

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

Crowne Plaza Hotel - Old Town
Alexandria, Virginia
August 7, 2012

Approved October 22, 2012

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INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move to approve Option 2 for Section 3.1.1A, initial trap reduction schedule; for Section 3.1.1B, ongoing reductions, Option 2; both of which will not go into effect until NMFS implements transferability and trap reduction rules. For Section 3.1.3, trap allocation transfers, A and B; 3.1.5, trap allocation banking; 3.1.6, ownership cap; 3.1.7, controlled growth; and 3.1.8, transfer tax be postponed until the annual meeting** (Page 15). Motion. Motion by Bill McElroy; second by Bill Adler. Motion defeated (Page 29). After reconsideration, motion carried (Page 20).
3. **Move to reconsider the last vote** (Page 21). Motion by G. Ritchie White; second by Bill McElroy. Motion carried (Page 23).
4. **Move to postpone further action on the addendum until the annual meeting** (Page 22). Motion by Adam Nowalsky; second by Pat Augustine. Motion defeated (Page 23).
5. **Move to adopt Area 3 trap cuts in Section 3.2.1, Option 3, 5 percent reduction of trap allocation per year for five years, which will not go into effect until NMFS implements transferability and trap reduction rules** (Page 24). Motion by Dan McKiernan; second by Robert Ballou. Motion carried (Page 26).
6. **Move to approve Addendum XVIII as modified** (Page 26). Motion by Bill McElroy; second by Rep. Watters. Motion carried (Page 26).
7. **Move to adjourn by consent** (Page 26).

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)
Steve Train, ME (GA)
G. Ritchie White, NH (GA)
Douglas Grout, NH (AA)
Rep. David Watters, NH (LA)
Rep. Sarah Peake, MA (LA)
William Adler, MA (GA)
DanMcKiernan, MA, proxy for P. Diodati (AA)
Robert Ballou, RI (AA)
Rep. Peter Martin, RI (LA)
William McElroy, RI (GA)
David Simpson, CT (AA)

Lance Stewart, CT (GA)
James Gilmore, NY (AA)
Pat Augustine, NY (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)
Peter Himchak, NJ DFW, proxy for D. Chanda (AA)
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)
Tom Fote, NJ (GA)
John Clark, DE, proxy for D. Saveikas (AA)
Roy Miller, DE (GA)
Tom O'Connell, MD (AA)
Bob Ross, NMFS

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

Ex-Officio Members

Joe Fessenden, Law Enforcement Committee

Staff

Robert Beal
Toni Kerns

Daniel Chesky
Chris Ford

Guests

Loren Lustig, PA
David Spencer, AOLA
Bonnie Spinnazola, AOLA
Russ Allen, NJ DFW
Peter Burns, NOAA
Jud Crawford, Pew Charitable Trusts
Adam Davis, Chesapeake Research Consortium

Raymond Kane, CHOIR
Lindsey Fullencamp, NOAA
Fred Akers, Great Egg Harbor River Council, NJ
Brad Stevens, UMD, Eastern Shore
John German, LISLA
Janice Plante, Commercial Fisheries News

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel, Alexandria, Virginia, August 7, 2012, and was called to order at 10:35 o'clock a.m. by Chairman Douglas Grout.

CALL TO ORDER

CHAIRMAN DOUGLAS GROUT: This is a meeting of the American Lobster Management Board. Welcome, everybody. My name is Doug Grout; I'm the Chair. We have on our agenda today consideration of final approval of Draft Addendum XVIII as well as discussion of a potential proposal from the state of Massachusetts for modifications to the V-notch definition in Area 1 and a technical committee report that Toni will be making for Josh Carloni, our technical committee chair because he is on his honeymoon right now.

APPROVAL OF AGENDA

CHAIRMAN DOUGLAS GROUT: First of all, we have approval of the agenda. Are there any changes to the agenda or modifications that the board would like to make? Seeing none, are there any objections to the agenda being approved. Okay, the agenda is approved without objection.

APPROVAL OF PROCEEDINGS

CHAIRMAN DOUGLAS GROUT: We also in our packets have the proceedings of the May 2012 meeting. Does anybody have any changes or comments? Is there any objection to approving the minutes as drafted? Seeing none, I'll see those proceedings approved.

PUBLIC COMMENT

CHAIRMAN DOUGLAS GROUT: Finally, Item Number 3, we give this opportunity for the public to make comment for items that are not on the agenda. Is there anybody in the public who would like to make comments at this particular point for items not on the agenda? Seeing none, let's move to Draft Addendum XVIII and, Toni, I assume you have a presentation on the addendum.

DRAFT ADDENDUM XVIII

REVIEW OPTIONS

MS. TONI KERNS: Okay, I'm going to go through the options just to remind the board of what is contained within the addendum and then review the public comment that we received. As a reminder, the board voted to scale the Southern New England Fishery to the size of the current resource under the current environmental conditions.

This included an option that would result in minimum reductions in traps allocated by 25 percent. The addendum proposes a consolidation program for both Areas 2 and 3 to address latent effort and reductions in traps allocated. One of the goals is to improve the economic performance of the fishermen who remain in the fishery by constraining unused gear from returning to the fishery should the stock rebuild in the future.

As a reminder, there are varying amounts of latent effort within the stock. The most current number of traps allocated in Area 2 was 177,120 traps and the maximum traps fished for the data that we have for the area is about 104,603 traps. For Area 3, 2010 traps allocated were approximately 111,386 and maximum number of traps fished was approximately 75,808 traps. The maximum traps fished for Area 3 is less precise due to less reporting from that area.

The proposed management options; first, I'm going to go through the options that are proposed for Area 2. First is initial trap reduction; the first option is status quo, no trap reduction. The second option is a 25 percent reduction in trap allocation in Year One. This is what the LCMT had preferred, and it reduces from the allocation that was given in 2007.

As a reminder, the National Marine Fisheries Service has yet to allocate those traps and that would be coming forward in an upcoming rulemaking. The second is looking at trap reductions after that initial; first, Option 1, status quo, is no option. The second option is to do a 5 percent reduction per year for a total of five years, making an additional 25 percent reduction.

Again, this is the LCMT preferred and this with the prior option would result in total of a 50 percent reduction. The next is looking at trap allocation transfers. In Addendum VII we set rules for partial transfers of multi-area trap allocations as well as full business transfers of multi-area trap allocations.

In the addendum for partial transfers of multi-area trap allocations, we stated that if you sold traps that could be fished in multiple areas, the buyer of those traps would have to pick one specific area that those traps could be fished in, and that is the status quo option here. Option 2 would allow that buyer to continue fishing in any of the areas that the traps had previous history in. Full business transfer is completely the opposite of that.

If we did a full business transfer from a fisherman to another where the traps had history in multiple areas, the buyer could fish in any of the areas that those traps had history in. Option 2 is that the buyer would have to pick only one area that the trap had history to be fished in. Trap allocation banking; the first option is status quo, no trap allocation banking.

The second option is to allow up to 800 traps to be banked by an individual or a corporation at a given time. This is the LCMT's preferred option. Remember that a banked account is by LCMA so you could have different bank accounts for each LCMA that you have traps in. The traps cannot be fished until after activated by the allocating agency, so that could be multiple agencies if you are a dual permit holder. These banked traps are also subject to the annual trap reductions.

Ownership cap; ownership cap is the maximum number of traps an entity may own in an LCMA, basically a combination of your allocated traps and your banked traps. Option 1, status quo, limits the number of permits to two with the exception to those that had more than two permits prior to 2003, and that was through Addendum VII.

Option 2, an entity cannot own more than 1,600 traps; 800 active and 800 banked. This was the LCMT's preferred option. Option 3 is the entity could not own more than 1,600 traps; 800 active, 800 banked; or more than two permits. Any entity that owned more than the aggregate cap at the time of the implementation may retain that overage, but all transfers of traps after the implementation date would still be subject to the trap cap, meaning the buyer would be subject to the trap cap.

Controlled growth; controlled growth is looking at how many traps you can move from your bank account to your active account at any given time. The purpose of controlled growth was to prohibit excessive consolidation of the industry. Option 1 would be no limit on growth; you could move as many traps as you wanted from your bank to your active account. Option 2 would be a maximum of

400 traps could be moved per year from your bank account to your active account.

Transfer tax; again this document was not proposing a change to the percentage of the transfer tax in Area 2; just the method to approve a transfer tax. Currently status quo; we go through an addendum or an amendment process to change the transfer tax. The document proposes through Option 2 that it could be done through board action. You could only adjust it between zero and 20 percent through board action and only once per year following the fishing year.

Next I'm going to go through the proposed management tools for Area 3. Area 3 had trap allocation reduction proposals. These would be reduced from their current 2012 permit trap allocation. Reductions would be both on active and banked accounts. Option 1, status quo, is no reductions. Option 2 is a 2.5 percent reduction of trap allocations per year for 10 years. Option 3 is a 5 percent reduction of trap allocation per year for five years.

Both Option 2 and 3 would result in a total of 25 percent reduction in traps. Transfer tax; for Area 3 there are two pieces that we're looking at for the transfer tax. First is the amount of the tax. Currently under the Area 3 transferability rules, there is a conservation tax of 20 percent for partial transfers and 10 percent for full business sales.

Option 2 looks at consolidating and having just a 10 percent tax on all transfers, either full or partial, and that was the LCMT preferred. Second is looking at the method and this change in the proposal for the method is the same as I just went over for Area 2, so I'm not going to repeat. Trap allocation transfers; again it is the same options that I just went through for partial and full trap allocation transfers for individuals transferring traps with multiple area history.

Next is looking at a designation for Area 3. The addendum document proposes to split Area 3 into three designations, Gulf of Maine, Georges Bank and Southern New England. Option 1 would be no designation. Option 2 would be the split for three areas. It would be part of the permit renewal process where fishermen would indicate which of the three or multiple – you could check multiple areas that you would want to fish in.

If you did check multiple areas, then you would be bound by the most restrictive rule for the area that

you designate. Next we look at trap and permit caps on ownership. We propose several types of restraints on ownership to inhibit the excessive consolidation of industry, including a cap on the number of individual active traps a single permit may fish, a cap on the number of traps a single permit may fish and own, and a cap on the aggregate number of federal permit and traps an entity/company may own.

First is the trap cap. The current trap cap in Area 3 is 2,000 traps. Option 2 splits the trap cap into two segments; one for Georges Bank/Gulf of Maine; the second for Southern New England. The Southern New England trap cap starts off at 2,000 and drops down to 1,800. It's larger of the two. The Georges Bank/Gulf of Maine starts off at 2,000 and drops down to 1,513.

Next is looking at the single ownership cap. Status quo, there would be no ownership cap. Option 2 is proposing an ownership cap. It assumes that NOAA Fisheries would implement a 2,000 trap cap in federal rules and cut allocated traps by 25 percent. This is the maximum number of traps that an entity could own with the combination of its active and active account. We just have a single ownership cap since the Gulf of Maine/Georges Bank area is not proposing to have banking. Therefore, the maximum would be 2,396 and drops down to 1,800 because at the end there would not be banking any longer.

Lastly is looking at an aggregate ownership cap. Option 1 is under the current rules sort of our monopoly rule that we have, you may call it. No single company or individual may own or share ownership of more than five LCMA 3 permits. If more than five permits were owned prior to December 13, they may be retained. They were grandfathered in.

Option 2 is no single company or individual may own or share ownership of more than five permits and cannot own any more than five times the individual ownership cap of traps. Any entity that owned more than the aggregate cap at the time of implementation may retain that overage, but all transfers of those traps after the implementation date would be subject to the cap.

Under Option 2, if this were approved by the board, the board may want to consider recommending that NOAA Fisheries establish a control date for the number of permits or traps a single company or individual may own or share ownership of for Area 3. This is what the aggregate ownership would look like.

For Georges Bank and Gulf of Maine we start off at 10,000 traps and drop down to 7,565. I have a corrected table for Southern New England on the far right side. We forgot to include the banking traps in this table prior to; and so if banking were approved, that is 396 traps, then it would look like the corrected where we would start off with a maximum of 11,980 and drop down to 9,000 traps. Prior I had just multiplied it times the single trap cap.

Banking; Option 1, no banking permitted. Option 2, up to 396 traps could be banked. Option 3, up to 9,000 traps could be banked, and Option 4 up to 2,396 traps could be banked. That is equal to the maximum ownership cap and is what the LCMT was preferring. Next is controlled growth; Option 1, status quo, no controlled growth for Area 3; and then Option 2 is a maximum of a hundred traps could be moved per year from your bank account to your active account.

Option 3 is 200 traps could be moved per year from your bank account to your active account. And then if the board adopts any measures within this document, the board will need to consider which of those measures that they would want to move forward with recommendations to the National Marine Fisheries Service.

REVIEW PUBLIC COMMENT

MS. KERNS: Now I'm going to go through the public comment that we received for this document. We received ten written comments and one hearing was held. It was a joint hearing between Massachusetts and Rhode Island fishermen held in Rhode Island. There were twelve industry members and six state and NOAA staff present at the hearings.

The comments that we received for the document, the majority of the comments were in favor of the LCMT options with some requests for some wording changes and a couple of comments that were not in favor of the LCMT options. For trap reductions, those comments were all in favor of the LCMT options for Area 2. It was to have 25 percent in Year One and then a 5 percent reduction in the five years following. For Area 3 we're looking at a 2.5 percent reduction over ten years.

To note, further comments that we received by the National Marine Fisheries Service, they indicated to us that they would have to put some of the information – if the board were to pass some of these issues forward, they would need to do a separate rulemaking than the one that they have coming down the line in order to implement them.

I have put stars next to those issues. For example, partial transfers, if we were to deviate from status quo, then that would need to be in a new rule-making process for NOAA, so that's what that star indicates. The public commented for Area 2 that they are looking to have fishermen be able to fish the traps for the history that it contains, so they want for the buyer to be able to fish in any area that the trap has history in, which is Option 2. There was an individual that supported status quo.

For Area 3, they understand the need to stay with status quo, but would like to in the future move forward to allow buyers to be able to fish in any area it does have history, sort of as we had indicated in the passing of the transferability rules through Addendum XII. Looking at full business sales, both Area 2 and 3 comments indicated that they favored status quo; that a trap could be fished in any area that it had history in.

For the transfer tax amount, comments favored the 10 percent tax on all transfers. For the transfer tax method, most of the comments favored an addendum; but if an addendum was not moved forward and it was done through board action, then the commenters stated that they would like to have LCMT input prior to that board action to change the transfer tax.

Banking; for Area 2 commenters favored to bank up to 800 traps and for Area 3 commenters favored to bank up to 2,396 traps. For the ownership cap, for Area 2 the commenters favored that an individual could not own more than 1,600 traps. For Area 3, commenters favored to set two caps; one for Gulf of Maine/Georges Bank and the other for Southern New England. They also commented that the option should say active traps for clarity.

For the single ownership cap, they favored for Area 3 two sets; a cap that includes a maximum trap cap and the bank traps, and it is Option 2. For the aggregate ownership cap for Area 3, commenters favored Option 2, no more than five permits or five times the ownership cap and recommended a control date.

The comments from NOAA indicated that if the board were to move forward with this option, there may be difficulty for NOAA to implement rules about monopolies but that it would be helpful if we would define what we mean by monopoly considering that the Area 3 has compared to the total landings of lobster, Area 3 landings wouldn't justify a monopoly in general terms of monopoly.

Next looking at controlled growth, for Area 2 they would like to move up to 400 traps from the bank to the active account. For Area 3, this is where there was a deviation from what was put forward in the addendum versus what was wanted by industry. They want to annually add no greater than a hundred traps to active allocations providing that no other cap is exceeded.

They do not want to restrict this to be from just the bank to the active account; that Area 3 is looking to not be able to move more than 100 traps at a time from any movement except for when doing a full business sale. This is more restrictive than what we went out for public comment on; so if we were to move forward with this comment, then we would need to take the addendum back out for public comment to let the public know that we're proposing something that is more restrictive. We would also need justification for why we would only want to restrict at a hundred traps. I do not have that justification right now. Those were all the comments that I received. Are there questions?

MR. DAN McKIERNAN: Thank you, Toni, well done. I think one of the areas where confusion was created was the concept of the bank. I guess my question to you is could you help the board understand the discrepancy in understanding what a bank is? In other words, it appears that in Area 2 a bank included all the traps above the area-specific trap cap; but for Area 3 the bank was where you put any traps that you obtained even if you were below the area's trap cap. Does that make sense to you?

MS. KERNS: I understood what the bank was for Area 2. It's you can purchase X number of traps but you cannot fish, that you slide over – that you can move to your active account at any given time that you get authorization from the agencies allocating you. I am not a hundred percent sure and I do not have complete clarity what Area 3 wanted to define their bank as.

REPRESENTATIVE DAVID H. WATTERS: I had a comment on 3.1.8, the transfer tax and a question. As a legislator I'm going to tend to prefer that we go to the public when we're creating taxes and allocating that. I just wondered then were there any compelling reasons not to go out to the addendum or to the public hearing on that.

MS. KERNS: The board's original justification for wanting the option to change the tax through board action was that if they thought the trap reductions weren't meeting the goals of the document on an

annual basis, they could adjust that tax. It also could be the flip if the trap reductions were going beyond the expectation of the goals of the document, you could lower the tax just through board action, so responding to how well the management measures contained in the document were working to industry. That was the original reason why it was proposed, but I didn't receive any other comments beyond that.

MR. ROBERT BALLOU: Toni, I'm interested in the use of the term "ownership" in Addendum XVIII and whether it is used consistently with regard to prior addendum. It seems to me ownership has sort of three components. One is you own traps, which seems straightforward. The second would be you own a permit or a license, which seems straightforward.

The third is you own the allocation, and that phrase is used in Addendum XVIII several times. Has that phrase or that approach or concept been used in prior addendum or is it new ground here? Have we already established the concept of once an allocation is issued, it is owned by the recipient?

MS. KERNS: I would say that we started that concept through Addendum XII as we built sort of this backbone for transferability. I think that we put it out for use in this addendum a lot more, so I think we have built around those beginning ideas of ownership of that allocation and implemented it in Draft Addendum XVIII.

DISCUSSION OF FINAL APPROVAL

MR. STEPHEN R. TRAIN: Toni, I have two questions and maybe I didn't understand. Early on did you say that you have poor reporting data from Area 3?

MS. KERNS: It is not their data reporting is – the Area 2 reporting is stronger in order to identify traps fished versus traps purchased because the states of Massachusetts and Rhode Island have a hundred percent reporting from their fishermen. Area 3 federal permit only holders do not have a hundred percent of fishermen reports, so I don't always have traps fished from the Area 3 permit holders whereas from Area 2 it's more likely that information is there.

MR. TRAIN: So they're a lot like us in Area 1; they could –

MS. KERNS: Correct.

MR. TRAIN: Tags and traps are not necessarily the same thing?

MS. KERNS: Yes, because sometimes in lieu of traps fished I have to use trap tags purchased, which we know is not always a reflection of – purchase isn't what you always fish.

MR. TRAIN: Thank you; and my second question was on the aggregate ownership cap, 3.2.7, you said that anybody with ownership of over five permits would be grandfathered. Does that define active or not? I mean is it possible that someone would have four or five inactive permits and they could activate them during when we're talking activity and non-activity?

MS. KERNS: I'm going to have to ask my federal partner to help me out with that one because I'm not sure how many inactive Area 3 permits there may be. You may have to repeat the question for Bob.

MR. BOB ROSS: Is it okay to respond?

CHAIRMAN GROUT: Yes, please do, Bob.

MR. ROSS: The question here – part of this issue is that we obviously at the federal level have no rulemaking in place relative to ownership. What this addendum proposes is for us to do a control date to begin a potential process that would establish a limit on ownership. In our comments we voiced concerns of the differences in how certain states and the federal government allows ownership.

For instance, we obviously have corporations and partnerships in addition to owner/operators where the majority of the states still have owner/operators. Regarding your question, I could be bureaucratic and say subject to a request from the commission and the initiation of an advanced notice of proposed rulemaking, that is the kind of information we would seek from the public once we receive your recommendation to us.

Not to be as bureaucratic, our federal lobster permits are entities into themselves. We have the ability – we provide our constituents the ability to put their lobster permit in abeyance. We call it conservation of permit history, CPH. It would depend on what ultimately is decided through public comment process because this would clearly be something we would go out to the public in a proposed rule seeking further guidance on whether it would be restricted to currently active vessels or those vessels that potentially for reasons through no fault of their own their vessel sank of whatever; those permits are sitting in CPH. I'm not sure if that helps you or not to clarify your question.

MR. TRAIN: I understand the concept of conservation of permit history, but I'm dealing more with the aggregate. If there is a limit here that seems to be applying to the industry of five vessels and you're grandfathered if you have more but it doesn't say whether they're active; I mean could somebody be sitting on three or four permits and they've already got six vessels and you see them go with three more vessels in a couple of years as we're trying to reduce effort. We're not talking about somebody that is sitting on their Area 3 permit because they're fishing Area 1 right now.

MR. ROSS: I understand your question; could someone with seven Area 3 permits who also has three more permits in CPH, in permit history; would all of those permits be exempted from the cap. Again, I think that is a public comment question that we would seek public guidance on. We have no pre-conceived direction for this.

MS. KERNS: Steve, the document does not say they have to be active; so if it was the board's wishes to want it to be active, then you would need to make that clarification, and I believe that would be more restrictive as well, and so that would be something else that we would have to consider going back out for public comment on. I would have to work with Bob to see how many inactive permits there would be for potential use out there as well to determine the volume of permits that would be impacted by – people would be impacted by a ruling such as that.

MR. DAVID SIMPSON: One of the things that I think will be really important to keep in mind here, as we talk about ownership and transfers and accumulation of traps, which are all described in numbers of traps, is just like when we work with quotas, I think it is going to be important that we keep in mind the concept of a percentage of the allowable total number of traps.

I think of countries that have gotten themselves in trouble allocating pounds of quota; and if there is a future management action – say we were able to link up fishing mortality with the number of traps fished and we want to manage F through trap reductions, I'd be very concerned after a few years of trading that somebody is going to come back and say, no, I own 9,000 traps and they're going to expect some kind of compensation if the commission plan calls for a reduction to 8,000 traps.

I think so that we don't lose the public, I wouldn't want to change all the tables. The numbers are fine, but overarching all of this there should be

incorporated a total number of traps that we're talking about and all of these numbers that we are presenting in tables and in discussion are in fact a percentage of the total allowable. Otherwise, I'm afraid we're really going to lose the handle on this.

MR. PETER HIMCHAK: Mr. Chairman, be patient with me on my questioning here because I don't have the history of all these transfers in areas that many of you have at the table. I have about 30 fishermen in the lobster fishery. Here is my simple question. I'm sitting there with a federal permit with a thousand traps and the partial transfer of 500 of these to another fisherman; does the permit go – how does the permit get transferred when there are partial transfers of traps? That is my first question.

MS. KERNS: Pete, if you have a federal permit holder, he is a federal permit holder only for Area 3, let's say, he has to sell to another federal permit holder only. Those are the rules that we designated through Addendum XII. I already have a permit. I may not have any allocation or I may have a hundred traps. I'm going to buy 500 of your traps. You can continue to fish the other 500. The buyer will receive 500 less the transfer tax; so if it is 10 percent, then he gets 450, and then that individual already has a federal permit. He will be able to now fish 450 plus the traps he already had.

MR. HIMCHAK: Okay, that part I get. Now, I'm still sitting there with the residual pot allocation. I've given X number. I still have a permit. That permit can be transferred with the remaining pots I have? If that is the case, then the recipient of partial locations – somebody is going to end up with another permit.

The whole exercise is to scale down the effort in Area 3 by 25 percent; so if a fisherman in Area 3 is reducing his pot allocation 2.5 percent a year and then gets another permit from somebody with a pot allocation, how have we achieved any reduction in effort, because he could take latent pots with a new permit and start fishing them.

The basic premise of this business model is what I'm trying to understand because we have to do this in Areas 4 and 5. We have to come up with a mechanism to reduce the pot allocation without activating the latent permits. There is not going to be any buyout for any of these latent permits. So in that respect, I like this business model that is presented here; but I see a basic flaw in that if the permits get transferred, then the fishermen that are reducing their pots are also augmenting their pots at the same time.

I see it as counterproductive. Maybe I don't understand the model.

MS. KERNS: Pete, I think that you are following. There are approximately, what I can estimate, a 30 percent latency in Area 3; so if they're reducing their traps at 2.5 percent, some of those latent traps could be activated into the fishery by purchasing and banking traps, so you are correct. Because in Area 2 they do have slightly higher latency – I close it is closer to 40 or 45 percent, estimated – they are going to cut 25 percent right from the beginning, so they will cut some of those latent – some of that latency will get cut out at the start. There will again be some latent traps that could come into the fishery through banking and transferability.

MR. HIMCHAK: One last comment; so if I'm an Area 3 fisherman and I'm scaling down my business because I'm required for a 25 percent reduction in Addendum XVIII and I'm acquiring pots, which is a good business move and I'm putting them in my bank for future use; if I get another permit, then all of a sudden they're not going in my bank, they're going in the water. I don't see how we reduce in the Southern New England area. If the permits can be accumulated by one individual or a corporation, then he has multiple pot allocations; correct?

MS. KERNS: I believe you are correct and I am looking to the National Marine Fisheries Service to make sure that I am answering your question correctly.

MR. ROSS: Area 3, Area 2 and the Outer Cape all have – at the state level Area 2 and Outer Cape and the state and federal level Area 3, there has been a historic participation and qualification process. So for Area 3 at the federal level, at this point we have a known quantity of I believe 137 vessels fishing a finite number of traps.

I don't have that trap number offhand but it is 150,000, plus or minus. That number of traps is finite. That cannot expand. It's our assumption that under transferability, in fact that finite number of traps will in fact reduce through transfers' conservation tax. At the same time once we have locked in that number of traps, we have recommendations to open up that fishery because at that point you don't need the number of vessels to fish those traps.

You could have more or less, but the total effort in Area 3 is constrained by the total number of traps available. So if 100 individuals fishing the 150,000

traps or you have 200 vessels fishing that 150,000 traps; in fact, in theory that extra hundred vessels would generate additional conservation taxes that would continue to drive that finite number of traps in that area down. To us it is not as much the number of permits once you lock down. It is the number of traps that can be legally fished in that area then becomes the fishing effort for that area.

MR. HIMCHAK: Well, how is that number of traps capped in Area 3?

MR. ROSS: Under the commission recommendations we went through a limited access historic program for Areas 3, 4 and 5 back in 2003, 2004 and 2005. Every Area 3 vessel that is authorized to fish in that area now went through a process that proved that they met the criteria. I don't remember the details, but they had to show they fished two consecutive months in the area and they had to land at least 25,000 pounds, et cetera.

There was a process that every one of those vessels went through. As a result of that process, that vessel was or was not qualified for future access into Area 3; and those vessels that did qualify were given an individual trap allocation based on their documented history of fishing in that area.

CHAIRMAN GROUT: Toni found a slide on the public comments that needed to go up there to provide you with information on public comment; an extra slide.

MS. KERNS: I apologize; I don't actually have this slide over there because it is missing. I did leave out a key public comment, and it is for the Area 3 designation. Industry changed their comments or maybe comments were interpreted incorrectly, I'm not really sure from all of the LCMT meetings that occurred and then us putting together the document.

But it was not the intention of the LCMT to have a three-area designation. They just wanted a two-area designation. One would be LCMA 3 Southern New England; and the other would just be LCMA 3. As part of the annual permit renewal process NOAA Fisheries would require fishermen with Area 3 permits to designate whether they were going to fish in Area 3 or they were going to specifically fish in the Southern New England stock area.

Should an entity designate Area 3, then the Area 3 trap cap would apply. A permit holder's designation within Area 3 Southern New England would incorporate the identical trap cap reductions until

Year Five when the trap cap is frozen and remained at 1,800 traps. And then should a permit holder designate both Area 3 and Area 3 Southern New England, the most restrictive rule would apply. Area 3 Southern New England is only applicable to Addendum XVIII and does not denote a separate LCMA in any other management issue considered by the commission.

CHAIRMAN GROUT: After I go to Bill, I would like to go back and try and resolve Dan's original question about limited growth in Area 3, and at that point I might ask the LCMT Chair to come up and help clarify what their intent was with a permit bank in this particular case.

MR. WILLIAM A. McELROY: Mr. Chairman, a couple of comments here. There was a question as to whether permits or traps were an important criteria and someone mentioned that Area 3 could have as many as five permits. I think some people might have the assumption that every one of those permits would necessarily be a full allocation.

In reality there are many smaller allocations than a full number. The number of traps that would be allowed to owned and banked is more important than the number of permits because conceivably you could buy five permits that only had a hundred traps on each allocation and then you could another permit that had as many as 2,000 or more.

It seems to me much more sensible to be concentrating on the number of traps. As Bob Ross very clearly stated, both in Area 2 and Area 3 we now have a finite number of traps that have been qualified and approved to be in the fishery. Anything else is not allowed. Every time a transfer takes place, that number is going to be reduced by either 10 or 20 percent with the transfer tax.

Then we have the additional reductions through the 2.5 percent for Area 2 and the 25 percent and 5 percent for Area 3 and then that other one for Area 2. In both of those cases the pool of pots is going to continually shrink. Worrying about how many permits are dividing up a shrinking number of pots really doesn't have much implication on management and on conservation.

It is just a matter of business sensibility. I'd stress to people don't be concerned and worrying about that you can have five permits. It is how many pots are attached to the permits that is the real number. You can accrue a great number of permits but you can't

exceed the number of pots. That is really the determination.

This program for both Area 2 and Area 3 has a continually shrinking number of pots that are available in the system, so it really isn't that significant that one fisherman is fishing 600 versus 800 or in Area 3 a thousand versus 2,000. The fact is that overall number can't be exceeded, so it is just a matter of economic efficiency as to how many each individual fisher ends up with that really has very little to do with conservation at that point. As Bob Ross pointed out, every time there is a transfer, there are fewer pots in the system. So to some extent the more we have transfers the fewer pots that are there, and that is an actual benefit to the system. Thank you.

CHAIRMAN GROUT: Thank you, Bill. Dan, could you restate your question and given that we're a little unsure about things, maybe, Dave, you could come up and respond to this as to what the intent with the trap bank was in Area 3.

MR. McKIERNAN: It appears that in the concept of banking that was defined in the draft addendum, it was a place to put traps over and above the trap limit. For example, an Area 2 fisherman who has an 800-trap limit today and maybe has 800 traps in their allocation portfolio could obtain trap allocation from somebody else, but they can't fish it so therefore they bank it. It made sense because there is a pretty aggressive schedule of trap reductions, and so fishermen and permit holders may want to line themselves up with options to get allocation in the future as they suffer the trap cuts.

It seemed to be different in the Area 3 proposal where the bank was any trap allocation that was transferred to a new owner; that allocation seemed to go into a bank out of which Area 3 LCMT campaigned for only a hundred of those coming out at a time. An Area 3 fisherman who may have 800 traps, for instance, if he grabbed another 800 traps from another Area 3 fisherman, all the new 800 goes into a bank from which you only pull out a hundred a year. There seemed to be confusion about what the bank was going to hold. Was it traps over and above the area-specific trap cap or was it traps over and above the unique allocation that the permit holder got?

CHAIRMAN GROUT: Dave, can you help us out?

MR. DAVID SPENCER: A lot of the concept of banking came about as Dan described. This is an

industry-funded buyout essentially. As Toni pointed out, we have a latency rate in Area 3 of roughly 30 percent. It is actually less than when you start to separate traps that aren't tied to another area.

So at some point in this active reduction people aren't going to be able to buy traps to maintain their business or the competition is going to get pretty intense. This was a mechanism that especially with the smaller guy in mind to allow them to buy up once and over their trap cap and let the active trap reductions take them down to the final trap cap.

We never envisioned that the purchases had to go into a bank. That was just an option if people wanted to do that. We envisioned people still had the ability to buy every year if they wanted to do it that way. Banking to us was just an option that offered some flexibility and we thought some protection, if you will, for some of the smaller operators as we went through this ten-year program.

CHAIRMAN GROUT: I don't understand where the banking would be something someone would want to do if they have – say they have 200 traps in their allocation and then they want to buy some more and you're saying they don't have to go into the bank, so why would they want to put it in a bank?

MR. SPENCER: The reason we thought they'd want to go into the bank was they could – somebody at 200 could potentially in the first year buy 2,100 and have them available. He would not have to go back out on the market every single year. As I said, every year of this ten-year program there is going to be less and less traps available to be purchased.

It was really the opportunity for especially the smaller guys to be able to get traps in the very beginning and not be put in a position of competing for traps at the end of this program. It also really kept the value of their business on sort of a par with anybody else. If they decided to sell their business, the business would be sold if they had traps in the bank with that potential going forward.

CHAIRMAN GROUT: Dan and Toni, does that clarify things for either of you? Dan.

MR. McKIERNAN: Yes, but it is still not quite clear to me why you're only allowed to pull a hundred out of – why you're only allowed to activate a hundred at a time. I guess that is the essential question; why not allow someone who grabbed more than a hundred, 400, say, to activate them immediately?

MR. SPENCER: I'm glad I have the opportunity to speak to that. This is where there is two – Area 2 and 3 are vastly different in this one aspect. Over a period of about eight years, roughly, Area 3 has invested into their resource a series of active trap reductions that started from initial allocation and ended up with 30 percent less overall.

We've been finished with that for a few years now and we're starting to see that there are less traps. People like this. The controlled growth aspect came about; we have always supported transferability and would advocate that it be implemented. However, if there is not any sort of control on the number of traps that can go back in, it is possible that we will have a spike in effort even though admittedly temporary; that people that have made this 30, 40 percent investment in trap reductions felt this was an appropriate process to take; unlike Area 2, they have not made that investment yet. They're still at initial allocation levels, and I think that is why you're seeing a discrepancy between the two areas.

MS. KERNS: David, I'm still unclear I guess because your justification for the bank was that you said that you wanted to allow these smaller fishermen to be able to purchase traps; so if someone had a small allocation, anywhere from 100 to 500 traps, and they're going to have to spend a large sum of money to purchase a large amount of traps to build up; but then their investment, they won't be able to utilize that investment for – I mean, if they only had 100 traps for a ten-year period; and so I'm just trying to figure out for justification-wise of making recommendations to NOAA Fisheries, if this is something we move forward with, how I would justify that recommendation to them in terms of saying that is to allow smaller allocations to build up their business, but we're really restricting them on how they can build up their business. I'm not completely clear.

MR. SPENCER: This is an option so in the end it is a business choice. If they don't take that option – as I said before we're going to run out of traps; we're going to run out of traps if people want to buy at the end of this program. This is an opportunity that smaller operators or anybody has is to purchase traps if they think they'll need in the out years. That is really what this was.

The kind of unintended consequence was it really locked traps up for an extended period of time. If controlled growth were an issue that is approved, you really don't allow those to go to another permit and become activated. They're under the restraints of

controlled growth. It's just an option; it gives them a business decision. If this weren't there, then they would have to go out every single year and compete on the market with bigger operations. We just felt it was flexibility.

CHAIRMAN GROUT: Further questions on this issue? Go ahead, Bill.

MR. McELROY: I don't know if it is actually a question; it might be a comment. Area 2 and Area 3 have been to some degree a disagreement as to how to take traps out of the bank. I know from the Area 2 fishermen who have partial allocations in Area 3 – say, a fellow has a couple of hundred pots of an Area 3 allocation and he would like to build himself up to enough traps to make it worth his while to go out there and fish them in Area 3, to tell them that you can only activate a hundred at a time and you need to buy 400 pots, like Toni said, that is four years before you can get any repay back on your money spent. I don't personally like that at all.

I know from the Area 2 position of having to deal with Area 3 allocation, we don't like that. We said 400 pots was a proper amount and to try to tell a fellow that you've got to spend a hundred dollars a trap or more for an Area 3 allocation and then you can only use a certain amount of them each year and it could take you four or five years to activate them all, that is a burden that I don't think is fair. I have great sympathy with Area 3 not wanting to have an initial spike in effort and that certainly tries to address that problem, but it clearly disadvantages the smaller fisherman, and I have some degree of discomfort with it. Thank you.

CHAIRMAN GROUT: Bonnie, would you like an opportunity to comment on this?

MS. BONNIE SPINAZZOLA: Mr. Chairman, just to what Bill is just saying right now is actually the reason Area 3 went with a hundred traps is because in the beginning we followed Area 2, so that is where we came up with that initially.

The other thing as far as an economic reason for this is, first of all, the smaller fishermen can benefit by this because if he buys traps right away, puts them in his bank, they're going to be a heck of a lot cheaper and they're available if they do it in the beginning and they have the opportunity to do that.

Even though we're only going to go up a hundred traps a year, the other huge economic boon to this is that once that Area 2 fisherman or whoever else,

small guy, goes into Area 3, even though he has to wait four years or whatever until he can put his full allocation in, we are paring down the traps so amazingly or so quickly or so huge – I don't know, a lot – that this fishery we expect will be extremely healthy.

The thing to remember is right now Area 3 has fewer traps right now than probably in Cape Cod Bay. We have a huge, huge area and very few traps. We want to get rid of our latent traps. By the time this is all finished, we will have basically no latent traps left. We right now only fish about 60 or 80 or something fishermen. The whole 137 permits are not being used.

We want a very clean fishery. The Area 3 fishermen that we worked with as well as the LCMT agreed that they have worked very hard for ten years to get traps out of the water. They're going to work another ten years to get an additional 25 percent. In the end we will have taken 55 percent of our traps out. We did not want within the first year to see all of those traps come flying back in the water. That is basically it. As far as economic reasons, I hope you got that.

CHAIRMAN GROUT: Okay, what I was going to look for at this point is are there any motions that we can get up on the board unless there are final questions from the board for Toni about the addendum; just for clarification. Bob.

MR. BALLOU: Mr. Chairman, it is not a question for Toni, but I think in terms of transitioning in the way you just suggested, a very key issue here is the comment letter from the National Marine Fisheries Service and the potential disconnect that would arise from this board adopting a number of the measures in the draft addenda.

I'm wondering for the board's edification in terms of positioning ourselves well for motions whether it might be appropriate through you to have the Service – of course, it doesn't make sense to have them just reiterate what they've already said in their comment letter but perhaps expound a bit on the implications of adopting measures that are not currently in rulemaking, vis-à-vis the federal rule-making process, so that we have a better understanding as to what it would mean to adopt measures that are not in sync with the National Marine Fisheries Service in terms of where they are now. If appropriate, I would be interested in hearing more on that, but I'll leave that up to you, Mr. Chairman, as to whether this would be a good time for that.

CHAIRMAN GROUT: Would that be helpful to our commissioners here in making their decision? Toni, has an additional item that she would like to – are you prepared, Bob, to be able to give us an overview? Okay, Toni, you go first.

MS. KERNS: Bob, I think it would also be helpful if you could in your answer let the board know the timing of the current rulemaking as well as the timing of allocation from Addendum VII and Outer Cape Cod so that all of that information can come at the same time.

MR. ROSS: Just a brief background history; we started the Area 2/3 action – I believe it goes back to at least Addendum IV, several years. There were problems with how the original addenda proposed to qualify and allocate. As a result of that, several other addenda evolved over time. Ultimately we took the marching orders for this transferability program that also includes qualifying and allocating federal dual permit holders that fish in Area 2 and the Outer Cape.

We used Addendum XII and we did our initial analysis to draft an environment impact statement that unfortunately literally published back in April of 2010. If the board recalls, that same month the Lobster Technical Committee came forth with the Southern New England recruitment failure determination, which then triggered the board into the actions that ultimately now we're dealing with here, which was Addendum XVII and now Addendum XVIII.

When we came out with our DEIS, our environmental impact statement, we went out to public hearings on that. At the same time all this information was breaking about Southern New England. At that point we received several recommendations both from the board as well as through our public comment process for us to delay further development of this Area 2/Outer Cape qualification allocation process and then the transferability aspects subject to the results of the Southern New England action.

You will recall initially it was a five-year moratorium. We looked at that and realized it made no sense for us to go forward and try to align trap allocations when the fishery would close for five years. We put this rulemaking on hold while we worked this Addendum XVII and Addendum XVIII process. At some point here in the last several months we became more comfortable with the direction that the board was moving in that allowed us the opportunity to reactivate our rulemaking.

We've done our initial environmental impact statement. We are now drafting our proposed rule. This rule will present to our constituents what we propose to do based on the commission's earlier recommendations to us that evolved after Addendum XII. We will do a proposed rule. Our target is later this fall. We would provide constituents public comment opportunity to evaluate our proposed way to move forward with this rule.

Then following that public comment period and subject to the feedback we get from our constituents, we will do our final analysis, which barring major adverse public reaction should be able to turn quickly, and it is our hope at this point that we will implement our final rule prior to the 2013 fishing year for us, which is May 1st.

Now, that implements the final rule. What this process does is really a four-step process. First, taking what the states have already done in Area 2 and the Outer Cape and we continue to work with the states on this issue, we will qualify and allocate dual permit holders to align our vessels and the number of traps they will receive to hopefully identically match what the states have done.

The driver states here are primarily Massachusetts and Rhode Island, although Connecticut and New York have players. We will then have an aligned state/federal agreement on the total number of authorized permit holders, both state/federal dual, in these two areas, the Outer Cape and Area 2. That is Step 1 and 2.

The third step is there will be some individuals here because of the lag in time for us to implement our side that will experience disconnects between what the states have given and what we have given. We intend to identify ways to mitigate those disconnects with those permit holders that would not perpetuate and expand the number in those two areas.

Once we align we will then move to the transferability aspects of the program. That would allow us to align with the states using the centralized database to allow individuals to transfer traps within each of these areas, and we're only dealing with Area 3, Area 2 and the Outer Cape. Again, it is our assumption we can get our final rule out before the 2013 fishing year.

We expect to take a majority of that year to align with the states. We are going to be seeking public comment on the impact of qualifying and allocating and allowing early qualifiers to begin transferring or

not. We have some indications from prior experience from the states that once transferability is turned on, there is pent-up demand, a lot of this action will occur within the first year.

One of the issues we face is that we have choices. We can qualify and allocate first come first served and allow them to begin transferring or we can qualify and allocate all and align with the states and then turn on transferability. One of our concerns is if we do it first come first served, those initial qualifiers will probably have greater access to more traps and cheaper traps than individuals that qualify later in our process. That is one of our dilemmas.

We are looking at the majority of the 2013 fishing year to align that to then turn on transferability with the states potentially late in the 2013 year or potentially in the 2014 fishing year. That is our timeline now. As our public comments indicate, we came out with – you, under our federal process we have to extensively analyze our proposed approach.

If you recall, I believe we've got an extensive document on this. That document, as I mentioned, came out unfortunately in April of 2010. All of the additional measures you see in this proposed addendum, banking, controlled growth, the ability for partial trap transfers, for those traps to maintain their multi-area rights, all those were not in our original – the four corners of our original rulemaking.

Therefore, our choice is to fall back and start over, which would push us out several more years, or to continue to move forward based on the recommendations of the commission that were provided to us following the approval of Addendum XII, which was intended to be the guideline for commission lobster transferability. That is where we are today. I hope we have tried to be transparent as we participated in the development of these two addenda and tried to communicate this both to the PDT and the board. I can respond to questions if appropriate.

MR. ADLER: If I might ask Bob Ross, first of all, if we were to pick the status quo in every case in this addendum, meaning it is already there or something, is it in place in the federal system – my thought would be it is probably not – and secondly Bob has already indicated that if we pick something that is new, one of the other options, that in most cases that definitely is not in the federal plan, so we're just walking into a big thing here where the federal people aren't going to be ready for this at all in most cases. I guess my question was even the status quo

options here, if we pick them, that the federal people haven't even caught up to that yet; is that true?

MR. ROSS: Okay, there are two parts. We're working now on this rule that – you know, I haven't looked at everything from your question's perspective here, Bill, whether status would work or not, but basically we're looking at what the original recommendations were from the commission, which did not include such things as controlled growth and banking.

We obviously have been working very closely with the industry teams. We understand the direction they have been going in. One thing I guess I would like to clarify is that as we're working on this current rule and if the commission moves forward with measures in this addendum as well as XVII, we can attempt concurrent rulemaking to expedite the integration of these measures into our transferability program after the fact.

In other words, from our perspective the quickest way for us is to just go forward as you recommended initially, get that done by 2013 and qualify. If this process wants us to include these in our current rulemaking, we would have to fall back and it would take us longer to reanalyze this.

However, if you want us to incorporate these not with this upcoming rulemaking but with a future one, we can attempt to develop those in line to expedite what measures come out of this addendum going forward. The dilemma would be that at that point we would already have transferability and some of the concerns here such as controlled growth, et cetera, may already be nullified if there is pent-up demand and all the traps have already transferred.

MR. McELROY: I have a question for Bob. Now, we've got six different options here. The first one is for initial trap reductions and ongoing reductions, the multi-area and the trap banking. Now, those first two items are already in the process of rulemaking from what I understand. The other four would have to carry on.

If we were today to say, okay, we're going to approve all six of those options with the idea that the first two would be ready for implementation next year and the other four would follow two, three, four years behind whatever amount of time it takes you to do rulemaking; is that something that we could do or would by including those at this point stop it? I don't want to stop moving forward, and I don't want to

have to wait another two or three years to get the trap reductions and the transferability going.

Obviously, the trap banking and the controlled growth is a more important issue for Area 3 than 2; and from the Area 2 perspective I would be comfortable getting the first two options up and running as fast as possible and then have the rest of it follow behind in whatever timeframe it takes NMFS to get their rulemaking done. Is that something that you would be able to do, Bob?

MR. ROSS: It is our intention again here to use some creative regulatory processes to align what the states in Area 2 and the Outer Cape have already done, and we already are aware that there were transfers that did involve some federal permit holders prior to us doing our rulemaking that we will need to address.

It is not crystal ball quite, but it is difficult for us to say – going forward NMFS would prefer to lock in, to qualify and allocate Area 2 and Outer Cape permit holders prior to additional trap reductions. It would simplify our rulemaking tremendously if that were possible, so that we would not have to attempt to somehow not only align what may have been transfers of traps that went outside of the commission plan, but also to, on top of that, address additional trap reductions outlined in this addendum.

Again, I'm indicating that it is our hope to have this thing operating either late in the 2013 or early in the 2014 fishing year; qualify, allocate, address problematic alignments and then initiate transferability. I hope I wasn't too confusing there.

MR. McKIERNAN: To sum up what Bob told us about five minutes ago, as a board we need to weigh the upside to tweaking rules that we have already adopted in past addendum and that they have launched in terms of their very long and drawn-out rulemaking versus the downside of delaying this for another two to three years.

To me that is unacceptable to delay this because I think a lot of the rules that have been brought forward are sort of boutique tweaks from a small minority of fishermen, and when I've got piles of fishermen who are dying to start transferring traps, who have been held back for anywhere from five to eight years inshore. That's a comment.

Now, let me just sum up in terms of NMFS' letter. They talk about the issues that they are having problems with that would require new rulemaking or

for them to change their rulemaking, and it would be allowing traps to maintain authorizations to fish in multiple areas. I get that. The splitting of Area 3 by stock area, I understand that as well.

The banking of traps is one issue that I don't quite understand and I just want to give a little explanation. In Massachusetts we have an ITT system. Especially now for the state-only permit holders, we have been at it for seven years in the Outer Cape and four years in Area 2, and there is nothing in our rule that says that someone can't obtain allocation above the trap limit.

I would argue and I plan to appeal to NMFS to think that through because if the rule is silent on it, then I presume you can do that; so if NMFS would allow anyone to obtain allocation over the LCMA specific trap limit, then you essentially have a bank. You have trap allocation above what the limit is.

That is really what fishermen are trying to accomplish here because you've got this schedule of trap reductions. The reason we don't have any rules in Massachusetts we never thought about it because no one could fish more than the trip limit because there was no scheduled reductions. Well, now that you have scheduled the reductions, this is the insurance policy people want to set up for.

NMFS needs to really consider that carefully, and I hope they will see it our way that just allowing the transfers of allocation; and once they turn it on to a number higher than the trap limit, that will serve as the bank; and not the Area 3 style bank where every transferred trap goes in but just an amount of traps above the trap limit.

I understand where they have problems with the annual adjustments to the transfer tax. I don't really see how that is very useful because transfer taxes in my experience in Massachusetts aren't very effective after the first couple of years because there are very few transfers. If we think that tweaking the transfer tax is going to bring about conservation, the horse is out of the barn after the first year or two.

Then the federal ownership control date; I won't comment on that. To me there is an urgency for us to approve something if not today maybe in the October meeting so that they can complete their rulemaking and we can get transferability because this thing has been a very long gestation period that needs to come out.

CHAIRMAN GROUT: Any motions to start this process so that we could start the discussion? We're at ten after twelve right now and we were scheduled to complete by 12:30; so if we're going to move forward with anything today, I think we need to have some motions on the board from one of our commissioners. Bill, do you have motions?

MR. McELROY: Well, I guess I could try a stab at it. I guess as a point of clarification we have recommendations for Area 2 and we have recommendations for Area 3, which are similar but not identical. Am I correct in assuming that we would want to do Area 2 first and say, okay, on these six points we want to either move them forward or not and then do the same thing on Area 3 or are we trying to combine the two things into one package?

CHAIRMAN GROUT: I think that would be up to the board the direction they want to take. Clearly, from some of the comments that have been made by the Service, they want to have as much alignment between the two plans as possible. Now, they may not get that; but if you'd rather go through one, say Area 2 and then go to Area 3; and then if you find any differences we would have to make some changes. Any changes you wanted to make you would have to make amended motions on this. It depends on how much you take NMFS' comments into consideration.

MR. McELROY: I'll take a stab at a motion and please be willing to correct me if somebody sees a problem here. I'm going to talk about the Area 2 program first, and I'm going to say that the initial trap reduction schedule that we approve Option 2; and on the ongoing reductions, that we approve Option 2; both of those for immediate action.

Then on the option of the multi-area allocation and the trap banking and the ownership and controlled growth, I would like to defer those to the next meeting so we've had a little more time to get clarity with NMFS to make sure that we're on the page but at least we will get the initial trap reduction and the ongoing reductions up and going along with the federal transferability. I don't want those four follow-on options to slow down the federal rulemaking on transferability so that would be my motion.

CHAIRMAN GROUT: Just for clarification in this motion; can we put the sections we're referring to? For example, I believe the first one you're talking is Section 3.1.1.A; initial trap reductions?

MR. McELROY: Yes, that is correct. I don't have those numbers in front of me but that is exactly what I'm looking for.

CHAIRMAN GROUT: And then 3.1.1B –

MR. McELROY: And I'd like to add one clarification. The initial cuts and the ongoing cuts would not occur until NMFS has finished their rulemaking on transferability, so we would not have a time lag between cuts on the fishermen and their ability to transfer back up, so those two would be a link. They wouldn't start until the feds at the end of '13 or '14 would –

MR. McKIERNAN: Qualified and allocated.

MR. McELROY: Qualified and allocated traps.

CHAIRMAN GROUT: Just bear with us while we get this motion up on the board. No, you didn't say anything about the transfer tax; that is one of the things that is being tabled, right?

MR. McELROY: Well, Area 2, we want the 10 percent transfer tax and that should be included in this.

MS. KERNS: That is already set; we're not proposing to change that, but there is the methodology, so I don't know the proposal as to how you adopt a transfer tax, either modified through an addendum or modified through board action. Option A is modified through an addendum; Option B is modified through board action. It could either be postponed or –

MR. McELROY: Can we wait on that?

MS. KERNS: Yes, I will include that in the postponement.

CHAIRMAN GROUT: And then a followup; I believe your motion also involved with 3.1.1A and B; that would not go into effect until NMFS' proposed rulemaking on trap transfers would go into place.

MR. McELROY: Yes, that is correct.

CHAIRMAN GROUT: That is a key point on that; to clarify that is in the motion. Toni.

MS. KERNS: Bill, Bob Ross indicated that the rulemaking would come out but then they have to implement those allocations following the rulemaking. I just want to make sure that we're clear

on the timing of when that would happen. They're hoping that their rulemaking will be finalized prior to the start of the 2013 fishing year, but I'm not sure if those allocations would come out prior to the 2013 fishing year.

I don't believe that they would so I just want to make sure that the timing of everything is clear to the board on when these reductions would be. I would guess that those reductions wouldn't be able to occur until the 2014 fishing year.

MR. McELROY: Well, it is my intention that the reductions occur at the same time that the transferability would allow someone to make themselves whole. For example, if the reductions went in on July 1st, I'd want the transferability to start on either July 1st or July 2nd so you wouldn't end up having a fisherman who wanted to build himself back up to full allocation having to go for a season or two with a reduced number before he would be able to build back.

I think it is absolutely critical that it be linked so we don't end up with that inadvertent time delay where a fellow would end up losing some amount of his gear and have an ability to build it back but the formalities hadn't been approved yet.

MS. KERNS: I just wanted to make sure we weren't anticipating reductions when the rulemaking came out because I know that other steps need to occur after that in order to implement these things.

CHAIRMAN GROUT: All right, before we take any other questions, we need to finalize this motion and then get a second. The motion I'm not sure is clear because there is a highlighted area up there that says both of which will not go into effect until NMFS implements similar measures, but, NMFS, you're recommending transferability rules. It should be until NMFS implements transferability rules?

MR. McELROY: Correct.

CHAIRMAN GROUT: Okay. Now, the next question is do you want to have NMFS also implementing the transferability rules before – because you haven't started the process of transferability – excuse me, the reduction rules, the trap reduction rules. So now that would be, according to Bob, we would either have to pull back the current rulemaking or we go forward with this without NMFS having the ability to implement reductions, but you would have the transferability ability.

MR. McELROY: It is getting more and more confusing –

CHAIRMAN GROUT: Yes, it is.

MR. McELROY: – to go on with a simple motion. My idea is to have the transferability and the reductions essentially simultaneous.

CHAIRMAN GROUT: Well, that is going to be a while with NMFS unless there is something that is going to change here. This is the way you would like this motion to occur; that it only affects until NMFS implements transferability rules or do you want to put transferability and trap reduction rules in your motion?

MR. McELROY: I would like to let Dan make a comment here. I think he might have a slight clarification on this.

CHAIRMAN GROUT: Okay, we're still working on a motion. Dan.

MR. McKIERNAN: Well, I wanted to turn to Bob Ross and ask him to speak to this point because it seems that was one issue that NMFS did not raise in their letter on the record, that the trap reductions were not going to require changes in the rulemaking. Can Bob speak to that?

CHAIRMAN GROUT: Bob, do you want to speak to that, please?

MR. ROSS: As I mentioned before, we're looking at the Addendum XVII/XVIII actions and we expect to go out soon with a notice of rulemaking on that. It is our intent to – as we are moving forward with this transferability, the qualify, allocate and transfer process, we're hoping to be able to move forward with trap reductions concurrent to that.

It is our hope that if the Christmas tree of proposed measures is not too large, we would be able to meet a similar timeline. Worse case scenario, in the past we have been able to catch up, but again my concern is we're trying to catch up from prior actions. Our hope here is that with this time we can run both – complete our transferability rule and move to implement these trap reductions on a concurrent timeline. That is a hope at this time if that helps.

CHAIRMAN GROUT: So you would like to add to this motion then, transferability and trap reduction rules after NMFS? Okay, is that the way you would like your motion to read?

MR. McELROY: I think so.

CHAIRMAN GROUT: Is there a second? Bill Adler seconds. Okay, discussion on this motion? I had David Watters up first.

REPRESENTATIVE WATTERS: Mr. Chairman, on the motion do we need to include 3.2.2 in terms of the transfer tax rates since we have 3.1.8 there?

MS. KERNS: For Area 2 the transfer tax rate is 10 percent and we were not proposing to change it. For Area 3 they had two different rates for full business or partial and that is why we were proposing a change to that one. When we get to Area 3, you want to take it a little bit differently.

REPRESENTATIVE WATTERS: May I follow on that, Mr. Chairman. So as it stands now by not taking any action and by postponing this, we stay under status quo that essentially affirms that any tax rate goes to public hearing and it goes through addendum? I mean, that is the –

MS. KERNS: The addendum never proposed to change the transfer tax rate in Area 2 so it is 10 percent. It is not changing; it continues forward. I'm not sure where this will move forward to – if you guys are going to separate the addendum or is it just the intention of making the motion for some of the sections just to let industry know what is your intention of how you're moving forward and we'll be doing a final approval of the document at the October meeting since we're postponing some of the issues until October or if we're going to somehow break this document down and then have a new document for the other issues.

MR. McELROY: I think that would be the way; we would approve this now and whatever follows on would have to go through whatever process would be necessary for the follow-on. I don't want to stop this because of that, and I suspect that some of those other issues very well might take some amount of time and there is no guarantee that we'll have it ready by the annual meeting.

MS. KERNS: Then we would have to take issues back out for public comment if we put them into a new document; correct?

ACTING EXECUTIVE DIRECTOR ROBERT E. BEAL: It sounds like you want to approve the first items through this addendum and sort of push back a final decision on any of the other issues that are associated with this addendum to a subsequent

addendum, which is essentially starting over; a draft document for the board, new round of public hearings, new final decisions. The earliest it could be done would be two or three quarterly meetings out from the annual meeting if that is the way they decide to go at the annual meeting.

MR. McELROY: It gets more confusing as we go forward. That is right; my intention is to get these first two things up and going. I didn't realize that it would postpone those others into another addendum and delay it. With Bob Ross' comments that if we put together a comprehensive package with all of those six things in at once it would take him two or three years or so to get caught with it; we can't afford to wait that long so I'm trying to cherry-pick the two most important things, get them going.

It's kind of my promise that I made to Ritchie there a few meetings ago that we would try to do something to get the horse out of the barn and get this underway so we get some results from it rather than finding a way to delay it for another two or three years. I don't want the whole thing delayed for that amount of time.

ACTING EXECUTIVE DIRECTOR BEAL: I think this gets back to the comment that I believe Dan made earlier which is balancing the tradeoffs of tweaking the system that is currently in place right now with some of these changes versus letting the current provisions work through the federal process in a more timely manner. The more changes you have the longer the process is going to take. It is a tradeoff that the board has to decide what is a better approach for them.

MR. HIMCHAK: Mr. Chairman, I'm looking at Draft Addendum XVIII and this was supposed to be the second round of the reductions for rebuilding the Southern New England stock. Approving the first two options for the trap reduction – the two options that are in this motion; that is not the complete picture for the addendum to rebuild the Southern New England stock in my estimation.

Putting in language until NMFS implements transferability and trap reduction rules; that didn't mean no assurance that the final product will satisfy the second round of the 25 percent reduction in the Southern New England stock. If this motion gains traction and you want to talk about 25 percent reduction and 5 percent reduction over a five-year period, well, why do you have to adopt that now? You may know that is your preference, but that in and of itself I wanted to make it perfectly understood that doesn't satisfy the second phase of the rebuilding

of the Southern New England stock for Areas 2 and 3. I just wanted to get that on the record.

MR. ADLER: Mr. Chairman, my only question was since we already took those other issues out to public hearing and we got comments on them, the other things, I didn't see why that would have to be in a new addendum. We might have to approve or disapprove them at another meeting, but I didn't see why we would require another addendum to go out because we've already gone out to get comments on those things.

CHAIRMAN GROUT: I think because it sounds like what this motion – it depends on how you want to move forward with this. Again, what Toni had said was this motion could be taken two ways; one, that you're approving this for now and then you're delaying action on this complete addendum until October; or, if you really want to move this thing forward quickly, then what you're doing is you're just approving two aspects of this addendum and approving the entire addendum to start moving forward for implementation. Then all the other things that are on here, we're going to take up at the next meeting and because you have already approved an addendum with only two options in it, then you've got to start the new addendum process. Pat.

MR. PATRICK AUGUSTINE: Mr. Chairman, we're in a Round Robin here. A lot of effort has been put into this thing. I listened to what Bob had to say relative to what the feds are doing and where we are in the process. There is no question if we start piecemealing this now, we're looking at doing some real action two to five years from now.

I think Pete said it rather succinctly when he said what are we really accomplishing. It is a paper chase. If you're going to reduce 2 percent or 5 percent a year, it is going to take you to go from 11,900 traps down to 9,000 traps from now until 2023. All of the other elements here are an active – in my humble opinion are designed to actively make some changes and do some reduction.

The real question is at the end of the day what have we really done to improve the status of the stock? Nothing. So if we're going to play with two parts of this, I would suggest we throw this motion out and – excuse me, Bill, I think it is a well-worded thing but it is piecemeal. Let's either do the whole thing and let the process take its role or postpone the whole thing until the feds get through with their process, which is going to be two to three years from now.

I would suggest we either table this motion of defeat this motion and go back to a new motion that would address all of the seven or eight issues that we have identified; move forward with it and then as we're able to work with the feds on it and they're able to mesh what we're trying to accomplish with what they're trying to do will be in some form of lockstep motion.

Bob said that they would do everything in their power once their process goes forward, if I understood what he said, to bring into play what we're trying to accomplish now. I believe that they will do that to the best of their ability. Rather than starting a new addendum as would be suggested here if we only take the first two parts, so, Mr. Chairman, I would move to table this motion or defeat it. It would be up to you which way you want to go. Then I would like to put forth a different motion.

CHAIRMAN GROUT: You can't leave it up to me. You've got to either make a motion or don't make a motion, Pat.

MR. AUGUSTINE: I was being kind, Mr. Chairman. I move to table this motion.

CHAIRMAN GROUT: To when?

MR. AUGUSTINE: Forever.

CHAIRMAN GROUT: Forever?

MR. AUGUSTINE: If I go to a date certain, I'll make the motion to table it for six minutes at 12:32. I'm not being facetious on purpose. I would like to call the question and defeat the motion. Call the question.

CHAIRMAN GROUT: I had four other hands already in the queue and after that we will vote on it if you're calling the question. Ritchie White.

MR. G. RITCHIE WHITE: In listening through this, I think I understand that the difference between – there is no difference between how fast this would be implemented by passing this now or at our annual meeting. I think I heard Bob say that, so therefore to pass this now and have to start a second addendum doesn't make sense to me. I think we ought to put all of this off until the annual meeting and try to solve some of these issues with Area 3 if we can. If we can't, then pass this in October because I don't think that delays us by waiting until the October meeting.

MR. BALLOU: Mr. Chairman, I respectfully disagree with my colleagues from New York and New Jersey. I think what is on the board here is a motion that involves a significant action, involving a 50 percent reduction in traps. I think I understand the concerns – well, there are a number of concerns associated with other aspects of the addenda, but most of those have to do with the industry and its ability to configure itself in a way that best meets its business interest.

From a resource conservation and management standpoint adopting a motion such as what is on the board is a significant action aimed at reducing traps by 50 percent over a six-year period. My only comment would be to perfect the motion by – right now it reads “not to go into effect until NMFS implements transferability and trap reduction rules.”

I think the correct wording would be something along the lines of “until NMFS implements current rulemaking involving qualification, allocation and transferability” and supplements or augments that rulemaking with trap reduction. That is what I hear from Mr. Ross is that current rulemaking being undertaken or envisioned by the National Marine Fisheries Service involves qualification, allocation and transferability.

We are looking to make sure that we are in sync with that process such that we would not invoke the trap reduction proposal until such time as that action is completed and implemented, and we’re looking to ask the feds to add to their rulemaking or at least do so in parallel with regard to the trap reduction piece.

I know this sounds confusing, but I actually don’t think it is that confusing. I think we are on track here to put forward a significant action. Granted, we are looking to try to time it in such a way that we don’t get ahead of ourselves in terms of federal rulemaking. We let that complete itself. I think we all recognize it is taking a long time, but we appreciate the fact that they are now on track.

I think we have an opportunity here to make a significant advance in our lobster management program by adopting the motion that is up on the perhaps with some minor perfections; and understanding that the other pieces, whether they’re taken up at the annual meeting or at some point thereafter, really don’t get at much – well, they get at some very significant issues, but they’re more about the flexibility and the accommodations that we’re looking to make to industry to enable them to adjust to the trap reduction. I think it is an important issue,

but it is one that we can get to down the road. I think this primary piece, which is a very significant piece, is something that we can and should take up today. I plan to support the motion.

CHAIRMAN GROUT: So that wasn’t a formal motion to perfect because I had a motion to call the question already as is.

MR. BALLOU: Mr. Chairman, I just think – and I would look to you for this – I think the current federal rulemaking is not just transferability and trap reduction. In fact, it is not trap reduction at all as I understand it. It is qualification, allocation and transferability. I think – and I’ll look to anyone to clarify or correct me on this – we’re looking to add to that with trap reduction. Thank you.

CHAIRMAN GROUT: I certainly understand what you’re saying there. I’ve just gotten in sort of a bind here because I had a motion to call the question as is, but I did want to allow the people that were already in the queue to speak to the question. I think we have got to move forward with the question as is since the motion was already called at this point.

REPRESENTATIVE WATTERS: Point of order. Mr. Chairman, I believe a call to the question actually needs to be voted on as to whether we vote on the question; so that if people don’t want to vote yet on the motion, the motion to call the question can be defeated.

CHAIRMAN GROUT: Thank you very much for that. What we’re going to do here is I’m going to finish up the comments from – Bill McElroy had his hand up and Tom were the ones that were already in the queue, and that point we will vote on calling the question.

MR. McELROY: Mr. Chairman, I’ll be very brief. I just wanted to reiterate what Bob Ballou said in that the first two points that we’re trying to approve here are the meat of the issue in terms of the conservation benefit of the motion. The other issues aren’t really conservation measures; they’re just clarifying points. To my mind there is no reason not to go forward with the 50 percent reduction. That is a significant step in the right direction.

MR. THOMAS FOTE: When it gets so confusing that after, you know, probably 20-something years of sitting here at this table and I can’t figure out which end is up, I have a real problem. When I start looking at it, it had to be a whole package. When people start basically saying, well, this is going to

happen in a year or two, this is going to happen in a year or two, I don't know what is going to happen in a year or two.

I have been promised that before and still waiting for things to happen four or five years down the road. I think when we have a complete package to basically vote on, I'll feel comfortable, but there are too ifs, ands or buts sitting around here for me to approve this, so I can't support this motion at this time.

I know it might be a significant part from all this conversation, but I don't know if it is without looking at the rest of the package. If we're going to approve a package, we need to approve a package, we need to approve an addendum. When you start splitting out things, we don't do that with addendums. We approve the full addendum or we just cancel parts of it. That is the way I feel about it.

CHAIRMAN GROUT: Do we have a second on calling the question? Okay, Tom is the second. Now we're going to vote on whether we're going to call the question. This is voting on whether to call the question or not.

MR. BALLOU: Point of order, Mr. Chairman. So if the vote is affirmative and the question is called, we have to vote this up or down as is? Okay, thank you.

CHAIRMAN GROUT: And just so you know, if the question is voted to be called, I will be taking public comment before we vote on this. Okay, is everybody ready? Would you like to caucus on calling the question here?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Are we ready to vote here? All those in favor of calling the question raise your hand; all those opposed; any abstentions; null votes. The motion carries six to four, so now I'm going to take public comment on this particular motion and then we will vote on this. Remember this is just for Area 2; is there anybody in the public that would like to comment on this? Seeing none, while I'm reading the motion into the record, if you all could caucus on this.

For Area 2, move to approve Option 2 for Section 3.1.1A, initial trap reduction schedule; for Section 3.1.1B, ongoing reductions, Option 2; both of which will not go into effect until NMFS implements transferability and trap reduction rules. For Section 3.1.3, trap allocation transfers, A and B; 3.1.5, trap allocation banking; 3.1.6,

ownership cap; 3.1.7, controlled growth; and 3.1.8, transfer tax be postponed until the annual meeting.

This motion was made by Mr. McElroy and seconded by Mr. Adler. Okay, we'll vote on this. All those in favor of this motion raise your hand; all those opposed; abstentions; null votes. **The motion fails four to five to one.** Okay, do we have further motions? Dan.

MR. McKIERNAN: Actually, can I get a point of clarification from the National Marine Fisheries Service because I think there is a perception around the table that this could be denied today because it can always be approved in October with no essential difference in our ability to get this into federal rulemaking. Can I ask NMFS for a comment on that?

CHAIRMAN GROUT: Would you like to comment, Bob?

MR. ROSS: I guess directly to Dan McKiernan's point, it would facilitate our rulemaking in that this would initiate from our side an advanced notice of proposed rulemaking, which is the initial step for us to begin the next rulemaking. Yes, this would expedite our efforts to have, as Mr. Ballou indicated, to qualify and allocate and implement transferability; and if we can align concurrent rulemaking to address the proposed trap cuts at the same time, it should all come together. So, yes, I think an earlier approval would facilitate our side of the rulemaking.

MS. KERNS: Bob, if the board approves a motion that indicates that they want to move forward with trap reductions but does not approve the entire document today, does that still work in terms of an intention of – I forget what you just called it – an intention to rulemaking or something.

MR. ROSS: Yes, Toni, advanced notice of proposed rulemaking. As others here at the table and at the public hearings and through the public comments have indicated, I think there is work still needed to be done on other aspects in this addendum. Having lived through problems with measures that go forward prior to full vetting of the impacts of those measures, NMFS would not benefit from the full package if that full package isn't complete.

I'm not sure if I'm articulating that well, but we would rather not have to figure out the intent of the board on some of these other issues that we feel are not clear either to the impacted constituents or to some of the regulatory agencies. From my exposure through the public hearing process, different parties

have different interpretations of what some of these proposed measures mean. I would appreciate the commission clarifying in more detail what those measures mean.

MR. WHITE: After hearing Bob's explanation, my reasoning in the last vote has changed, so I will move to reconsider the last vote.

MR. AUGUSTINE: Point of information, Mr. Chairman.

CHAIRMAN GROUT: Give me a minute here. Do we have a second to that motion? Bill McElroy, so we have a motion to reconsider.

MR. AUGUSTINE: Point of information, Mr. Chairman.

MS. KERNS: The seconder does not have to be on the prevailing side.

CHAIRMAN GROUT: No, I understand that. We already have a second. My question was is it debatable. Sarah, do you want to help?

REPRESENTATIVE SARAH K. PEAKE: My recollection is a motion to reconsider is debatable so the maker of the motion can talk about why it is we would reconsider, and it can't just be because we want to cast a vote again but has there new information that has come forward.

I think in this instance, yes, there is new information that has come forward that might influence the way people voted. I certainly would support the motion to reconsider and it is debatable and that is why I added my editorial comments. I'm not sure if it is a majority or two-thirds vote. I believe it is a majority vote.

CHAIRMAN GROUT: I'll accept our two parliamentarians here. We will have discussion on this at this particular point in time.

MR. McELROY: Point of order.

CHAIRMAN GROUT: Point of order, okay.

MR. McELROY: When we had a vote up in Boston for reconsideration, it was a simple majority vote. It wasn't a two-thirds majority.

CHAIRMAN GROUT: I think that was clarified by Representative Watters that it was a simple majority; but when we vote on it we will have it fully clarified

by Bob Beal, who is looking that up right now. Discussion on this motion; and given that we're running late, if we could make our comments and discussion succinct. Pat.

MR. AUGUSTINE: In reference to what Bob Ross said, he said he could go forward with what we had put on the board in the previous motion, I would be more inclined to ask Mr. Ross of the items within this addendum are there others that should be included and be of value to move forward as opposed to only using those two?

I would almost suggest we take a look at that list – there are seven or eight of them – and it is possible there is something that is directly related to that that could move forward at the same time. As Mr. Fote said, it is a shame that we end up piecemealing a document of this nature and this magnitude and this complexity and end up putting the bulk of it aside to move forward with a federal process that only addresses just a portion of it. If Mr. Ross could respond to that, I would appreciate it, but I'm not sure he is able to.

MR. ROSS: I look at this document and I see two parts to it. One part is the intent for the trap reductions. I think that part is clear. I look at the other aspects, and those other aspects apply to the transferability, the process of banking, controlled growth, et cetera, as a separate action. First, it is awkward obviously for us since the commission would be the one that is in fact recommending whatever these measures are to us, so it is inappropriate for me to cherry-pick what measures you should or should not select.

I guess my point here is that if I look at this addendum in two components; one component seems much less controversial and much clearer to the federal government. The other aspect ties to transferability and from my participation both in the PDT and at the public hearings is that aspect – those aspects of this addendum are not as clear.

From a federal perspective, again we would prefer clarity and we would prefer the commission process do the best it can to facilitate the federal ability to take your recommendations and integrate them into our dual process. The best way to do that is for the commission to have clearly articulated the intent of these measures. Again, I hope that helps.

CHAIRMAN GROUT: Adam, you had your hand before Ritchie made his motion to reconsider. When

we do have a motion up here to reconsider; would your comment be to the motion?

MR. NOWALSKY: Yes, I'll put this out there as the debate on this particular motion is discussed is that this board had a press release put out by the commission after the annual meeting last year where we went out to the public and said that the options for this addendum would include but not limited to a minimum reduction in traps fished by 25 percent.

We now have an addendum in front of us here today that on Page 3 talks about this addendum proposes a consolidation program to address latent effort, unfished allocation and reduction in traps fished. Further along in the document it says it is anticipated that long-term reductions in traps fished will occur. We go further along and we get comments in here that says if the net result is increased effort, then conservation goals would be compromised at least temporarily.

We have a document in front of us where our goal has been to address conservation of the Southern New England stock of this resource. We have something that we put forth and we put a press release out to the public and said we're going to address traps fished. Now we're only addressing latency in the fishery at best with the hopes that at some point in the future it will address actual traps fished.

To that extent I just don't see where this is going to meet what we have put forth in our previous actions. It is my intent, once we get beyond this phase and these motions, that I do intend to move to postpone action on this final addendum until the annual meeting at this time simply because there are too many questions about this, we have too many pieces that need resolution.

I just don't believe that we're going ahead and addressing the things that we have put forth as a management board to deliver on at this time and there is just more work to be done on it. I don't believe the motions we're going to have here in the addendum that we would put forth would address those concerns. That is my intention. I'll let these motions be voted up and down; but if it impacts how this motion is voted on or any other subsequent motions, that is my intention at this time.

MR. FOTE: The motion to reconsider is supposed on new information that we got. What Bob basically said – and I'm not picking on Bob because I don't pick on the National Marine Fisheries Service. What

I'm picking on is I can't get – you know, to me this looks like the National Marine Fisheries Service cannot act until this is a full package.

They're not going through the process, so we can't get anything really done until we put the full package together. It might give them more time to work on one part of this; but if the second part of this doesn't get adopted, this means nothing. Until we do the two parts together, we're not going to basically accomplish anything, and that is what we said and that's why we voted it down the first time and that is why this information is no different, because what Bob said didn't basically change my mind. It is just the same thing he said before, so I didn't think it was new information.

CHAIRMAN GROUT: I think it is time to vote on the motion to reconsider at this particular point in time. Do you need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, all those in favor of the motion to reconsider raise your hand; all those opposed; abstentions, abstention. **The motion carries seven to two to one.** Now we have the original motion back up on the board. Okay, discussion on the motion. Sarah.

REPRESENTATIVE PEAKE: At the risk of cutting off my colleagues, I think we have beaten this proverbial dead horse and during our motion to reconsider there were lots of questions asked and more information that came forward. Given that, I would move that we call the question.

CHAIRMAN GROUT: Okay, again, I'm going to take the same thing if we have a second on the calling of the question. Okay, Bill seconded. Bill, you were one of the ones I was going to let talk and who had their hand up in the queue.

MR. McELROY: I was going to call the question.

CHAIRMAN GROUT: Okay. Were you going to call the question, too, Tom? I'll let you speak and then –

MR. FOTE: **No, what I was going to do is make a motion to postpone.**

CHAIRMAN GROUT: Well, the call the question came first, so we will now vote on calling the question. All those in favor of calling the question raise your hand; all those opposed to calling the

question; any abstentions, 1 abstention. That motion carries seven to two to one.

MR. AUGUSTINE: Point of information, Mr. Chairman. If the motion is back on the table; why can't I make a motion to postpone?

CHAIRMAN GROUT: Somebody called the question before.

MR. AUGUSTINE: Well, but you voted to recall the question so it is back on the table to be voted on again.

CHAIRMAN GROUT: But to call the question came before; that is why. Okay, everybody ready to vote? Do you need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, all those in favor of this question now; all those opposed; any abstentions, 1; null votes. **The motion carries seven to two to one.** Yes, Adam.

MR. NOWALSKY: **Mr. Chairman, at this time I would like to put forth my motion to postpone further action on this addendum until the annual meeting.**

CHAIRMAN GROUT: Is there a second; seconded by Pat Augustine. Discussion on this motion? Toni, go ahead.

MS. KERNS: Bob, I just want to clarify by making this motion for trap reductions; that is enough for the intention of advanced rulemaking? We don't have to finalize the addendum today. We could potentially fix some of these wrinkles. That is what you said before and I just make sure so that is clear to everyone that this is enough for advanced rulemaking intentions for the Area 2 trap reductions without a finalization of the entire document.

MR. ROSS: I guess our question would be whether it is the intent of the commission to recommend to NMFS that there be trap reductions whether you finalize this addendum or not. I guess that is our issue. Usually when you approve the addendum, that generates the recommendation. The reality is we hear what the board is asking us to do. We will make our best efforts to move forward with this guidance subject to at some future date assuming that you will in fact close the knot on your request to us.

MR. TERRY STOCKWELL: That is not really crystal clear to me. Our position changed with the intent that the agency moves forward with what they can, so I guess I'm looking for a nod of the head that is going to be the case. Otherwise, we're going to oppose the motion on the board.

MR. McKIERNAN: I would recommend against this motion because I would like to see salvaged from the document today the trap cuts in Area 3 as well and then a possible disapproval of the rest of the addendum for a future addendum so we can get the things in place that NMFS can sync up with right away.

MR. NOWALSKY: Mr. Chairman, I believe that we heard from the Service was some positive indication that they can move forward with their proposed rulemaking process at this time without final action on this addendum today.

CHAIRMAN GROUT: Further discussion? Okay, do you need to caucus on this motion?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: While you're caucusing, I'm sorry I was remiss in this motion, since this does have an effect, I do need to take public comment on this. Is there anybody in the audience that would like to make public comment? There is no public comment?

MS. KERNS: It is the whole document that they will delay.

MS. SPINAZZOLA: Area 3 agrees with what is happening here. We would like NMFS to move forward with transferability. We would like to move forward again also with the trap reductions. However, we'd like to make a bit of a change. We feel as though if we were to be able to – and it was already in the public hearing document – we would reduce 5 percent for five years instead of 2.5 percent for ten years, which would allow us to leave out the controlled growth because it is only a five-year window, so it is not going to be awful.

If we could do that – if the Service can do that without going – you know, having a problem with it, we would do that to make it easier so we would cut limited growth out of it. The other thing is we would like to, as I said, begin with transferability, but we want to have the 10 percent transfer tax as in 3.2.2. By the way, the 5 percent for five years is 3.2.1.

We will leave the banking, the area designation and the trap cap of 1,500 and 1,800 for future discussion. However, we would like the highest designation as in the document; the highest designation to be the trap cap. Otherwise, we would have a trap cap of 2,000; so when transferability started everybody could go up to 2,000. We don't want that.

We would like stay as recommended by the LCMT with the highest allocation, but we're willing to wait for the 15 and 18 because that goes with the area designation. We would also like to convene a group of ASMFC, Area 3 and NMFS to get together and discuss the rest of these issues so that when we do come to the annual meeting we have a succinct document and we all know what we're talking about. This ended up a very confusing mess the last two days before the meeting. I would like to propose that. Finally, this is a question to NMFS in a sense; due to the fact that Area 2 and the Outer Cape are still going through allocation, and this is holding up a great deal of everything. Area 3 went through allocation in 2001 and we asked for transferability in 2004.

We are asking if there is any possible way of Area 3 being pulled out of this document to be able to move forward with their measures. As far as traps and what we're trying to do is we've already reduced 30 percent for anybody who doesn't know. We want to go down another 25 percent. We want to control our growth, we want to be able to have a small fishery so that everybody can work and the wind farms can go up and everything else, and it will work. That is pretty much what it is.

CHAIRMAN GROUT: Any other public comment? Seeing none, I'll come back to the board.

MR. STOCKWELL: Mr. Chairman, just a clarification on the intent of the motion is to postpone further board action today but not to postpone continued development of the issues we have wrestled with for the last several hours.

MR. NOWALSKY: Absolutely correct; and that is the desire is the fact that we have been wrestling for two and a half hours now is a clear indicator that we have more work to do, and I would like to leave this room today knowing we're on the track to do the right thing and not just leaving the room to say we did something today.

CHAIRMAN GROUT: Okay, are there any other comments from the board? No, you've had your bite at the apple.

MS. SPINAZZOLA: Oh, come on, quickly.

CHAIRMAN GROUT: To this; you've got one minute.

MS. SPINAZZOLA: Seeing as though you are voting on this, I would like to pull Area 3 out. We know what we need to do; we know it is the right thing for fishery; and it's not difficult. We would like NMFS to be able to get going on all of these things. Can we pull Area 3 out? It is pretty cut and dry and we're willing to wait for all the difficult stuff.

CHAIRMAN GROUT: That would take a motion by a board member. Bob.

MR. ROSS: Just a point of clarification on our part that may help this; we acknowledge that we are aware of what the commission wanted us to do relative to the trap reductions. However, I would agree with AOLA that we have got half the pie here for trap reductions. If the process expects NMFS to move forward with rulemaking to implement trap reductions, we would be hampered if all areas are not included in that action.

In this case it is clear to us that you have two area requesting trap reductions here and yet the motion has been restricted – or your approved action was restricted only to the Area 2 trap reductions. Therefore, I would urge the board to consider all trap reduction proposals outlined in the addendum. Thank you.

CHAIRMAN GROUT: Further discussion? Okay, seeing none we will vote on this. Do you need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, all those in favor of this motion to postpone raise your hand; all those opposed; abstentions, 1 abstention; null votes. **The motion fails four to five to one.**

MR. McKIERNAN: **I would like to make a motion consistent with Bonnie's comments on the record to adopt the Area 3 trap cuts of 3.2.1, Option 3, 5 percent reduction of trap allocation per year for 5 years.**

CHAIRMAN GROUT: Seconded by Bob Ballou. Do you want to speak to it, Dan?

MR. McKIERNAN: Yes, the meat of this document is the trap reductions and everything else is dressing.

I don't want the board to get caught up in the tweaks which in my opinion were really designed to serve last-minute debate minority of individuals. Speaking as a regulator and a fishery manager, I've been working on these trap allocation schemes for almost a decade, and this was the logical endpoint, the transferability.

We've got this going but with this transferability that is coming online, the industry is concerned about the spike, and this addresses that spike even better than the other option, which is ten years at 2.5 percent. I mean, this is brilliant and it really should be supported.

CHAIRMAN GROUT: Further discussion on this motion? Pete.

MR. HIMCHAK: Again, the rest of this that is window dressing; I mean, I'm concerned that this – this is phase two of rebuilding the Southern New England stock. If we go ahead with this addendum, then Area 4 can do the same thing; well, we're going to reduce pot allocations by 5 percent for five years. Then the rebuilding of the Southern New England stock is over. I don't think that accomplishes phase two of the rebuilding just reducing pot allocation. I think there is a lot more to it than that. If that is the case, if this addendum moves forward today, then we will present the same thing for the rest of the Southern New England stock.

CHAIRMAN GROUT: Further discussion from the board? Bill.

MR. McELROY: Yes, I would like to call the question.

CHAIRMAN GROUT: I'm going to take public comment before that.

MS. SPINAZZOLA: I would just like to address Pete very quickly; is that okay?

CHAIRMAN GROUT: No, not individuals, to me.

MS. SPINAZZOLA: Okay, I will talk to you. As far as window dressing and 5 percent for Southern New England, the 5 percent is over and above the 30 percent trap reductions that Area 3 has already done, so we will have a 55 percent trap reduction in Area 3 within five years. All of our latent traps will be gone so we can't have anymore coming in. We will have a very finite amount of traps. As I said before, Area 3 has fewer traps in it than Cape Cod Bay, so it is

definitely not window dressing. We do need to be able to reduce traps.

We do need transferability to come online because we can't do it without it. Finally, I would like to ask NMFS I think if the trap cap can go in with the trap reductions, because otherwise we will have a 2,000 trap cap and the one that we want to go in will be a trap cap with the highest allocation, and it will go down each year with the highest allocation. Otherwise, it is going to stay at 2,000. I'm just wondering from NMFS if they can do that along with the trap reductions because it is in this addendum. It is 3.2.5.

CHAIRMAN GROUT: Thank you for those comments and we have got that question. I just want to make there are no other comments from the audience. Okay, back to the board; are there any further comments or responses to that question? Bob.

MR. ROSS: First I would like to just request a friendly revision to the motion. In your first motion that was approved, you did contend the action based upon NMFS achieving its objective. I believe Dan McKiernan's intent was to mirror the same approach. I would request that this motion also identify that issue. Thank you.

CHAIRMAN GROUT: Dan, are you willing to have a friendly on this?

MR. McKIERNAN: Absolutely.

CHAIRMAN GROUT: Okay; so if we can add that in and then we also need the seconder. Bob Ballou agrees. David.

REPRESENTATIVE WATTERS: Mr. Chairman, just for clarification, does this cut involve any provisions for transferability?

MS. KERNS: No, this is strictly cuts to allocation.

REPRESENTATIVE WATTERS: To follow up, then related to that we don't have to do anything about 3.2.2B on the tax rate here? That doesn't come into play in this?

MS. KERNS: If the board would like to change the transfer tax rate, it is the will of the board to change that transfer tax rate. The National Marine Fisheries Service hasn't specifically indicated whether or not they would need an advanced intention of rulemaking in order to help make that change to their transfer tax rate, which would be a part of – which is currently a

part of the rulemaking that is ongoing, and that transfer tax rate is broken by what type of transfer it is.

CHAIRMAN GROUT: Further discussion on this motion? While I am reading this motion in, can you all caucus, please. **Move to adopt Area 3 trap cuts in Section 3.2.1, Option 3, 5 percent reduction of trap allocation per year for five years, which will not go into effect until NMFS implements transferability and trap reduction rules.** Motion by Mr. McKiernan and seconded by Mr. Ballou. Okay, all those in favor of this motion raise your hand, 10. **The motion passes unanimously.** Are there any further motions? **We will need a motion to move the addendum forward. So moved by Mr. McElroy –**

MR. McELROY: Yes.

CHAIRMAN GROUT: – and seconded by David Watters. The motion is to approve Addendum XVIII as modified. Motion by Mr. McElroy and seconded by Mr. Watters. Is there any discussion on the motion? Do you need time to caucus? All those in favor raise your hand; all those opposed, 1. **The motion carries nine to one.** Believe it or not, we have two other agenda items. One of them, the technical committee report I think we can put off. Bob.

ACTING EXECUTIVE DIRECTOR BEAL: Before you go too far off this, just to make everyone is clear, the intent is for staff to continue working with the board members, the members of industry and all the other issues that were taken out of this addendum, and we will bring back a report of some sort at the annual meeting; is that correct?

CHAIRMAN GROUT: That would be my intention. Is there anybody else that would opposed that? Okay, so is it clear?

ACTING EXECUTIVE DIRECTOR BEAL: Yes.

DISCUSSION OF LCMA 1 V-NOTCH DEFINITION

CHAIRMAN GROUT: Dan, would you like to bring up your discussion of the v-notching issue in LCMA 1.

MR. McKIERNAN: No, in the interest of time I would like you to request the technical committee and the law enforcement committee to discuss the

issues of compliance and enforcement with zero tolerance. We could talk about it in October in detail.

CHAIRMAN GROUT: Would you like to use your original memo as a reference to the issues here?

MR. McKIERNAN: Certainly.

CHAIRMAN GROUT: Okay, so there is a memo that was in the documents that will refer to the technical committee and the law enforcement committee for input and bring reports back to the annual meeting. Terry, do you have any discussion on that.

MR. STOCKWELL: Yes, just quickly in reference to that request; had there been more of a prolonged discussion on this proposal, I just want to state clearly into the record that Maine DMR, the Maine LCMT 1 members, the Maine DMR Lobster Advisory Council and the vast majority of Maine lobstermen are adamantly opposed to changing the v-notch definition at this time.

ADJOURNMENT

CHAIRMAN GROUT: Okay, then without any objection we will move forward with that particular agenda item as stated. Anything else to come before the board today. Seeing none, I will take a motion to adjourn. So moved; thank you very much.

(Whereupon, the meeting was adjourned at 1:25 o'clock p.m., August 7, 2012.)