going to open, we were very, very concerned; because for the last 18 years it has been closed, and for the last 18 years the fishermen clamored into that area. There are probably 30,000 traps in that area between June and October; because not only is it a very prolific area for good catchable keepers, it happens to be an area where very large females migrate through.

We were very concerned that if the draggers got into that area, they would crush them. I was going to say earlier with the technical committee recommendations or discussion we really can't tell what it is doing to the eggers. We can only fear what it is doing to the eggers, and that is truly believe our biggest brood stock or the only one that we really know if it is out there.

It is amazing; we had some boats throw over a million pounds. They throw over more than they keep. One boat threw over 300 pounds just from June through October. What we did is we sat down with the ground fishermen and said can we work something out, and we did. What we have is a definite, absolute, agreed-upon decision and agreement by the fixed-gear fishermen that fish in that area.

As you know, lobster is very territorial, so we seldom have others, but the thing is we took the group that is fishing there now and we asked them if they would sign a piece of paper – they're signing off on it – and we agreed to the sector ground fishermen that we would send – for public knowledge of Area 3, we would send the entire Area 3 permit holder list a certified letter that this was taking place so that they were aware of it.

The other thing is we have talked to people who do sometimes frequent the area. They're great with it; they're fine with it as far as fixed-gear fishermen. As far as the groundfish fishermen are concerned, all of the sectors – first of all, the common pool and non-sector groundfish fishermen are not allowed in that area.

What the sectors are doing is they're trying to use a sector exemption to be able to go into that area, and they're allowed in there only because they are sectors. They would be allowed in there because they are a sector. It is an exemption. The whole Framework 48 would take too long so using a sector exemption allows them to get in sooner.

This is why this is so important to us to move forward so quickly. All the sectors have agreed to do this. We have every single sector on board. We now have every single lobsterman who fishes in that area signing on to a piece of paper and we have every single sector signing on. Now, through the management process, the groundfish fishermen can be regulated.

Once they sign a sector agreement and they're putting it in their operational plans, once that happens and their operational plans are agreed upon, that becomes law. It is a regulation. If somebody in the sector does something wrong, the whole sector is shut down. The sector guys said to us "so what are you guys going to do, sign a piece of paper." We said you have our word.

They believe it but it doesn't really work, so we asked what could we do to codify this. We asked the

Service and they said the best thing to do would be to have an exemption. We agreed with the groundfish fishermen – or not an exemption; an addendum – we agreed with the groundfish fishermen that from June 15<sup>th</sup> through October 31<sup>st</sup> we would have lobster traps in the area and there would be no groundfish fishermen dragging through that area at all.

That would be from 41/30 to 41/50. It is kind of a swath right in the middle, and I think you probably have that diagram of the chart. The triangle above it and the area below it would be status quo where the two gears work together, but it is seldom a lot of gear in either place. That middle area would be – even if you had two groundfish fishermen in there, it would be a disaster because of all the traps during that period. They're fine with it.

The rest of the time, the rest of the year groundfish fishermen have the entire area and we're out of it. The top and bottom would remain status quo; the middle is all groundfish. We all agreed that would work perfectly. It is a done deal; it is a definite agreement. We are asking you to please do what the Fisheries Service needs you to do and agree to just put it in an addendum.

In talking to Bob earlier in the week or last week or whatever it is and actually talking to Doug, we talked about suggesting just putting it in an addendum all by itself and let it piggyback onto XIX, go forward, not cost a thing because it is agreed upon. We don't want to change it, and that is why every one of us, every single fisherman and the sectors and lobster, everybody wants it to be a regulation so that it is not going to change. The truth of the matter is, too, that down the road ten years from now, because they're in a framework process and we have addendums that can change, if necessary we can change it down the road. Did I answer that? Everybody is clear with that? Anything else? No questions? Thank you.

MR. ADLER: Okay, I'm a lobster trap guy and I've got a big boat. I signed the agreement and I go out into Closed Area 2, apparently the National Marine Fisheries Service can regulate the sector boats so they're going to be under some regulation that can be enforced; but, if I put my traps in there and I signed on the paper but there is nothing else, I don't know what the National Marine Fisheries Service can do because there is no regulation on me.

I think what we're just trying to do with whatever you need, so that since NMFS can't enforce or basically run the lobster deal, what do they need from us so that we can agree with the agreement and it will have some force of enforcement somewhere if the

lobstermen violates it. We know they can take care of the sector people. What do we do? I think that's why NMFS said, well, this is how you should do it so that it will be enforced for the lobster fishermen. I think that's where I'm trying to go here with this.

MR. WHITE: Mr. Chairman, I have what I hope is a friendly amendment that I think may take care of Terry's concerns. If we added to this "limited changes to the agreement brought forward by the industries could be approved by board action." If this changes in the future and it is not too substantial, we don't have to go through another addendum. We could just bring it to the board and approve.

CHAIRMAN GROUT: Is the maker of the motion acceptable with that friendly amendment?

MR. ADLER: Yes, because I think that would also – you know, as Bob Ross, these things could pop up somewhere else. I think what Ritchie's idea is that you fix this for this one, but you'd also leave it open. You wouldn't have to do a whole addendum if somebody else came up with an agreement. Ritchie, is that what you're intending?

MR. WHITE: Well, this was intended for this agreement. I'm not sure that if there are new areas and new agreements coming up, I think that would take a new addendum, but I think for changes to this agreement is my intent. Terry seemed to have concerns about tweaking of it. If there is a tweak, we don't have to go through all 'nother addendum. It just has to be approved at the board level.

MR. ADLER: I would support that, and basically you're saying that what you're having here would take care of what our immediate problem is? Yes, okay, I'm all right with that.

CHAIRMAN GROUT: Is the seconder agreeing with that? Bob Ross, if we had that flexibility in here, if there were changes in the future, do you believe this would be something that could help the National Marine Fisheries Service with making any changes to the rules in the future?

MR. ROSS: Yes, I think that would allow more flexibility. Again, my concern here is that we're focused on the one area, Closed Area 2, which obviously has significant information that there are large concentrations of brood stock lobster there. I guess my concern here is that the commission process – we have reached out very preliminarily to some of the potential impacted areas.

We have heard back from the Maine Lobstermen's Association regarding concern to the Western Gulf of Maine area. We know that the Nantucket Closed Area overlaps the Area 2/3 Boundary. One of the concerns we have at the federal level is to ensure that all potentially impacted lobstermen are aware of what is happening here. The reason we felt in addition to the need to get very specific recommendations regarding this agreement, we also felt that the commission would be the best vehicle to announce what is happening relative to these closed areas to the rest of the constituent base, which is why did not encourage a simple letter of recommendation from the commission to us to codify an agreement.

There are potentially many other Area 1 and Area 2 lobstermen who may not be aware of this action at all and by us going into rulemaking to codify this agreement for Closed Area 2 does not ensure that other impacted lobstermen are aware of this; or, as we know from the public process, other issues float to the surface when there is a full discussion of these issues.

For instance, even though this is an agreement between lobstermen and the mobile gear, there are other fixed gears out there potentially; as we've discussed in the past, Jonah Crab, which is a non-regulated federal fishery.

I think that we are looking to the commission to inform its membership of what is going on with the sister agency, with the council/NMFS process, and see if other issues do arise that could impact the direction the federal government is going in, as well as potentially identify other issues and exchange data. I understand the focus of this issue is the agreement. However, from our perspective the focus is the impacts to all commission-managed lobstermen if any of these areas are opened. That is why we sought a more public vetting of the issue.

CHAIRMAN GROUT: Bob, let's say we pass this addendum; doesn't the federal government have a public process when you're going to be implementing rules that you could potentially send out notices about these actions, the potential changes in the sector operations plans. Where they will have access to those areas; can't you send a notice out to all federally permitted lobster fishermen, because they have to have a federal permit to fish out there, correct?

You know, we're addressing a very specific issue because there is an agreement that has been brought together here to address something that was

specifically identified already with data that there is an issue in that particular area. It sounds like you're asking for something that is much broader, in all respect, as if you have no public process, but you do have a public process.

MR. ROSS: We do have a public process but it has been our experience relative to lobster that it is not as effective as the commission public process for a variety of reasons. Even though we are doing the best we can to outreach, we are experiencing budgetary constraints in our process, too, which has reduced the likelihood of mass mailings to all impacted constituents, especially at our proposed rule stage.

It is very clear that we will be notifying – once the rule is final, we will send out notice to all of our permit holders. Our concern is that potentially impacted federal permit holders would not be engaged in our council/NMFS regulatory process in the same way these same permit holders would be engaged in the commission's lobster public process.

Again, lobstermen follow the commission with lobster issues. They do not follow the council process. It is fortunate that one of the companies was able to monitor the New England Council actions and be made aware of the efforts to open Closed Area 2. Again, based on your letter to the board back in January, I think the board became aware of that action. Since then there has been little communication on the council's side that, at least in my humble opinion, has trickled down to the rest of the lobster industry relative to what may be coming in these other areas. That is our reason to encourage full public outreach on the issue.

CHAIRMAN GROUT: Okay, Toni, you have a question.

MS. KERNS: Bob, I have two questions relative to what the National Marine Fisheries Service would be looking for as information contained within the addendum. First, looking at this broader issue, if that is what is being considered in this addendum, what you're looking for is almost I guess something like scoping on potential impacts on lobstermen for all of the closed areas that the council is considering?

And if that is the case of what you're looking for, then the commission would need information from the council – background information of what they're considering and what they are considering because the council has not communicated to the commission at all on any of these issues. The only

communication that we have received is the information that Doug has passed on to the board as the Board Chair and a member of the New England Council.

That is my first question. My second question is specific to the agreement, when you were first describing what the National Marine Fisheries Service was looking for, it was unclear to me if you within this addendum need specific information on the impacts to fishermen. I guess I would want to know more information on what impacts are you looking for.

The number of permit holders impacted, how gear would be impacted, how catch would be impacted, those are pretty specific details and a lot of that data I think would actually come from the National Marine Fisheries Service because you guys have the VTR data, so we would need to work collaboratively to build that addendum, which would be I think a little bit more simpler than just writing up this agreement.

MR. ROSS: Yes, I think those are very good questions, Toni. First and foremost I think that the addendum would address the agreement and seek a public feedback on that. The benefit to the National Marine Fisheries Service is that it would then not just be an industry handshake. It would be a vetted process through a structured outreach.

The second aspect would be at the same time to inform interested parties that this agreement would address specifically Closed Area 2. However, other areas would also be potentially opened as part of a move by the council process. I think that in itself would potentially, I hope, generate additional awareness and potentially feedback from others as yet unknown who may not be aware that any of the closed area actions are being considered for reopening.

It serves two purposes. One, it gives guidance to the National Marine Fisheries Service relative to support by the commission for this agreement, and it takes it out of the realm of private industry and raises the bar so that NMFS has clear guidance from the commission on this action and not an industry handshake.

Second, it raises awareness of other areas that may be impacted, but it may also identify other issues that NMFS or the council may not be aware of unless there is public comment on the issue of opening any or all of these closed areas. It is two-pronged. I hope I answered your question.

MS. KERNS: I think that does; and so as the plan development team chair I would request that Terry work with me to help get the New England Fishery Management Council to respond to our requests for communication on this issue.

MR. TRAIN: Mr. Chairman, you could rule this out of order if it is not in line with the actual motion, but did I understand from Bob that before we open all the closed areas you expect to get a new agreement? You have mentioned four times all of the other closed areas that may open, so would you expect to get a new agreement for each area before it is opened and just currently we're only dealing with this one?

MR. ROSS: I'm unclear if these areas will in fact be opened, to be honest, because again – and maybe Terry Stockwell can expound on this, but it was my understanding that the approval for such an exemption would still have to be captured under the council's Framework 48 before the sectors would be exempted and then allowed access into these areas.

Now, I believe that is something that will happen in the future. What our concern is, is there the need for other types of agreements like this in the other areas? NMFS does not know that. Are there participants in Area 1 that fish the Western Gulf of Maine – lobstermen that fish the Western Gulf of Maine that would be impacted. At this time we don't know that.

Again, bearing in mind that especially in Maine most of your permit holders do not have other federal permits that require VTR reporting; therefore, we would not have good data to indicate whether there is a large or small concentration of Maine lobstermen working in the Western Gulf of Maine Closed Area that may or may not need this type of agreement.

Again, one of the approaches here is just to – it is a scoping in some way. We need to know if in fact these other areas have adverse impacts to lobstermen or to the resource; again highlighting the fact that we feel the commission is the most appropriate vehicle to reach out to lobstermen rather than NMFS or the council process.

CHAIRMAN GROUT: I think the point that Bob is trying to make is that if we go forward with this addendum, during the public comment process on the addendum other issues may be brought forward and there will be a public process of gaining that piece of information that NMFS can use in the future and may be some that the lobster industry can be used with the groundfish industry in developing other actions. Terry.

MR. STOCKWELL: Mr. Chairman, I will be quick. Specifically to the motion on the board, thank you, Ritchie, for the language for perfection. I'm feeling very comfortable with it right now. As Bonnie said, it is a done deal by industry. This would codify it as a done deal for one year because that is the length of a sector operations plan.

To address all of Bob's issues, this is a trial run, and I would propose that we vote motion up and then reconvene in a year when the habitat omnibus has got some life to it and we know a little bit more of what the details are and respond accordingly with an appropriate additional action.

MR. ADLER: I move the question.

CHAIRMAN GROUT: That takes a two-thirds vote. All right, do we have any objection to limiting debate at this particular point in time? Seeing none, while you're all caucusing on this, I am going to read the motion. Bonnie, is this real critical, is it going to mean some change that we need to make to this?

MS. SPINAZZOLA: Yes.

CHAIRMAN GROUT: Why wasn't that brought up before when you were making –

MS. SPINAZZOLA: I'm trying.

CHAIRMAN GROUT: No, no, I mean when you were making the initial – okay.

MS. SPINAZZOLA: Where it says "limited changes to the agreement could be made through board action"; would it be possible to please change it to "limited changes to the agreement by industry could be made through board action", because this is an industry agreement that we're voting on. I would not like the board to decide to make changes to it. I would like the industry to make changes. They would still be made through board action.

MR. WHITE: When I made this friendly amendment those words were in there, and that will be on the record as our intent, so I think you're protected in that.

CHAIRMAN GROUT: Okay, I'm going to read this into the record while you're caucusing. Move to initiate the development of an addendum that would include measures outlined in the agreement between the offshore lobster fishery and sector trawl fishermen for bottom-sharing in Closed Area 2 in order to protect large concentrations of egg-bearing

females and prevent gear conflicts. Limited changes to the agreement by the industry could be made through board action.

The motion was made by Mr. Adler and seconded by Mr. McElroy. Are we ready to vote on this? All those in favor raise your hand, 10 in favor; all those opposed; abstentions; null votes. One abstention; **the motion carries ten to zero to one to zero.** Okay, thank you very much on that. We now will move down to a quick Fishery Management Plan Review by Toni.

## FISHERY MANAGEMENT PLAN REVIEW

MS. KERNS: I will go through this very quickly. In 2011 we had record lobster landings at 126 million pounds. Maine and Massachusetts account for 94 percent of those commercial landings; 83 percent in Maine and 11 percent in Massachusetts. The plan review team added an additional table to the FMP review to look at monitoring.

This is for fishery-dependent and independent monitoring according to what is required in the plan. For the dealer and the harvester reporting, the check and check-plus, if you have a check you have met all the requirements of the plan; and if you have a check-plus you have exceeded the requirements of the plan.

As a reminder, for harvester reporting it is only 10 percent of your harvesters are required and many states do have a hundred percent harvester reporting. For the fishery by dependent biological sampling for sea sampling and port sampling, the measures that were implemented through Addendum X far exceeded what any of the states had currently been collecting and far exceed the budgets of any of the states have to collect in terms of the percentage of sampling of the commercial fishery.

When the board implemented those measures, the technical committee did let the board know and the acknowledged it, recognizing that many of the states would continue with their current sea-sampling program at that time and that would be sufficient. It does characterize the fishery. For those states that have checks, they are sufficiently characterizing their fishery.

The one check minus is for New York, and the only reason why we put a minus there is because they have actually decreased their sea-sampling program in the past couple of years. That in part is due to the fact that industry has been less receptive to have the

state on the boats as well as a decrease in funding for their sea-sampling programs.

I also just wanted to point out the potential sampling loss, which I think will come up again from the other business that Bill McElroy had asked for. There are several states that will struggle to do the sea sampling for lobster and even some fishery-dependent sampling in the upcoming year with the loss of IJF funding and some Wallop-Breaux funding; not Wallop-Breaux; they're just all IJF funding.

It is a cause of major concern for the plan review team as well as the technical committee; because without that sea-sampling data, it will be very difficult for us to continue forward with assessments. The states of North Carolina, Virginia, Maryland and Delaware have made de minimis requests. They all do meet those de minimis requirements.

It is up to the board to decide beyond the coast-wide biological measures if those states can be exempted from additional measures. The plan review team recommends that those states implement all biological measures contained in the FMP and that the states conduct some biological sampling of their fisheries to improve the stock assessment but not make it required; just encouraged.

The de minimis states are also required to collect annual harvest data, and the PRT recommended that the harvest data is collected monthly so that it can be used better in the assessment. Lastly, the plan review team made a couple recommendations that are outlined in the document. I am not going to go through all of them except that the compliance reports contain the number of permits issued and the number of those permits that are active by state and LCMA; and Maine, for their zones; just to provide better information within the FMP review. That is all.

CHAIRMAN GROUT: Questions? Dave and then Pete.

MR. DAVID SIMPSON: I am not sure if it is necessary but the slide show wasn't complete for Connecticut, but I don't see it in the document. I don't know that it matters, but we do have a trawl survey. It is noted under New York that Connecticut does the trawl survey for New York, but it is not for Connecticut.

Then, more importantly, the ability to continue doing our lobster work is contingent upon money coming through IJF. The only reason we were able to do it

this year was because we had money left over; but going forward, I don't know where we would get money to do lobster, especially the juvenile recruitment, the larval stuff, and fishery-dependent sea sampling. I don't know where we would get the money to continue doing that without IJF money.

MR. HIMCHAK: Toni, I just wanted to point out about the – yes, New Jersey does have a trawl survey. It seems to be an omission there. I know you don't use it for the University of Maine Model, but it is the only fishery-independent survey for our area in addition to the NMFS Trawl Survey. Just one comment as a lead into the de minimis requests, we obviously don't have any objection to the de minimis requests states, but just to allow the board to be aware that we did have a conference call July 10<sup>th</sup>.

The state agencies that fish in Area 5; it is a very small but nonetheless significant component stock. While most of the states are de minimis, but the sea sampling will be accommodated by New Jersey's black sea bass sampling, and Maryland and Delaware were going to explore options for doing some sea sampling on the Southern New England stock. We're all on the same page as far as meeting the 10 percent reduction and coming up with a concerted effort for the evaluation of the 10 percent that will be needed in 2014. Thank you.

CHAIRMAN GROUT: Are there any other questions for Toni? Toni, outside of the requests for de minimis action we have to approve; are there any other things in there that you wanted formal approval from the board other than the entire approval of the management plan review?

MS. KERNS: If you approve the FMP review, then I can add those additional compliance report requirements, but you don't have to do an official motion for that.

CHAIRMAN GROUT: Okay, so I'm looking for a motion to approve the FMP review, including the four states that have requested de minimis. Bill.

MR. ADLER: **I will so move to approve the FMP review, which will include the requests of North Carolina, Virginia, Maryland and Delaware for de minimis status.**

CHAIRMAN GROUT: Seconded by Steve Train. Is there any discussion on this? Okay, all states in favor raise your hand, 11 in favor; any opposition; null votes; abstentions. **The motion carries eleven, zero,**

**zero, zero.** Okay, next we have a Lobster Advisory Panel population here.

### **APPOINTMENT OF ADVISORY PANEL MEMBERSHIP**

MS. KERNS: Mr. Chairman, Nick Jenkins from the state of New Hampshire is no longer in the lobster industry, so he retired from the advisory panel. **New Hampshire has nominated James Willwerth.**

CHAIRMAN GROUT: We have a motion by Mr. Abbott and seconded by Mr. Adler to put Jim Willwerth on the Lobster AP. Are there any objections to that motion? **Seeing none, the motion carried.** Now, under other business we had one item from Mark Gibson concerning ACCSP. Jim, you also had another item that you wanted on here; do you want to start off with that?

MR. JAMES GILMORE: In our attempt for implementing the pieces of Addendum XVII and the management measures, we have run into a bit of a problem in New York. If you essentially look at the most restrictive rule between Area 4 and 6, essentially when we got down to putting this on paper, it pretty well came out that essentially the fishermen in New York couldn't fish in the either area, and I don't think that was the intent of this. Toni put some slides together and I think is going to go through this to explain it in a little bit more detail and then we can have some discussion about it; and then I have a motion once we're done.

MS. KERNS: The board approved the most restrictive rule to apply to the closed seasons any measure for Addendum XVII. As a reminder, Addendum XVII was for all Southern New England LCMAs to reduce their exploitation by 10 percent. Some areas put in closed seasons; others did the v-notch programs or a combination of closed seasons and v-notch regulations.

As Jim just said, dual permit holders would be prohibited from fishing for two closed seasons potentially if we did the most restrictive rule; or, depending on how you interpret it, you could also, if you said it was the longest closed season that a dual permit holder would have to follow, then some folks would be fishing in an area that is supposed to be closed, and that would be very difficult for enforcement purposes.

I don't think that is what the board was intending. I don't think the board was intending to prohibit the fishermen from being able to fish at all. One of the

reasons why we had suggested the most restrictive rule is because we didn't want to see effort shifting from one area to another. In the state of New York, for an example, there are fishermen that are actively fishing in both LCMA 4 and LCMA 6.

Eight of the thirteen permit holders live in Montauk or East Hampton, and ten of them live or fish outside of the South Fork of Long Island. These fishermen would be subject to both closures under the most restrictive rule. Their harvest accounts for about 56,000 pounds within the two areas.

MR. GILMORE: Like I said, I have a motion that I would like to put forward. Unless there are any questions about it, I can put the motion. What is your preference, Mr. Chairman?

CHAIRMAN GROUT: I was going to ask first are there any questions on this issue? Steve.

MR. TRAIN: Now, Toni said that the intent of the most restrictive rule – and I thought that is how I understood it – was to prevent displacement of effort; when one area closes, not go into another, which means essentially your traps would be out of the water. As I understand it, the intent now is to do away with that so they could fish one area or the other during closed periods, so that goes against the whole purpose of most restrictive rule. I'm trying to see what we're trying to do. Maybe I should I hear your motion first.

MR. GILMORE: Well, just to respond to the question, the motion will include a point that the area that they're fishing under the most – well, not using the most restrictive rule, the area they're not fishing, they will still be required to take their traps out of the water; that they can only fish one area or the other.

They can't do both at the same time, so essentially the motion is going to try to get at allowing them to fish and not – you know, essentially right now it prevents them from fishing the way we have essentially the rule set up.

CHAIRMAN GROUT: Maybe it would be good if you put the motion up on the board; and if we got a second to it, we could discuss it and then have questions about it.

**MR. GILMORE: I move that permit holders who fish both LMA 4 and 6 must remove pots from the closed LMA but they are permitted to fish in the alternate open LMA during that time period.**

CHAIRMAN GROUT: Do we have a second to that motion; Bill McElroy. All right, is there discussion on this motion? Pete Himchak.

MR. HIMCHAK: Jim, I know you've got problems. I'm surprised Area 3 isn't included in this, also. All right, so Area 4, we share that, and we have a closure in February and March; so if you declare for Area – I'm trying to understand the motion here to make sure that there is not a redirection of effort from Area 6 to Area 4. Can you satisfy my concern?

MR. GILMORE: Again, it may need to be wordsmithed. This is about the fourth version of this motion I did to try to essentially – you know, it started out that they can't fish in either area right now. This was to allow them to fish in one or the other, which I think was the original intent we were trying to do under management. If this is unclear and it is the best I could do in terms of making it that they could fish in one versus the other, then I'm open to suggestions on modifying it.

CHAIRMAN GROUT: Toni, you can clarify and then I'll go to you, Pete.

MS. KERNS: Pete, the technical committee had recommended, when they looked at all of these proposals prior to board approval, that the board use the most restrictive rule. If you apply the most restrictive rule as it is laid out, then it allows folks to fish in a closed area when that area is closed because it is the most restrictive of the two, so you would choose the longer closed season.

Then they would be allowed to fish if you were in the shorter season when no one else is supposed to be fishing in there. If you apply both – so then if you say, okay, well, we just don't want the effort to shift and you say you're closed during both time periods, then that wasn't the intention of the plan development team to not allow them to fish at all in either area. I don't know how we avoid the shifting of the effort because these folks are historically fishing in both areas. They have active landings in both areas.

MR. HIMCHAK: Well, my question is what is the closed season in Area 6? What is going to prevent the redirection into Area 4 where we currently have 87 percent of the landings and we're closing it down for two months in New Jersey?

MS. KERNS: Area 6 has not given their closed season dates yet, so I don't know them.

CHAIRMAN GROUT: Dave will have an answer to this and then I will get to you, Steve.

MR. SIMPSON: We don't have the exact dates, but we have agreed on a fall closure that would start some time in September, probably right after Labor Day, and go as long as it takes to get 10 percent; so into November, as I remember it; well into November.

MR. TRAIN: Mr. Chairman, I believe the way this is written it would be a clear redistribution of effort. I mean, you take your gear out of one area and put it another one because they're still open. I know at least where I fish if Zone G closed and they put the gear in Zone F because we were still open, it is a redirection of effort. Maybe the technical committee or the management board had intended this to happen, but I think it is a clear redirection of effort from one zone to another, and I am going to oppose this motion.

MR. HIMCHAK: Yes, I can't see it any other way but a redirection of effort into Area 4 in February and March while we're closed. How do we prevent that from happening?

CHAIRMAN GROUT: Is there further discussion on this motion? Okay, will you caucus while I read the motion into the record? Move that permit holders who fish both LMA 4 and LMA 6 must remove pots from the closed LMA, but they may fish in the open LMA during that time period. Motion by Mr. Gilmore and seconded by Mr. McElroy.

Okay, are you ready to vote? All those in favor of this motion raise your hand; all those opposed; abstentions; null votes. **The motion fails three to five to two to zero.** Okay, now other business, Mark Gibson, you had something? Well, we just defeated the motion.

**MR. NOWALSKY: I would like to make another motion, Mr. Chairman. I would like to move to have the technical committee review this issue. If I get a second to that, I'll go ahead and speak to it.**

CHAIRMAN GROUT: There is a second by Pat. Okay, go ahead.

MR. NOWALSKY: New Jersey opposed the motion on the grounds of the shift of effort, but it is clear that there is an issue here that needs to be resolved. I don't think we're in the business of simply putting people out of business, and therefore there is an issue here. New York has a valid issue. We need to find



some resolution to it, and I would like to find a way out of this box we're in right now for New York.

CHAIRMAN GROUT: Is there any further discussion on this particular motion? Pat.

MR. PATRICK AUGUSTINE: Could they do that for the next meeting? Otherwise, we're going to lose the whole year. We'll probably lose the whole year, anyway. Could we add that to be reported on at the next meeting?

CHAIRMAN GROUT: Okay, is that a friendly amendment?

MR. NOWALSKY: Yes, it is, thank you.

MR. WHITE: I guess I'd ask the technical committee are they clear on what they're being asked to come back with.

MS. KERNS: I think Adam's question is will there be a shift in effort if we allow for fishermen to fish during one of the area's opening. If we allowed what Jim wanted from his motion before, would there be a shift in effort; is that what you're asking, Adam?

MR. NOWALSKY: Well, obviously, I would have loved to have had that answered before voting, but I think we've got a pretty clear idea that, yes, there would have been some shift in effort. I think it is more comprehensive than that. The question here is how do we resolve – there were two very specific issues up there. One of them in particular was that there would be the ability for fishermen to fish in a closed area by choosing one of the more restrictive measures. That was an unintended consequence of the last action on this matter of Addendum XVII. I'm very clear that this issue should have a better answer and I'm open to resolution and wordsmithing on what we need to do here.

MR. GILMORE: Mr. Chairman, I think it goes beyond just asking about shift in effort. What we're trying to find out are alternatives to – essentially the first motion we were kicking around was suspending the most restrictive rule, which we figured was never going to fly because that goes in the face of what the amendment said, so we were trying to get into some way of providing an opportunity for these guys to fish in one area versus the other, which I think is fair. We're going to need not only whether it is a shift in effort but actually recommendations on how we can, under the amendment, still allow these guys to fish one or the other area.

MR. SIMPSON: I think Jim's attempt to narrow the issue to the particulars of the 4/6 dual area, there are only a few boats from Montauk and Hampton or some place – for my part in Area 6, because we're the only other state that shares Area 6, I'm not terribly concerned about that. I do think it needs to be clarified here because I don't want to have to go back home and say the 10 percent reduction in Area 6 is under review, because that is not what is happening here.

I think what we need is the technical committee to look at the particulars of Area 4/6 and ways to mitigate compromising the conservation without unduly burdening the few participants in both area. One of the things that occurs to me is the trawling. You can control whether you land or not from the two areas during the closed seasons.

There are trap tags that designate Area 6 and Area 4 so it is not like you can move all your gear back and forth. You can only fish your 6 tags in Area 6 and your 4s in 4; so just a little feedback from the technical committee about what difference does this make in the big scale of things. I am generally a proponent of most restrictive rules for the reasons that were expressed earlier, but we're talking about a couple of people who may be asked to do a whole lot more than is necessary to achieve the level of conservation we're looking for.

MR. HIMCHAK: Mr. Chairman, I understand Jim's problem and we encountered this in Areas 4 and 5, which is why we had the same closed area for those two areas – closed seasons for those two areas. My suggestion to Jim is could not New York require somebody that fishes both 4 and 6 to declare exclusively to fish one area during a calendar year and base that on their past landings from the previous years, so that you're locked into one set of regulations for an area for a year and you could not jump back and forth. Is that a possible solution?

CHAIRMAN GROUT: Jim, do you want to respond to that?

MR. GILMORE: I don't know, Pete. I mean that is something we could explore, but off the top of my head – I don't know unless Toni has got some idea on it; I don't know. We'll try.

MR. WHITE: Hearing the description of what you're trying to accomplish, the motion clearly doesn't reflect that in my opinion. I'm sympathetic to try to solve this. I view this as the states should develop a conservation equivalency where you figure out a

program that will let these fishermen fish and still come up with a 10 percent reduction.

I see this as kind of a reverse role, and I'm not sure that is the technical committee's role to come up with that. I think that is your role to come up with it and then the technical committee can review it and say, yes, we still get the 10 percent and that works.

MR. NOWALSKY: In response to the earlier question, I think what is up on the board right now really doesn't capture what I was going for. We're not looking to reopen the issue of reviewing the 10 percent reduction in Addendum XVII. I think specifically what we want the technical committee to review is the impacts of the most restrictive measures' provision of Addendum XVII for dual-permitted New York fishermen and then remove the part about the 10 percent reduction in Area 6.

CHAIRMAN GROUT: So are you withdrawing your motion or making an amendment to your own motion or a friendly amendment?

MR. NOWALSKY: Is that too complex to call it perfecting the motion at this point, Mr. Chairman?

CHAIRMAN GROUT: You can perfect it as far as I'm concerned.

MR. NOWALSKY: I would ask to remove the "in Area 6" portion of it.

CHAIRMAN GROUT: Is that the way you wanted the motion?

MR. NOWALSKY: Yes, that is a good clarification of this issue.

CHAIRMAN GROUT: Okay, Pat, are you comfortable with that? Okay, is there discussion on the perfected motion? Bill McElroy.

MR. McELROY: Mr. Chairman, I think that this is a good improvement. I share the concerns that New York and others have that some of their fishermen are essentially going to get a dual jeopardy. I think Ritchie is spot-on in suggesting that we need to find a way to solve that problem and be careful with the language. I think this is a good step in that direction and I'm supportive of that. Thank you.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Seeing none, can you please caucus while I read this into the record? Move to have the technical committee review the impact of

the most restrictive measures in Addendum XVII for dual-permitted New York fishermen by the next meeting. The motion was made by Mr. Nowalsky and seconded by Mr. Augustine.

Are you ready to vote? All those in favor raise their hand, 10 in favor; opposed, 1; null votes; abstentions. **The motion carries ten to one to zero to zero.** Mark Gibson, you have an item here on ACCSP.

## OTHER BUSINESS

MR. GIBSON: Mr. Chairman, I know you're way behind schedule here. We saw some information earlier about how states are struggling to maintain their lobster monitoring programs and the data feeds for stock assessments. I'm also aware that the Operations Committee recently reviewed proposals and the ASMFC proposal to support lobster port and sea sampling did not make it to the funded cutoff point. I was thinking about perhaps a motion from this board to the Coordinating Council recommending that proposal be at the funded level, and I am prepared to do that.

However, I am also thinking that should this board make that motion, there may be other boards meeting subsequently to this that may pass other motions that would be in support of maintaining the current Operations Committee rankings or protecting other issues that board is concerned about.

I didn't want the Coordinating Council to receive a series of conflicting motions, but I thought just some discussion at this board about the importance of that program. A number of us sit on the Coordinating Council as well and can articulate those views when it comes time to discuss the Operations Committee's recommendations. I leave it to your guidance as to how we might proceed on that.

CHAIRMAN GROUT: We had a table up there; that I believe Toni had in one of the previous presentations that showed the impacts of that not being funded next year. I think that is the key piece of information that we want to bring forward to make sure that the Coordinating Council understands.

The kind of conflicting message here is there is a certain amount of funds that are allowed for existing programs that are funded by ACCSP and then a certain amount, 25 percent, that is allowed for new programs. Because we have never gone to ACCSP for this, this is considered a new program.

I think what might be good for them to understand, if they already didn't know, as a result of the Operations Committee and the Advisory Panel's deliberations, that if this doesn't get funded, there will be backsliding even though this is a new program. That might be the thing that we would want to bring forward just to make sure that they realize that there will be a loss and what is the impact on the assessment. Toni.

MS. KERNS: This table was included as part of the proposal and that is why Connecticut wasn't included. I just stole this straight from the proposal that Melissa had pulled together, because the request for funding for those northern states. The review committee did have this information.

CHAIRMAN GROUT: Well, I would then ask what is the pleasure of the board? Does the board want to make a recommendation here? Pete.

MR. HIMCHAK: Mr. Chairman, I thought this was going to come up under Atlantic herring because typically every annual meeting we do make recommendations to the Coordinating Council for funding Atlantic herring. Wednesday the Coordinating Council will really be sharpening its pencils again and again.

Mark is right, if this board comes up with we want this proposal above the line, other boards can do it in similar fashion. I think many of us will be at the Coordinating Council meeting on Wednesday morning and we're aware of the severe financial handicaps that we're facing. A formal motion; I don't know; if Mark so desires, I would support it.

MR. GIBSON: Well, I'll make that motion then. **I move that the ASMFC Lobster Board recommend to the ACCSP Coordinating Council that the ASMFC Proposal for lobster port and sea sampling be elevated to funded status.**

CHAIRMAN GROUT: Is there a second; Bill Adler seconds it. Is there discussion on the motion? Rick.

MR. RICK BELLAVANCE: Mr. Chairman, I'm the chairman of the Advisory Committee for the ACCSP. We just went through that process, like you mentioned, and I thought I just had a couple of things I could offer to this discussion. There is no doubt that all of the partners are coming to all different funding sources, looking to fund projects that have been ongoing and looking to new projects as well.

That was evident by the increase in funding requests for the maintenance proposals as well as the larger number of new proposals that were put forward this year. The Lobster Sampling Data Collection Programs in my opinion need long-term funding sources. Under the ACCSP Program Design, new programs that come forward are supposed to be more geared towards innovative data collection programs and new ideas and things like that where this lobster program is an ongoing proposal that has been collecting data for a long time.

I think a more important discussion here would be where do we institutionalize long-term funding for this type of data collection instead of risking kicking out one program for another and trying to determine a hierarchy of what is the most important program to push forward with the limited funding that we have. I don't know if there is time or a way to get that conversation going, but it is the long-term funding I think that is more important. Thanks.

MR. WHITE: I guess I'll support this motion, but I really do have an issue with this not going before the Policy Board first. I know that can't happen with the timing of the meetings. In talking to Bob, we have done it on sea herring, but that is it. Every other board goes through the policy, and that does give me concern from a process standpoint. This clearly is important so I guess I'll support it.

MR. McELROY: I would just like to briefly say that I'm in favor of it even though I didn't second it and Bill Adler did. Thank you.

ACTING EXECUTIVE DIRECTOR ROBERT E. BEAL: I think Pete's comment that he mentioned earlier is right on, which is each state that is on the Lobster Management Board is also on the ACCSP Coordinating Council. If the representative is not here, they should talk to their Coordinating Council representative and go over why this important and have that discussion about if lobster is funded and what should not be funded. There are tradeoffs in all these things and I think prepping for that discussion at the Coordinating Council is pretty important, but all the states that are in the room are on the Coordinating Council as well.

CHAIRMAN GROUT: Good point and I have discussed that with my Coordinating Council representative. Yes, Tom.

MR. THOMAS FOTE: Most of the governors' appointees and legislative appointees will be at a workshop at the same time, which we would also be

looking at what priorities are we going to do. We're looking at the cutting of funding at a whole bunch of monitoring committees and monitoring actions on a whole bunch of boards, so where do we set the priorities. That is usually why we go to the Policy Board and then make a recommendation from there.

I feel uncomfortable going through this process because then we'll start making motions at every board where we meet. We have a lot of problems with tautog about getting information and make that motion at the next meeting. I find it difficult to start doing micromanaging without going through the Policy Board first to discuss it with all the commissioners sitting there. We won't have them all at the ACCSP.

MR. BILL COLEMAN: Mr. Chairman, thank you for our de minimis status, but I'm a little bit concerned about the motion here and I'm not going to be able to vote for it. It is not that I don't think lobster sampling is important, but I believe that decision needs to be balanced with the other specie boards right now. I am not ready to vote to elevate lobster ahead of everything else, which is what this would do.

CHAIRMAN GROUT: Is there further discussion? Okay, caucus while I read this into the record. Move to have the Lobster Board recommend to the Coordinating Council that the ASMFC Biological Sampling Proposal be elevated to funded status. The motion was made by Mr. Gibson and seconded by Mr. Adler.

Okay, are you ready to vote on this? All those in favor raise their hand, five in favor; all those opposed; abstentions; null votes. **The motion carries five to four to one to one.** Are there any other items to come before the board? Ritchie.

MR. WHITE: I just wanted to make sure that we had tasked the Law Enforcement Committee to report back to us on the v-notch and if we had attached a time with that.

MS. KERNS: Ritchie, I have two things tasked to the Law Enforcement Committee; review the perfect flipper rule and then also looking at the three different v-notches' definitions within one state. I was going to ask Mark Robson to see if that could be added to their agenda for this week's meeting; and then if not, if we could do a conference call to report back to the board in February.

## ADJOURNMENT

CHAIRMAN GROUT: Okay, are there any other items to come before this board? Seeing none, I will take a motion to adjourn. So moved; thank you.

(Whereupon, the meeting was adjourned at 12:05 o'clock p.m., October 22, 2012.)