

ATLANTIC STATES MARINE FISHERIES COMMISSION

AMERICAN LOBSTER MANAGEMENT BOARD

Radisson Hotel Alexandria, Virginia

February 7-8, 2000

MONDAY AFTERNOON SESSION

February 7, 2000

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ATTENDANCE

Amy Schick	Gil Pope	Bill Adler	Julie Williams
Carl LoBue	Mark Gibson	Ralph Maling	David Pierce
Charles A. Lesser	Ernie Beckwith	Gordon Colvin	Paul Diodati
John Connell	Pete Jensen	Bonnie Spinazzola	Lew Flagg
Bruce Freeman	Pat Augustine	David Spencer	Bob Baines
John Nelson	Brian Culhane	Roy Campanale	David Cousens
Bruce Freeman	Bob Ross	Bro Cote	Jim King
John Nelson	Harold Mears	Jeff Marston	Joe Haberstroh
Rep. Dennis Abbott	Pat White	Kurt D. Blanchard	Warren Apel
G. Ritchie White	George Lapointe	Dick Livingston	
Joseph Fessenden	Jim Fair	Chris Schoppmeyer	

Motion carries.

MOTIONS

Motion to approve minutes from September 14, 1999 Board meeting.
Motion made by Mr. Augustine, second by Mr. Nelson;

Motion to approve the minutes from the October 8, 1999 Board meeting.
Motion made by Mr. Augustine, second by Mr. Nelson;
Motion carries.

Motion to approve the minutes of the November 1, 1999 Board meeting.

Motion made by Mr. Alder, second by Mr. Augustine; Motion carries.

Move that the Board develop a policy statement regarding the enforcement of the trap tag program with respect to bringing in ghost/lost gear. Each state should work with industry in the development of a workable solution. In Area 3/federal waters, recommend a call-in system to the nearest Coast Guard station and request logging the report.

Motion made by Mr. Patten White, second by Mr. Alder; Motion carries.

Move that the Lobster Board request the NMFS to include in its upcoming rulemaking on lobsters an option, including all of the necessary evaluations, to increase the minimum size in specific areas as recommended previously by the Lobster Conservation Management Teams.

Motion by Mr. Nelson, second by Mr. Gibson; motion carries with 1 abstention (NMFS).

Move that the Lobster Management Board recommend that NMFS change its existing rules to classify black sea bass traps as non-trap gear in management area 5 only. This change should allow black sea bass traps to retain a bycatch of 100 lobsters per day, up to a max of 500 lobsters for a trip of 5 days or longer, which are the limits on non-trap gear in Amendment 3 and the Federal final rule.

Motion by Mr. Freeman, second by Mr. Jensen; motion carries with 1 abstention (NMFS).

MINUTES

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Washington Ballroom of the Radisson Hotel, Alexandria, Virginia,, on Monday Afternoon, February 7, 2000, and was called to order at 3:25 o'clock p.m. by Chairman Gordon C. Colvin.

CHAIRMAN GORDON C. COLVIN: Let's bring the Lobster Board to order, please. While the staff is distributing some last minute materials, I'm going to call the meeting to order and ask Amy to call the roll, please.

(Whereupon, the roll call was taken by Ms. Amy Schick.)

MS. AMY SCHICK: We have a quorum.

CHAIRMAN COLVIN: Thank you. I refer you to the draft agenda that was mailed out in advance of the meeting and ask the Board members if are there additions or any items of other business you would like to bring forward? Mr. Beckwith.

MR. ERNEST E. BECKWITH JR.: Yes, Gordon, I'd like to talk about a schedule for Addendum 2.

CHAIRMAN COLVIN: Without objection, we'll take that under other business. Is that all right, Ernie?

MR. BECKWITH: Fine.

CHAIRMAN COLVIN: Pete.

MR. PETE JENSEN: Mr. Chairman, I can't find my agenda. But my recollection is that it does not include a de minimis agenda item, and what I'm interesting in doing is clarifying for the benefit of ourselves and our fishermen just exactly what acceptance of de minimis for us and I believe four other states means, because there's still a little bit of confusion about what it is.

CHAIRMAN COLVIN: Pete, there is an Agenda Item 12, trap limits in de minimis states, which I believe responds to that issue.

MR. JENSEN: Okay, well, then I guess my request is, since we will not be here tomorrow because we have to be in town for some General Assembly business, could we take that up today?

CHAIRMAN COLVIN: Is there objection? Without objection, we'll arrange to cover it this afternoon. Bruce.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman. I'd like to put on the agenda the approval of the most recent meeting of the LCMT-4. Staff has handed out a summary of that meeting, which occurred in November of last year. I'd like to review and have acceptance of that.

CHAIRMAN COLVIN: That will be an action item, Bruce?

MR. FREEMAN: It could be under other business.

CHAIRMAN COLVIN: Under other business? Without objection, we'll place it there. Are there any other issues to come forward? Pat.

MR. PATTEN D. WHITE: Yes, Mr. Chairman, I'm not sure if the Chairman of the Advisory Board is going to do this or not, but I would like to again begin discussions on creating a line at 42 degrees to differentiate between the northern and southern part of Area 3.

CHAIRMAN COLVIN: Anything further? I would like to suggest that should time permit tomorrow under other business, that it would be appropriate for myself and/or Mr. Beckwith to provide the Board with a brief status report on the situation in Long Island Sound and some of the plans that we have upcoming for this year.

APPROVAL OF MINUTES

Seeing no further hands, I'll assume that we're settled on the agenda. Let us turn now to Agenda Item 3, approval of minutes. We have minutes distributed for our Board meetings of September 14th, October 8th, and November 1st.

First, with respect to the minutes of the September 14th Board meeting, are there additions or corrections to the minutes? Is there a motion to adopt the minutes? Moved by Pat Augustine; seconded by John Nelson.

Is there objection to the motion? Without objection, so ordered; motion approved.

The minutes of October 8, are there additions or corrections? Seeing none, can I have a motion? Pat Augustine; second, John Nelson.

Is there objection to the motion? Without objection, the motion is approved.

November 1st, additions or corrections to those minutes?

MR. WILLIAM A. ADLER: Motion to approve.

CHAIRMAN COLVIN: Moved by Bill Adler; seconded by Pat Augustine. Objections? Without objection, so ordered.

PUBLIC COMMENT

Item 4 is public comment. At this time on the Agenda we do provide an opportunity for general public comment. As always, we will entertain public comment on each specific Agenda item as it comes forward. Is there any comment that anyone wishes to make before the Board at this time? Thank you.

The next issue is the report from the Joint Law Enforcement/Advisory Panel meeting. Ralph, are you making that or is Joe?

ADVISORY PANEL REPORT

MR. RALPH MALING: I'm going to make it. We had a lengthy meeting, and we discussed a lot. I'm going to go through some of the things that we discussed but we got rid of.

We discussed the idea of trap tag replacement in the spring for fishermen that are bringing gear out and gear in. And we determined that that's an issue that we're going to resolve between the states and law enforcement.

We took up non-transferability and it was accepted that that's the way we're going to go. That won't come up again as far as the Advisory Panel is concerned.

We discussed the die-off of the lobster in the Long Island Sound, and does this mean that would more traffic be moved into the area to make up for the loss? Comment was made that historical participation felt that the 800 trap limit should be imposed in the area.

It appears to be a closed system and, and the Panel decided it should remain an LCMT manager's problem.

On the 42-degree line, five-inch maximum, we're out of that situation and, again, it's an area issue.

On area -- one of the parts here, on the V-notch, I guess it was, on the offshore between the trap limitations imposed by the area fishermen as opposed to the trap limits that the federal government is going to issue, we felt that we would listen until the public comments come in and then we can make a decision from there.

Other issues: Amy was going to put up on the board what we recommend. We recommended the development of a policy statement regarding the enforcement of the trap tag program with regard to bringing in ghost gear.

Each state should work with the industry in the development of a workable solution. In Area 3 Federal Waters, recommended for a call-in system to the nearest Coast Guard Station and request the logging reports.

There was a long discussion on this because it is a problem for the fishermen that are grappling up gear and come up with some of the gear. They might be three or four years old.

It's not going to have a tag on it that's current, or it may not even have a tag because the implementation is only beginning now. So they felt this was an issue that we should bring before the Board with a recommendation as presented on the screen up there.

CHAIRMAN COLVIN: Do you want to talk about these one at a time?

MR. MALING: Yes, it's up to you. You can take it as you please.

CHAIRMAN COLVIN: Let me suggest that we do that. These do have -- they're slightly different, and let's just stop at the end of each recommendation and see if there are questions for Ralph on the recommendation. So are there any questions on this first one? Pat.

MR. PAT AUGUSTINE: Mr. Chairman, we went over several items, and are we going to have an opportunity to go back and address earlier comments, particularly about pot limits and reference to the LCMT making decisions on that?

CHAIRMAN COLVIN: Why don't we see how we do later on that, Pat, but I would like to focus on these specific recommendations because they are somewhat lengthy and may require some discussion. So are there questions on the first

recommendation?

MR. MALING: The only thing I want to say -- I gave you an overall -- at any time during the discussion, the Chair would probably be willing to get it in. All right?

CHAIRMAN COLVIN: No questions on the first one? John.

MR. JOHN I. NELSON: All right, thank you, Mr. Chairman. So, do I take it that the Board would be developing an overall policy statement; is that what is being asked here?

MR. MALING: That's what we're asking. We're asking for some sort of policy so that the Coast Guard and the different enforcement agencies would have something to go by.

As we discussed a problem by where the Coast Guard are going to be boarding vessels and unless it's in black and white, that young guy from Idaho isn't going to know where it's coming from. And we do need that policy because we can't be out there floating it around. It's important.

MR. NELSON: So, within that policy is -- the next part asks for each state to work with the industry to develop a workable solution.

And so I'm gathering that we want to make sure we have a general policy first, which means, you know, that you can have ghost gears on board and then each state works out an individual approach?

MR. MALING: Well, as we discussed it, if the states worked out a system, then we could ask the Feds to get the same system so that nobody is left out of the equation.

MR. NELSON: All right, but I guess what I'm getting at, Mr. Chairman, is that it sounds to me like the industry advisors should be coming to us with what they feel is a workable system and recommending that to us.

Because it sounds like, otherwise, we're going to just come up with some policy statement, and then you're going to have multiple agreements out there that may not all coincide and may create some enforcement issues among neighboring states and for Area 3 may be totally different. I'm just wondering if we should do it a different way.

CHAIRMAN COLVIN: My sense is that the first part of this recommendation is to try to head off some of that kind of stuff by setting a general policy in place initially.

And I wanted to ask Amy is this something that the staff can do in consultation with the Law Enforcement and Advisory Panel members? And, can we just basically issue a policy statement of that nature that meets everybody's needs?

MS. SCHICK: Yes, that is possible. I just want to highlight the fact that during the discussions with both the Advisors and

Law Enforcement, it was felt that the state systems that are in place now are workable: what's going on in Maine; what's going on in Massachusetts.

What they're doing is if a lobsterman pulls up ghost gear or lost gear, they can call in to Law Enforcement and bring that gear in. And that's all they need to do.

The concern was raised mostly in federal waters where offshore fishermen pull up ghost gear, and sometimes they can pull up a lot of gear if they lose a whole string at some point, and how can they be exempt from getting a violation from having non-tagged gear on board, which might be from four or five years ago.

And so the biggest concern was in federal waters and in offshore waters, what system could work. And we were at a little bit of a disadvantage because we didn't have any Coast Guard representatives there to communicate with and come up a workable solution.

But I believe the conclusion was that the state systems that are in place now are working fairly well. It was mostly a concern in federal waters.

MR. NELSON: Well, would it be appropriate, then, for that group, Law and Advisors and staff, to come forward with a strawman policy that addresses any nuances that we need to have as a general policy statement; or do we want to try to develop one ourselves? I mean, that's what it boils down to.

CHAIRMAN COLVIN: I'm not quite sure how folks want to address these recommendations, whether we want to look at any action we may wish to take on them one at a time.

But I guess I'd suggest that that's probably the most efficient way of doing things rather than going them through and then going back. So unless there's objection, I would propose to do that.

And in this case, what I would suggest is that we probably don't need a motion at this point in time. What we can do is simply ask the staff to draft up this initial policy statement in consultation with Law Enforcement and the Advisory Panel.

It will come back to the Board after all have looked at it and are comfortable with it, probably at our next meeting. And unless there's objection to that approach, that's how I'd like to proceed on this particular one.

We can talk at that point about the second part of the recommendation, how to make that fit in and carry it out.

Ralph, does that sound like it's consistent?

MR. MALING: That's what we were hoping, that the Board would make this policy. The Advisory Panel can't make policy so we're throwing it in your laps.

CHAIRMAN COLVIN: Okay, and we're throwing it in

Amy's. We know how to do things. Pat.

MR. WHITE: Well, in light of that, Gordon, I think we're absolutely right, and I would make a motion as to the second sentence, that in Area 3 federal waters recommendation for a call-in system to the nearest Coast Guard Station and request logging of the report.

CHAIRMAN COLVIN: Let me just ask, Pat, is it your view that that would be a part of this policy statement, is that the Board's intent would include that practice in Area 3?

MR. WHITE: Yes, but I think this is a recommendation being made by the Board and we could do that in conjunction with what the outcome of the state's one is, but at least we could put this part of it to bed.

CHAIRMAN COLVIN: Is there a second to that motion?

MR. ADLER: I'll second.

CHAIRMAN COLVIN: Okay, now let's have discussion on the motion. Did you have something, Joe?

COLONEL JOSEPH FESSENDEN: I was just going to say that actually just walking in through the door, coincidentally, are two National Marine Fisheries Service agents. But during the discussion this morning, Agent Chris Shotmeyer was at the meeting.

And he wasn't really speaking for the Coast Guard, but he suggested that the calling in to the nearest Coast Guard Station might be workable. And that was a major concern for Area 3. So I'd like to throw that out on the record that Federal Law Enforcement did attend the meeting this morning.

CHAIRMAN COLVIN: Pat.

MR. AUGUSTINE: Mr. Chairman, does that mean we really need to the motion or would they concur with our staff position that we have taken, that staff would work with enforcement?

What would clearly tell them we'd like to make sure that they do accept this?

CHAIRMAN COLVIN: I think the motion puts the Board on record with the federal government. I don't see a problem. Bill.

MR. ADLER: I just want to make sure that when they are told, they don't come back and say, "Well, we can't do that unless it's clearly in the Federal Rule. Right now the Federal Rule says this, and unless it's changed we can't do what you want to do."

Harry, without the Federal Law Enforcement agencies, Coast Guard, NMFS, when we pass something like this or we approve this policy change or this particular type of dealing with, let's say, a ghost trap issue, when it goes clearly against the general wording in a plan, I don't want to hear the Coast Guard, when I

go to the Coast Guard Fishing Enforcement Working Group Meeting, which I'm a part of, and I try to tell enforcement people from Coast Guard this is how you do it if they've got ghost gear on board and they go, "We can't do that because over there in Gloucester they got a wording that says, 'Non-tagged traps are illegal.'" Now, is there any leeway here?

MR. HARRY MEARS: I happened to attend most of the meeting this morning, and I think one of the key points being made was that a lot of the issues which will be encountered, once these regulations come in place, can be dealt with with flexibility on a case-by-case basis.

And one of the reasons I was in the back of the room, I'm a little bit at this point unsure to what degree this issue has been formally brought before the entire Law Enforcement Committee for further deliberation, so that this Board can have the benefit of a report from that perspective.

The issue relative to what constitutes a regulatory impediment with regard to retention of ghost gear or what defines an unfishable trap, et cetera, were also key items of discussion.

And my understanding, from reading this recommendation, was a very workable situation that has worked in other jurisdictions such as Maine when this issue was raised.

So, other than that, I don't really have a specific response to your question; other than perhaps throwing out a question as to whether or not this needs to have continued deliberation within the Law Enforcement Committee with a Coast Guard representative at the benefit of providing a response.

MR. ADLER: Okay, if I may, Harry, the best thing is when you get back next week, give a call to Boston and ask the enforcement guys if they have a problem if you allow this just on your word, your flexibility part.

Is the Coast Guard going to say, "No, sir, we have to have it in writing" which is what they basically did when we said, "Are you enforcing the lobster rules?" And they go, "What rules? Until we see it in writing, it doesn't exist."

So, you could call over and find out if it's going to be a big hurrah for the Coast Guard. And if so, then you can think about what you're going to do about it.

MR. MEARS: Once again, I would defer this to the Law Enforcement Committee for further deliberation. I believe all of the parties are aware of the issue. My sense is that it needs to be brought to closure with a Coast Guard voice in the audience.

I'll defer to the representatives of the National Marine Fisheries Service on the Law Enforcement Committee relative to their perspective on what the next step should be.

MR. ALDER: Okay, I don't want to prolong this. All right.

CHAIRMAN COLVIN: Other discussion on the motion?

You ready for the question? All in favor, please signify by saying aye; opposed, same sign; abstentions, 1 abstention; null votes. The motion carries. Ralph, recommendation two.

MR. MALING: The next item is recommend that the mobile gear fishery be treated the same as trap gear fishery in that fishermen must designate the area they intend to fish for the year, and area designations cannot be changed during the year.

The rationale was that a fishermen with only a federal permit and non-trap could take or fish wherever he wanted to. And it was causing a problem whereby the trap fisherman had to designate his area and was restricted by that limit in the most restricted area that he has on his tags.

And we couldn't see how this restriction applied to the mobile gear because they don't necessarily have to have a state license. And if they do have a state license, in the State of Massachusetts they recently passed where the non-trap fishermen can change from Area 1 to Area 3 if he's in the Gulf of Maine restricted fishing deal.

He can go south of the 42-degree line and catch whatever he wants, and he's not bound -- even though he might have Area 1 on his license, he's not bound because he has no license. We'd like to see it on the federal permit.

CHAIRMAN COLVIN: Now, unless I miss my guess, my understanding would be that a recommendation of this nature would be a substantive change to the management program, which would probably require consideration in the next addendum. Would that be right, Amy?

MS. SCHICK: That would be correct.

CHAIRMAN COLVIN: So at this point we won't be looking to act on this item today, but to put it into that mix for discussion. But let me as if there are any questions of Ralph on the recommendation? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. My only question was would you track these mobile gear vessels using a vessel tracking system, or are they already required to have that in those areas? What would Enforcement do to keep them in their designated areas?

MR. MALING: Go ahead, Bill.

CHAIRMAN COLVIN: Bill, got an answer?

MR. ADLER: The enforcement, under the plan that was developed, was very simple. The enforcement simply said anybody with a lobster permit, you have to put your areas on those permits.

Knowing that some fishing sectors can't or don't stick in one area, it might be necessary to allow more than one area to be on a permit. And as long as they've got more than one area on the permit, they can fish in any one of those areas they want.

And once a year everybody who has a lobster permit can sign-in, sign-out, once a year, at renewal time, very simple. All right. The idea was the only stipulation was you have to go by the most restrictive rule of the areas that you've signed up with.

Okay. We have a situation where one of the areas, Area 1, happens to have a rule that is required that you can't take five-inch lobsters or over five inch.

Therefore, enforcement is relatively simple that when they land, enforcement can simply say, "Did you have a good trip? I just have to come aboard for a minute. Let me see your license."

And if the license has a one on there anywhere, they're going to say, "We're going to have to check you for maximum size." But if they don't want to go by that, once a year they simply don't put one down.

And so that's why these areas need to have beyond the permits. Everybody who has a lobster permit should have it on. And I think it's very confusing in the federal wording where in one case, one place they mention all federal license holders" and in another interpretation they basically say that trap people only have to have area designations.

And it just throws everything off because, as an example, someone could be fishing in federal waters of Area 1 and come in with nothing on their license and could land in what Area 1.

And that hurts the Area 1 plan that's using a five inch as part of their program. And you can carry this on with other rules in other areas, whatever.

CHAIRMAN COLVIN: Ernie.

MR. BECKWITH: Bill answered my question.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: I'm having difficulty understanding the need for this. Mobile gear fishermen now are only allowed an incidental catch. And if I were a mobile gear fishermen and this motion would pass, I would simply sign up for every area because I may fish every area. And I don't understand why I would --

CHAIRMAN COLVIN: If you signed up for every area including Area 1, you'd have a five-inch max, whether you want it or not.

MR. FREEMAN: A five inch --

CHAIRMAN COLVIN ADLER: As a maximum carapace length in Area 1 that does not apply elsewhere, you would have that. Plus, you know, we're not done with this management program. Down the road there will be other changes. And they could be different minimum carapace lengths in different

management areas.

MR. FREEMAN: Well, it seems to me -- I'm trying to look at it from a mobile gear, let's say a vessel fishing for herring that may catch a small amount of lobster, they could catch in Area 4, 5, 3, 2.

CHAIRMAN COLVIN: Sure.

MR. FREEMAN: There may be other areas, and I just don't understand what this is going to do. To me, it doesn't equate. I just don't understand the need for this.

CHAIRMAN COLVIN: Pat, do you want to address the question?

MR. WHITE: Well, I think it would be better if somebody from Enforcement did because I think that was one of the major issues that people had with this, and maybe you could defer that to Joe.

CHAIRMAN COLVIN: Joe, take a whack at it?

COLONEL FESSENDEN: Well, I try to equate it with the trap sector. The trap fishermen are required to go by the more restrictive rules, regulations. So, for example, an Area 1 fisherman, they can't take lobsters greater than five-inches carapace.

A mobile gear fisherman fishing in Area 1 legally can't take five inch, but there's no way to enforce it because we don't know where that person is fishing when he comes into the dock.

If he had an area designation on his permit, he would be restricted to the most restrictive plan. For example, if he had Area 1, if he had the privilege to fish in Area 1, then he wouldn't be able to take oversized lobsters from Area 1.

And that's why we thought for dockside enforcement, to facilitate law enforcement, it would be easier for enforcement to prove that somebody is in violation of the area restrictions versus proving the person who caught the lobster is in that area.

It's very difficult to know where a person was fishing, especially when they're fishing illegal. I probably didn't do a very good job explaining that, but --

CHAIRMAN COLVIN: Let me remind the Board that we're not being asked to take action on this today. It'll be presented to us as among our menu of issues for Addendum 2.

So what I'd really like to do is focus this discussion on any questions that the Board has in order to clarify their understanding of the basis for the proposal. Bruce.

MR. FREEMAN: I'm not certain I totally understand what Joe has said. But if we exclude Area 1, I don't see where this issue applies. And if this is going to be presented to the Board, I would expect to have a very strong rationale because at the

present time I just don't understand why we're spending all this time on this issue.

CHAIRMAN COLVIN: I think it probably would be a greater Area 1 issue at the present time than with the other areas, Bruce. But I want to emphasize what I said before, we can't overlook the possibility that ultimately there will be other differences between the management programs in place in all of the areas.

And I mentioned a minimum carapace length and there may be other things. And at those times then, there will be additional concerns. We can't necessarily foresee all that at this time. John.

MR. NELSON: I think those are all valid points, Mr. Chairman, but I also think that it raises the perception of one sector versus the other. And one sector has a large percentage of the pie already and it looks like they're just trying to -- it'll look like they're trying to squeeze the others again.

There's already a very, very low level of take, incidental take, associated with the mobile sector. And while I agree with the concepts that we've talked about, the question, when we have this discussion, we should keep in mind is have we already limited the mobile sector to the point where it doesn't matter?

So I would just ask that that be considered when that discussion take place.

CHAIRMAN COLVIN: I have no doubt but that it will be raised at that time. Bill, the last word.

MR. ADLER: Okay, and I think that this would have to be discussed, but there is a tabled motion from the LCMTs from Area 1 to do a tightening in Area 1.

And right now the way things are going, we have the ability to allow the draggers to continue to drag in Area 1 and catch some lobsters, too. And I'd just as soon leave it that way for now.

CHAIRMAN COLVIN: Okay, Ralph, can you go on to your next recommendation, please.

MR. MALING: Recommend the Lobster Board recommend to the National Marine Fisheries Service that the upcoming EIS and public hearings consider the Area 2 and 3 gauge increases as stated in the LCMT plans.

And we discussed it a lot but there wasn't any opposition. Incidentally, there wasn't any opposition to some of these plans except for one, and there were two abstentions, so we really never had a no vote in anything we discussed today.

It was mainly by concession. Area 2 has Massachusetts, Connecticut, Rhode Island. And Rhode Island is in a position where comes June 1st, they've got a gauge increase. Massachusetts does not have a gauge increase. they're members of Area 2, so the conflict arises. The fishermen in Rhode Island

can't land lobsters in Massachusetts less than his state's requirement. And it causes a problem there that this occurred.

We at the Panel agree, well, if Area 2 wants a gauge increase, then go ahead. But, what are we going to do with Massachusetts and its laws? Again, it becomes an enforcement problem.

So we recommend that the Lobster Board recommend that after the upcoming EIS and the public hearings are all considered, that they come up with an answer for us, but not until after the public hearings because we want everybody to have a voice in this.

CHAIRMAN COLVIN: Now, we have some other correspondence before us on this same issue. I see a letter that was distributed today from the Rhode Island Lobstermen's Association. And I know we have a letter from the Atlantic Offshore.

I do not want to put this before the Board for action at this point on the agenda. It would be my intention, if the Board wishes to discuss it and take some action, to cover it under Agenda Item 6, so that it is placed in the context initially of the schedule and the process for further federal action, and we have that discussion prior to addressing this recommendation.

So, unless there is objection, what I would like to do at this time is address only questions to the Advisory Panel on their recommendation, and no further discussion of the issue until we get to Item 6.

Seeing no objection, that's how we'll proceed. Questions for Ralph? Bill.

MR. ADLER: You keep referring to an EIS. What's the EIS for? What is it?

MR. MALING: Environmental Impact Study.

MR. ADLER: On what?

MR. MALING: Don't they have to do that prior to the --

CHAIRMAN COLVIN: We will cover that under Item 6, Bill. That's one of the reasons I wanted to put this off. Other questions?.

MR. MALING: Incidentally, if any of the Panel members saw that I overlooked something, please speak up.

CHAIRMAN COLVIN: Okay, there doesn't seem to be any other questions but, Ralph, it may well be when we get to discussing this later, that we'll have some for you on this issue. Can you go on to the other one, please.

MR. MALING: Concern was raised regarding the New Hampshire two-tier trap limit conservation equivalency in that fishermen in adjacent waters, Maine and Massachusetts, are limited by a smaller trap limit and throughout waters beyond the

three mile.

And they brought up the fact that under this system, the 1,200 trap limit, they could fish 800 traps in the federal waters, bring 4 inside their own waters, 400, and it's a distinct advantage, whereas the fishermen from Massachusetts and New Hampshire would have to put his 800 in federal waters in order to have the same advantage and which he can't do because he's still got to have enough in the inside water.

And we felt that really the trap tag system should be in Area 1 consistent with other states, and we had a long discussion on it. And we asked about Law Enforcement, are they going to have a problem with it, about the fact that New Hampshire right now doesn't have limited entry and anybody can go up and get a license, get 600 traps, make a deal with one of the 1,200 trap fishermen.

Now he can fish 1,600 traps. But because of his federal permit he can only fish 800 out in the federal waters, but then again he can fish more in the inside waters; or if he wants to give up his federal permit, he can fish a heck of a pile of traps inside the state waters if he wants to hire enough people to work his boat and pay for their licenses.

So we see a problem with that, and we see it in the future. And I know that there's some kind of legislation going on, but Law Enforcement shook their head when we asked them about complete enforcement. It presents a problem to them.

CHAIRMAN COLVIN: Let me see if I can make sure we all understand where we are with this. As I understand it, the New Hampshire program has been approved by the Board pursuant to Addendum 1 as a conservation equivalency approach.

It's done; the decision is made. I guess the Advisory Panel is asking us to consider revisiting that approval, or what, exactly, Ralph?

MR. MALING: Well, we're concerned about --

CHAIRMAN COLVIN: Or you're just informing us of your concern?

MR. MALING: This is a conservation equivalency. Conservation is foremost in what the Panel wants to work with. And we're afraid that it can be circumvented with the additional 600 traps on the boat, because New Hampshire doesn't require the vessel to be limited, only that the fishermen be limited. So, it's a major concern with the fishermen on the either side.

CHAIRMAN COLVIN: In the interest of equal time, John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I would point out to the Advisors, again, that it has been done. This is a done deal, and that New Hampshire has been rated as a more conservative approach than our neighboring states have taken.

And the total number of traps that New Hampshire could put in the waters, if we went to our maximum, was less than what we see as an annual increase in some of our states.

As far as the issue associated with, you know, multiple people fishing out of boats, we had recognized that that was a possibility, and we have moved through the legislature to address that.

I think that it is appropriate to raise those types of issues, and I'm glad it was raised. It has come to our attention that our neighboring states' fishermen who are being licensed by boat are buying multiple boats, and that essentially what we're faced with is that they're going to be fishing traps off the boats and enforcement will not be able to enforce the trap tag program because of that.

And it's something that probably should be addressed by the Advisors and the Law Enforcement people because of the circumventing that's going on in those two states. So, we are trying to address the gaps, if you will, or concerns that have been raised here in New Hampshire.

And we will continue to do that, and we would look to see that the other states would try to address their problem areas. Thank you.

CHAIRMAN COLVIN: Is there any other question or comment on this issue? Pat.

MR. WHITE: Well, just a question, I guess, to John. I understand, coming out of the Advisory Committee meeting, that there was an appeal made to the National Marine Fisheries Service to allow federally permitted New Hampshire-licensed lobstermen to fish 1,200 traps outside.

And that's one of the additional things that I would have a serious problem with. It would affect the Southern Maine lobstermen and the Eastern Massachusetts lobstermen because then boat for boat, sitting beside each other, one boat is going to be fishing 800 and one is going to be fishing 1,200, and I don't think it's equitable.

If they want to do that in state waters, I can see that that would be a different issue.

MR. NELSON: Thank you, Mr. Chairman. Again, that's erroneous information, and I appreciate the opportunity to address it. I'm sure we could address it by telephone calls, you know, in a more timely fashion.

But, no, we certainly have not petitioned. Maybe other states have petitioned our people to be able to fish 1,200 in the EEZ. I'm unaware of that. We have the 800 restriction that is out there, as has all the other states.

And as a matter of fact, most of our fishermen, the vast majority of our fishermen will not be able to fish 800 even though they held federal permits. They will only be able to fish 600 because that's the more restrictive measure.

So, I don't know where the 1,200 in the EEZ came into play. That's not reality. It's 800 for those that have a full commercial license, and it's 600 instead of 800 for those that have a limited commercial. So, thank you again for the opportunity to clarify that.

CHAIRMAN COLVIN: Thank you. Anything further? Ralph, do you have anything further for us in your report?

MR. MALING: I'm taking a look here. Yes, there's one other item I want to bring up. On the trap tags, the official date as to when they're going to be effective, because we have various dates.

ASMFC has June 1st, but Massachusetts has March 1st. The federal government, their fishing season begins May 1st. So, again, the Panel and in the discussions this morning we'd like to see the Board address that and see what could be worked out amongst the states.

After all, you are the Commissioners from all the different states and you can solve this problem for us.

The thing is that when the trap tags are not legal until June 1st, there's a period of time when the lobstermen would like to exchange gear.

And they can't do that without having the old trap tag on there and the new trap tag at the same time. If he's installing new gear or even gear that he's had on the dock and he's repairing it and wants to bring out 100 traps, he legally can't do it without additional tags.

And he can't get additional tags because of the constraint of time. And what we'd like to see is a more uniform time with a window in there for the fishermen to be able to bring out those new traps, pick up the old ones, bring them in, and a method by which is throughout the area the same, whereby the fishermen could get new tags for the new gear; and after setting that new gear, bring in his old gear and return the traps that he used back into the enforcement agency.

And I think it really should be issued through the enforcement agency, this method of supplying tags for this interim period.

CHAIRMAN COLVIN: Are there any further questions on Ralph's report? John.

MR. NELSON: Sorry, Mr. Chairman, I'll just take a minute. You know, this issue has been discussed in New Hampshire, too, because people have said they want to rotate in or exchange and what not.

But I'm starting to hear two approaches here. One is the rotation approach. The other is since people are now down to a much more manageable number of traps, the 800, for example, there isn't the need to have this rotation of gear anymore.

And so I wonder if it's really as much of a problem as some are saying versus will this work itself out over a course of time. I don't know, but I'm hearing both sides now.

CHAIRMAN COLVIN: Joe, do you want to add anything to this report, before we move out, on behalf of the Law Enforcement Committee?

COLONEL FESSENDEN: Well, I'm not sure Ralph made it clear enough earlier, but the Advisory Panel took the recommendation of Law Enforcement to support a non-transferrable trap tag.

He did say that, but I want to restate that. And I appreciate representing Law Enforcement, being like the Chairman of the SubCommittee, certainly, I appreciate the Lobster Advisory Panel cooperating and working with us, and dealing with the replacement tag issue and the trap tags in general, and working with industry.

I think we've come a long way, because I know when we started this process, industry was pretty much opposed to non-transferrable trap tags. So I think we've finally got industry on board.

Certainly, Law Enforcement is on board. We're going to do our best to try to accommodate industry to deal with this gear rotation issue because it is a concern. Certainly, in Maine we experience it on a regular basis, and we recognize it.

So I'd like to thank the Advisory Panel for finally getting on board with it. Hopefully, this issue is going to be on the table for a while.

CHAIRMAN COLVIN: Thank you. I think, indeed, Ralph went through the first four or five points of his report very briefly, and we appreciate that. But that shouldn't allow us to overlook the fact that I'm sure that each of those issues involved a lot of work and discussion between the members of the Advisory Panel and Law Enforcement Committee.

We appreciate that effort. Clearly, I know these things aren't easy and you all came here today to try to work these things out. And I'm really pleased with that part of the report. I agree with Joe.

I think this is substantial progress. Unless there's anything further on the Advisory Panel/Law Enforcement meeting, we will move on to the next agenda item.

DE MINIMIS STATES

What I'd like to do now is to accommodate the issue that Pete Jensen brought up and move forward, Item 12, trap limits in de minimis states, so that we are certain to conclude our discussion on that issue this afternoon. Pete, do you want to introduce this?

MR. JENSEN: Yes, thank you, Gordon. We, of course, are very minor players in the lobster fishery. In fact, we land less than the de minimis amount; and as a result of that, we submitted a request for de minimis status with the understanding that as long as we maintain the basic regulations of size-limit, buried lobsters, et cetera, that we would be exempt from the management issues in Addendum 1.

There seems to be a little confusion, or at least we were misunderstanding some of the things we're hearing because our fishermen are now being contacted saying, "When are you going to give us the records for the number of traps you can fish?"

And, of course, we're getting the tag agreement with the tag company. And we just want to make sure that de minimis, as we understood it, means that as long as we land less than 40,000 pounds, then we are exempt from the other management measures in the plan.

CHAIRMAN COLVIN: Amy, can you address Pete's question.

MS. SCHICK: Sure. There are four states that were granted de minimis status. That was the states of Delaware, Maryland, Virginia and North Carolina.

According to Amendment 3 and Addendum 1, what de minimis means is that the state is exempted from implementing the management measures in both Amendment 3 and Addendum 1 except for Section 3.1 of Amendment 3, and that's the seven coastwide management measures.

Everything else, those four states, are exempted from. With respect to the trap limit, state license holders are exempt from the trap tag system and implementing the trap limits for those areas.

However, if they also hold a federal permit, they will be required under federal regulations to abide by the trap limits and be required to have trap tags. That is something that would go through the National Marine Fisheries Service and not the state.

So it wouldn't be a state regulation that the state would implement. It would be covered under the federal regulations through the National Marine Fisheries Service.

MR. JENSEN: So, de minimis means we are exempt except trap limits when they fish out in Area 3?

MS. SCHICK: Exempt means that the state doesn't have to implement state regulations on anything except Section 3.1 of Amendment 3. And that's just for state regulations in state waters.

The federal regulations for any federal permit holders that reside in Maryland would be required to abide by all the federal regulations through the final rule that was just issued in December.

MR. JENSEN: Okay. Well, then, most of our catch does come from Area 3. Very little of it comes from Area 5. So that

helps clarify it, but it certainly is not what we were anticipating.

And so I hope that our understanding of de minimis has not compromised our fishermen or made them late in getting included in the system of tag allocation. Have we?

CHAIRMAN COLVIN: Well, let's ask the experts. Harry, can you help us with this question?

MR. MEARS: Okay, anyone who holds a federal permit must abide by the stricter of state or federal requirements. Now, in the case of Maryland, as I understand it, most of the catch, Pete, is from Area 3 and 5?

MR. JENSEN: It's mostly from Area 3 and it's mostly from black sea bass pots. There are a few people that set some lobster pots out there, but it's primarily a bycatch in the black sea bass pots.

MR. MEARS: Okay, then the trap tag requirement and the trap limit requirement would, in fact, pertain to those individuals by virtue of being federal permit holders. Is that the question?

MR. JENSEN: That's one question, because we had anticipated that de minimis meant de minimis and we were exempt, then we were exempt. There was not a selective exemption if they happened to fish out in the zone.

I mean, the whole basis for de minimis is we were such a small consequence in the fishery, that there was no reason to implement any of the management regimes. That's the plain, simple meaning of de minimis. And we began to get the feeling that it was a selective de minimis, and that's what I'm hearing now.

CHAIRMAN COLVIN: And I guess the issue becomes -- it tends to start to force us ahead to the next agenda item, but the issue becomes is there opportunity for this to be among the issues that can be addressed through the EIS process for future revision to the regulations based on the incorporation of the de minimis into the overall interstate management plan; and clearly, as such, each of and every one of the area plans.

MR. MEARS: I guess I'm having trouble truly understanding the entire scope of the question. As a Board member, I understand de minimis as applying specifically on a state-by-state basis.

Because a state is granted de minimis in no way removes the association of federal regulatory requirements upon anyone, in this case lobster permit holder, regardless of state of residence.

So, once again, Mr. Chairman, I apologize but I'm not -- perhaps, if a specific example were identified, I would be better able to respond to the question.

CHAIRMAN COLVIN: Let me see if I have it. I think the question is that -- it appears that the answer to the question is that the final federal rule will require any federal lobster permit

holder, regardless of whether they're fishing lobster pots or sea bass pots who happen to be from Maryland, which is a de minimis state, to nonetheless limit their pots and tag their pots consistent with the federal rule, effective when the federal rule is effective.

MR. MEARS: That is correct.

CHAIRMAN COLVIN: And therefore the de minimis status of their state of origin is not reflected or does not excuse them from compliance with the federal rule at this time?

MR. MEARS: That is correct.

CHAIRMAN COLVIN: There's your answer, Pete.

MR. JENSEN: So we don't have a joint plan. We have two plans, then.

CHAIRMAN COLVIN: As will become obvious in a minute. I think that some of us are already aware of that.

MR. JENSEN: Yes, well, we were under the misapprehension that this was a joint plan, that we were partners in this. But as is usually the case, the Feds go their own way.

Well, I want to make sure, then, that our misunderstanding has not compromised our fishermen to be enrolled in the pot fishery. And, I'm still bothered by the fact that black sea bass pots have to be tagged, because we still have this problem that the federal rules don't exempt black sea bass pots.

And so, that's a major problem because black sea bass pots are a major source of the fishery, which qualifies us for de minimis, is coming from black sea bass pots. And if they have to put lobster escape panels in black sea bass pots, then they ruin the black sea bass fishery.

And it's just not a very acceptable outcome, given that we are de minimis. And so, I'm still having a little problem with the reason behind these different rules. And so I appeal to the Board to help me straighten it out, like telling NMFS what we want them to do.

CHAIRMAN COLVIN: Sure.

MR. JENSEN: Okay, thank you, Mr. Chairman.

CHAIRMAN COLVIN: And that does push us right to the next item. But before we go there, I do want to ask Amy, we skipped over an announcement under the first agenda item that she wanted to make.

MS. SCHICK: Just to remind all the state directors that state compliance reports are due on March 1st, and there should be a memo and a report format waiting for you in your offices when you return.

CHAIRMAN COLVIN: Pete, did you want to have another

observation on this, or do you want to save it for a few minutes from now?

MR. JENSEN: I want an answer. I mean, obviously, I disagree with what I'm hearing. But, we're not going to do anything that would let our fishermen be thrown out of either the black sea bass fishery or the lobster fishery or have to make that kind of choice. It's just an unreasonable position.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: Mr. Chairman, I would like to address part of Pete's -- at least the second half of your comments, Pete. I can't address the first.

And I've spoken to Harry and Bob and other people relative to the sea bass situation, because what occurs in Maryland and Virginia also applies to Delaware and New Jersey.

If, in fact, Pete, the black sea bass pots are tagged with a lobster tag, they have to have the proper escape vents. And if that occurs, there will not be a black sea bass fishery unless you deal with sea bass that are six pounds and over.

We have recommended through the Commission, through the Board, the letter that Amy had sent, or I guess Jack had signed, that was directed toward the Service as a partial solution.

And that is -- and I think you've mentioned this as well -- a definition of a sea bass pot. Our recommendations from New Jersey mimics what the Commission has suggested to the Service in that the definition of 100 lobsters would be allowed as we do have a mobile gear fishery, Pete, where fishermen using black sea bass could bring in 100 count.

And my information is that would be certainly more than adequate in most of these instances. And if they have 101 lobsters, then they have to be pulling lobster pots. And if they desire to bring in more than 100, then they fish lobster pots.

If it's less than that, they should be allowed to land those. And that will certainly rectify the problems we are facing with black sea bass in those various states. So I think that can be addressed.

Now, I know there are concerns the Service has over some other enforcement issues. But, I see that certainly as being one that can be put in place and not jeopardizing people taking advantage of black sea bass pots. Because this traditional fishery, as you well know, goes back hundreds of years in this area.

CHAIRMAN COLVIN: Okay, I want to hold for a minute on that subject because we are going to get to it very shortly under Item 6 where we have an opportunity to discuss it in somewhat greater detail.

And, Pete, I think that the answer to all your questions basically lies in the issue of the status of the current federal

regulations and where they may or may not go in the future. So I'd like to move on to that item.

REVIEW FINAL RULE

What I would like to do under this item is initially to ask Harry to briefly review with us the final federal rule and the process that NMFS has announced for the preparation of an EIS for consideration of future incorporation of the area management programs that we have adopted under the Interstate Plan.

I am then going to ask Amy to review with us the letter that the Commission sent on January 10th to Pat Kurkul that addresses the final federal rule and the responses to date, formal and otherwise, that we may have had from the Service on that letter.

At that point I'm going to throw it open to discussion and questions by the Board, as well as any suggestions, if any, by the Board about where they may wish to go with this.

At some appropriate time towards the end of that discussion, we will then turn specifically to the issues that have been raised about requests to ask for revisions to the federal rule with respect to gauge increases in Areas 2 and 3.

Does everybody understand how we want to structure this item? Harry, could you give us a rundown, then, please, on the federal rule.

MR. MEARS: Thank you, Mr. Chairman. I will attempt to be brief. On December 6th the final rule was published. By and large, the major change was withdrawal of lobster regulations under the Magnuson-Stevens Act and implementation of federal regulations under the Atlantic Coastal Fisheries Cooperative Management Act.

It also, for the first time, established a regime for area management in federal waters. It predicated the implementation of federal management on an area-by-area basis.

It extended a moratorium on new entrants into the federal waters indefinitely until such time the lobster resource is rebuilt. It increased the vent size requirement on lobster gear to come up to par with what was recommended through Amendment 3.

It established a five-inch maximum size in Area 1. The majority of these regulations became effective on January 5th, 30 days after publication of the final rule.

It also implemented a trap limit depending upon the area fished. Essentially it implemented a 1,000 pot limit immediately in the nearshore EEZ areas. It also implemented a 2,000 pot limit in Area 3.

Effective May 1st, three additional requirements will come into place. One will be a requirement for trap fishermen to elect

the lobster fishing areas in which they'd like to fish during the next fishing year. Trap limits will further decrease in the nearshore EEZ areas from 1,000 to 800.

They will similarly decrease in Area 3 from 2,000 to 1,800. In addition, May 1 is the date by which a trap tag must be affixed to every lobster pot fished by a federal lobster permit holder regardless of where that pot is fished.

That briefly summarizes the final rule itself. In terms of other recent events and response, once again, to recommendations from the Commission, an advance notice of proposed rulemaking was published on September 1, 1999, to establish a possible control date for participation to further limit the activities of federal lobster permit holders, where they fish in the federal portion of certain areas under the umbrella of Amendment 3.

This announcement applied to all areas, including the recommendation to publish a control date for Area 2.

On December 10th a notice of intent to provide an EIS or Environmental Impact Statement was published in follow-up to the AMPR.

This announcement specified that the next attention with federal rulemaking would apply to an analysis of historical participation versus fixed-trap limits in Areas 3, 4, and 5, and also indicated that the forthcoming EIS and associated rulemaking could also address additional recommendations submitted by the Atlantic States Marine Fisheries Commission, including but not limited to the request from the state of New Hampshire to remove the more restrictive requirement pertaining to activities of federal permit holders while fishing in state waters.

This is a brief summary of where we're at. I would like to add to that an indication that I am pleased to the extent I can be pleased by having General Counsel in the audience with me today to acknowledge we are also involved in three lobster lawsuits, three filed in Rhode Island Federal Court.

All three involve to various degrees the establishment of fixed versus historical lobster trap fishing limits. One of those three also challenges the basis of the more restrictive of area requirements applied for those electing to fish in more than one lobster fishing area.

A fourth, yet unofficial, suit involves establishment of the Area 1-3 line, the line separating Area 1 from Area 3.

That completes my summary.

CHAIRMAN COLVIN: Thank you, Harry. You know, when the final rule came out, I called Jack and asked him that if New York sued NMFS over this, could I get off the hook on being Board Chairman? And he told me no.

So, that's why you probably don't have one more. What can I say? There was just no upside at all. I'm going to ask Amy to run through with us the January 10th letter from the Commission to the Regional Administrator in response to the final rule. I

hope everybody has it in front of them.

MS. SCHICK: If you don't have a copy, Bob Beal can come around and give you one. Just let him know that you need a copy.

After polling the states and Board members on their reactions to the final rule, the Commission drafted a letter to Pat Kurkul. And it was in response to some clarification that they were seeking in regard to our recommendation for implementation in federal waters.

And there are a few major issues that I'll just highlight. The first issue is of black sea bass pots, and especially in the mid-Atlantic region. Because of the very similar trap style, the only difference is the vent size.

There's a smaller vent used in a black sea bass pot.

There is some concern about bycatch of lobster in the black sea bass pot fishery. And what's been requested and included in Addendum 1 is that the black sea bass pot fishery be treated as non-trap gear.

And when I say "non-trap gear", that's related to the 100/500 possession limit that the non-trap gear has under Amendment 3. And the reason for this is that lobsters are a significant bycatch in the black sea bass pot fishery.

However, with the larger vents, they lose a large portion of their black sea bass catch. So what the Commission recommended was to define lobster pots based on the vent size and the requirement that a lobster pot must have a trap tag.

If a fisherman chooses to fish a black sea bass pot, they could have the smaller vents. It would not have a trap tag, and they would be required to abide by the 100/500 limit. Whereas, if they have the larger vent and the trap tag, they could take as many lobsters as they choose.

The second issue dealt with trap limits, and the Commission expressed its disappointment in the differences between trap limits for Area 2, 3, 4, 5 and 6. The Area 2 limit in the federal rule was at 800 traps; and under Addendum 1, the Area 2 trap limit is 1,000.

And then for Areas 3, 4, 5, and 6, the Commission trap limit is based on historical participation, and in the federal waters it's at 800 for Areas 4, 5, and 6 and 1,800 for Area 3.

And the Commission's concern is that this creates a significant enforcement problem with the different trap limits and its unnecessary confusion to both the fishermen and the state agencies in implementing the trap limits.

The third recommendation dealt with the vessel upgrades. This would be a provision for the first two years. For two years it would have a two-year sunset. And the purpose behind this was to control effort in the first two years of the reduction program.

So the Commission recommended having that limit on vessel upgrades in Area 3 be implemented for a two-year period.

The fourth issue was the closed areas recommended by the Area-4 LCMT and included in Addendum 1.

The purpose behind the closed areas is to stop the expansion of effort. These areas were known to have very little lobster trap fishing. And they felt that by closing these areas off, it would prevent the expansion of effort in the future.

And finally, dealing with the implementation of historical participation in Areas 3, 4, 5, and 6, and the Commission sent along the state regulations to the National Marine Fisheries Service to have in their deliberations about an EIS.

The Commission also reiterates at the end of the letter that it's essential to have compatible regulations and that those should be adopted as soon as possible, and that it's important to have consistency in both the current and forthcoming regulations dealing with lobsters in both state and federal waters and recognizes that there is some difficulty in synchronizing these regulations; however, we need to find a workable solution so that different management measures are implemented on the same timeframes.

CHAIRMAN COLVIN: Thank you, Amy. And have we had any response, formal or informal, to any of those specific comments or recommendations?

MS. SCHICK: To the best of my knowledge, we haven't.

CHAIRMAN COLVIN: Okay. Questions with respect to the status of where we are with the Federal EEZ Regulations and the Commission's response? Gil.

MR. GIL POPE: I have one quick question for Amy. Amy, you mentioned in number five --

MS. SCHICK: Can you use your microphone, Gil?

MR. POPE: I'm trying to speak loudly. You mention in number 5 here, implementing historical participation in Areas 3, 4, and 5, and you said 6 as well. Should I add 6 to that?.

MS. SCHICK: The issue with Area 6 is that after the final rule was published, there was a clarification that came out through the National Marine Fisheries Service that basically said if a federal permit holder is fishing only in Area 6, that the state regulation would apply.

However, I'm unclear on this. It would be a question to Harry, if someone is fishing Area 2 and Area 6, it's unclear whether they would abide by historic or by the trap limit that is established in the final rule.

If a Federal permit holder is only fishing in Area 6, they would abide by the historical participation in state waters.

MR. POPE: Should I add that, then? It doesn't say that. It

says just Areas 3, 4, and 5 on my copy. All right.

MS. SCHICK: Again, it's related to the fact that the National Marine Fisheries Service issued a statement saying that the Area 6 limit would be based on the state trap limits.

CHAIRMAN COLVIN: I think there was one residual issue we talked about the other day, Harry, with the Area 6 fishermen. It may have been what Amy just brought up, if they're in two areas.

MR. MEARS: In that case, as the federal regulations are written in accordance with Amendment 3, the more restrictive would apply amongst multiple-management areas.

CHAIRMAN COLVIN: I remember it was another issue. It was in the absence of an MOU.

MR. MEARS: That's correct.

CHAIRMAN COLVIN: The federal permit holders in Area 6 will have to have a federal trap tag even if they have a state trap tag on the pot.

MR. MEARS: That's correct.

CHAIRMAN COLVIN: So in the absence of an MOU, the federal rule will require that. That was a different issue, something else to be aware of. Bill.

MR. ADLER: Thank you. First of all, Amy, did you mention in what you had sent in on the letter about the federal rule not adding in the Massachusetts changes to their borders? Did you mention that?

MS. SCHICK: The Commission had already made that recommendation, and this was in response to some clarification that the National Marine Fisheries Service had requested from us. That was a recommendation that did go forward from the Commission to address those boundaries.

MR. ADLER: Okay, because I noticed it was in the December letter that was sent in. And so that's where it is?

MS. SCHICK: Correct.

MR. ADLER: Okay, I may have some more questions for Harry, but I'll --

CHAIRMAN COLVIN: Other questions? Go ahead, Pete.

MR. JENSEN: Well, I'm unclear as to the path that this recommendation takes and how NMFS is going to handle them. This is in response to an advanced notice of proposed rules, right? That's what this letter is? Amy, is that right? This is in response to their advance notice of proposed rules?

MS. SCHICK: There were two letters sent out. Most of the substance in terms of the notice of intent to go out for a proposed

rule is contained in this letter.

The Commission sent another letter under the public comment period for the notice of intent that included this as an attachment, which is the substance of our concerns, in addition to all the measures that are included in Addendum 1 be considered in the EIS that the National Marine Fisheries Service is preparing.

So, the topics that are discussed in detail here were based on questions that came from the National Marine Fisheries Service.

MR. JENSEN: Okay, and so how does the National Marine Fisheries Service handle these comments? Are you just going to deal with them as you see fit, or are you going to come back and consult with us on whatever you finally adopt before you adopt it?

MR. MEARS: I believe it's fair to say that this letter continues to serve as recommendations to the Secretary to consider in forthcoming rulemaking.

I would just like to clarify, as well, that one letter that I don't believe is in front of us is a letter submitted to the Commission directly after publication of the final rule in which an Agency response to the request for the black sea bass issue was provided in writing.

CHAIRMAN COLVIN: And that response was?

MR. MEARS: It is here.

CHAIRMAN COLVIN: We have it.

MR. MEARS: Rather than read it, Mr. Chairman, perhaps copies could be xeroxed for tomorrow.

MR. JENSEN: Well, what was the bottom line? What did it say?

MR. MEARS: The bottom line is that it is not a new issue. It was raised in 1986. Our position was published in the Federal Register.

And we remain concerned about what impact such a waiver would have on enforceability of the vent-size issue in the lobster fishery.

It further summarized what was already contained in the final Environmental Impact Statement, where an analysis was conducted where it appears that this is a pertinent issue to 20 federal permit holders who hold both a federal lobster and a black sea bass fishing permit.

Essentially, to make a long story short, on balance the importance of the integrity of the vent-size requirement for lobster trap gear as an integral part to manage the American lobster resource would seem to outweigh the unquantifiable loss of the black sea bass that would result as a result of the current

situation as described in writing.

And only to add to that, the situation that the current dilemma is not a new one. There has never been a waiver for black sea bass pots. It has essentially been the same on the books since 1983.

MR. JENSEN: I guess it wouldn't do any good to remind you that you were operating under the Magnuson Act and are now operating under the Atlantic Coastal Act. And I guess you're saying that the recommendations of the state don't really have much weight; that you're going to fall back on reasoning that happened under another set of rules.

MR. MEARS: I believe that would be an unfair statement. It was evaluated in the final Environmental Impact Statement. And it was concluded that the same position as was the case back in 1986 with the same issue would be counter to what's trying to be achieved to maintain the integrity of lobster gear-marking requirements to manage American lobster.

MR. JENSEN: I guess I would be even more blunt. Back then it was your decision; now it is more our decision. And so I think you're being rather inflexible in making the decision you are.

CHAIRMAN COLVIN: The staff will get a copy of the letter that Harry has been referring to and distribute it to the Board.

I guess, trying to bring this to where we are at this point in time, the Commission has brought forward to the Service the issues that Amy outlined, both as sort of post-facto commentary on the adoption of the final federal rule as well as issues of substance to be considered pursuant to the advanced notice of proposed rulemaking and the notice of intent to prepare an EIS.

It will be my intention as a regular feature of our agenda to ask our partners in the National Marine Fisheries Service for a status report at every Board meeting with respect to their efforts to conclude these processes and to pursue issues of bringing us closer together in terms of our actions and our sequences.

Again, I don't want to get ahead of ourselves, but we do need to have a talk at an appropriate point on our agenda about the future of this management program. And one of the issues that needs to be addressed in that context is the differences that have emerged between the Addendum 1 implementation plans and the final federal rule.

It is an issue of substance that concerns us. Let me ask, also, at this time, do any of the Board members want to make any specific suggestions about any actions we might want to take; setting aside for purposes of this, the gauge increase recommendations which we will come to in a few minutes? Bill.

MR. ADLER: I wanted to ask Harry two questions, and one of them had to do with something that he has in the plan. Now is this the place to ask him about that?

CHAIRMAN COLVIN: Well, you ask him and I'll tell you.

MR. ADLER: Okay. All right, first of all, my first is a question, and that has to do with the Area 2 and Area 3 trap plans which you have put out, or the National Marine Fisheries Service has put out versus what you're trying to do in your EIS versus what the ASMFC has done in their addendum.

And are you saying basically, knowing what an EIS process and all that stuff is, is that this May is going to come and this May is going to -- the trap limit difference in Area 2 is going to come into effect, causing the confusion in that area, and the Area 3 trap limit that you have put forward is also going to come into effect because your EIS or your efforts to change it to what the ASMFC has agreed to will not have been able to be changed or adopted by that time?

First of all, I want to ask you, is that what's going to happen?

MR. MEARS: I think I'm hearing two questions. One has to do with a disconnect in Area 2 between the timing of trap limits. Bill, is that fair?

MR. ADLER: Yes, the 1,000/800 scenario.

MR. MEARS: Right. This was a key item of discussion during a recent meeting of the Massachusetts Lobstermen's Association in Hyannis a couple Saturdays ago.

And at that time we did have, what I believe was, a good dialog between those present. And essentially, the situation there is that the one-year delay for Area 2 had been a result of the Addendum 1 approval in August of 1999.

We were already far into the process under the Administrative Procedures Act to look at a trap reduction schedule that was equitable amongst the areas.

And probably, Bill, the best I can say, it would have certainly introduced, having to go back to public comment and public hearing, even more of a delay than we were facing.

And in the grand analysis, it was not a case of not listening to the industry team's recommendation. It was not a case of not wanting to abide by the recommendation from ASMFC.

It was certainly an issue that had to do very much with the timing of requirements we need to comply with under the Administrative Procedures Act. And the bottom line, such as it is, is that it was a six-month disconnect that will disappear in six months.

And being that we now have a system of area management, now that we have a much more closely aligned system of trap tag requirements and area certifications, my own personal comments at that time, and as they are now, is that in the grand scheme of things it's a shame they weren't able to be exactly the same.

But I would hope, looking back, later on it would not be construed as a major disconnect between state and federal management regimes for Area 2.

Your question on Area 3, I hope you can appreciate that I need to have whatever is submitted in writing, that you have in front of you serve as my comments on that issue, and that I'm not at liberty to comment further due to litigational concerns.

MR. ADLER: Therefore, I'm taking it is that May 1st there will be the federal rule and the state rule, and they will be different. And so these guys will be fishing 1,000 but 800/1,000, and Area 2 is going to click into the 2,000/1,800.

That's what I got out of that, was that that's what it's going to be, and so we have to work with that. The second question -- and I'll move right after this -- is that you have a gear-marking system which creates another line within the inshore area lines, I think.

And it's like at 12 miles, when the actual area for inshore marking, the inshore Areas, 1, 2, 4, those are inshore fishermen; and you're saying, basically, when they go beyond "somewhere" in their area, they have to change the marking codes and go to the high flyers, which I was sorry to see because I thought it would be better if, just if for no other reason for less lines, that all of Area 1 or all of Area 2 would at least have the rule that you have to have all the same markings and not have to go to the bigger, high-flyer system that offshore boats do use, and some inshore boats do, too; but, rather than mandating it because we also are going to come back around to the whale issue where those high flyers are more of a liability to the whales than a little buoy is or a littler buoy.

The 50-pound test line will really be a tough one on that one, yes. So, anyway, I was sorry to see that. I don't know what can be done about it, but I'd like it at least on the record that I really don't like having the offshore buoy requirements come all the way in even to 12 miles when we have an area that probably align at 20 to 30 to 40, or whatever, that we could all use and it makes it easier.

That's all. I just wanted that on the record. Thank you, Mr. Chairman.

CHAIRMAN COLVIN: Okay, George.

MR. GEORGE LAPOINTE: Mr. Chairman, mine is a general comment related to the disconnect between the state process and the federal process and the grand scheme of things.

And Maine is certainly going to remember, and I encourage the rest of the states to remember how long it takes to get things through when we put compliance dates and dates on addendums and amendments just because I feel like we have been in a hurry-up-and-wait, and so we should just reflect the time needed for the federal process to run when we put compliances dates and deadlines in future addendums and amendments.

CHAIRMAN COLVIN: Thank you. Are there any further comments on the overall issue? If not, then I would now like to turn to the fact that we have had some specific recommendations with respect to requesting consideration of implementation of gauge increase schedules in Areas 2 and 3 under the federal rule.

Now, I'm not sure who's going to speak to these. Okay, I'm going to turn first to John Nelson.

MR. NELSON: Thank you, Mr. Chairman. As we did see earlier, the Advisors had come up with a suggestion, a recommendation that we include a request to the National Marine Fisheries for them to consider gauge increases at least in Areas 2 and 3, and there may be others that are appropriate also, at least for getting the public comment at this time.

And so, with that in mind, I'd like to make a motion for consideration by the Board, and I do have it written out so Joe doesn't have to race through or keep up with me, although I know he could.

But I'll give this to him afterwards. And the motion would be that: I move that the Lobster Board request the National Marine Fisheries Service to include in its upcoming rulemaking on lobsters an option, including all the necessary evaluations, to increase the minimum size in specific areas as recommended previously by the Lobster Conservation Management Teams.

CHAIRMAN COLVIN: There is a motion on the floor by John Nelson. Is there a second to the motion?

MR. MARK GIBSON: I'll second it.

CHAIRMAN COLVIN: Seconded by Mark Gibson. Is there Board discussion on the motion? Harry.

MR. MEARS: I believe that the record will show, looking at previous meetings, going back even to the time of adoption of Amendment 3 in December of 1997, certainly I as a Board member am very supportive of any attention that can be afforded to looking at gauge-size evaluation as a potential management tool, especially since we've heard time and time again that this seems to be one of the means to get us where we need to go in the fastest amount of time.

In this regard, I would also like to express apprehension on behalf of those enforcing federal regulations of what a variable size limit would do on an area-by-area basis. However, we've faced these difficulties before.

I, personally, as a Board member, would obviously abstain from this vote, but to me this is certainly a valid selection amongst the various choices there are in the tool box in looking at area management.

I would not want to underestimate, however, the difficulties this would impose on enforceability of differential size limits, both at sea and on shore, and certainly would look forward to any comments and analysis from the Law Enforcement Committee

on such a recommendation.

CHAIRMAN COLVIN: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. Point of information. When you mentioned increase the minimum size in specific areas, does that include all areas or is it limited to 2 and 3, 4, 5, or is that up to the --

CHAIRMAN COLVIN: The intent of the mover?

MR. NELSON: The intent was what was previously recommended by the Lobster Conservation Management Teams, and there may very well be a number of them.

And I do not remember at this time and, again, I didn't want to limit it just to Areas 2 and 3 because if there are other areas that it's appropriate.

And Harry's comments I think open that up a little bit more, and the Board should consider whether or not we should amend this so that they get comments for gauge increases in all areas so that at least we have that opportunity to obtain that type of input at this time.

CHAIRMAN COLVIN: Is it your desire to perfect your motion?

MR. NELSON: Well, I guess I was hesitant. I wanted to see if the Board, what the pleasure of the Board was, Mr. Chairman. Could I leave it like that and get comments and then see if there's a desire to change that to all areas?

CHAIRMAN COLVIN: Ernie.

MR. BECKWITH: John, I have a question for you. These gauge increases would be separate from what states might have to do under Addendum 2? This isn't linked to egg production, is that correct?

MR. NELSON: I think it's merely an opportunity to get public comment on gauge increases. I don't know what we would be proposing in Addendum 2 as far as increases in regard to egg production.

But I know that we had some, we did have some areas that had proposed, and they probably were in regard to egg production levels, gauge increases. And I just think that since they've been proposed by the LCMTs and, therefore, we ought to have an opportunity to have the Federal Plan EIS provide us with an opportunity for public comment.

CHAIRMAN COLVIN: I should say that it occurs to the Chair that one prospective benefit of incorporating this into the federal process might be to enable the federal government to consider things ultimately on an equal time scale rather than, you know, behind the Commission's Addendum 2 or other process.

I don't know, but it would seem to me that that's a perspective

benefit. I have Pat White and then Pat Augustine.

MR. BECKWITH: Gordon, could I just --

CHAIRMAN COLVIN: Follow-up, Ernie?

MR. BECKWITH: -- finish and follow-up. I think this is an important issue, and I think it has to be clarified on the record. It appears that there are some LCMT areas that are in favor of a gauge increase now regardless of what they would have to do under the egg production schedule and goals.

And I think it has to be clear that there are other areas, Area 6 in particular, perhaps, that would probably not favor a gauge increase at this time. But if they saw that they had a need, they were deficient in terms of meeting an egg production goal, that that would be an option that they would consider. So I think it's an important point to keep clear.

MR. NELSON: Well, are you suggesting, Ernie, that we do modify this to have it as an input for all areas?

MR. BECKWITH: I just didn't want the impression to be left that this is something that the Board was moving forth with at this time for all areas. As I said, it appears that at least two areas have made a proposal that they would be willing -- three areas -- to entertain a gauge increase at this time, before we even know what we'd need to do to meet the egg production goals.

And I think that's an important clarification. Some areas want to do it now. Other areas would consider doing it to meet egg production goals at some time in the future. But I don't think we want to be locked into that now for those other areas.

CHAIRMAN COLVIN: Pat White.

MR. WHITE: A couple things, Mr. Chairman. I think the LCMT ones that proposed the gauge increase was definitely to meet egg production goals. And that's why I think this, as it's written, is important to keep it that way.

It doesn't preclude any other area from doing it, but I think in most cases -- in all cases in the LCMTs this was meant to meet egg production goals. And my other side is really very apprehensive because I think it's a law enforcement nightmare. But that doesn't keep us out of trying to meet egg production goals.

CHAIRMAN COLVIN: Pat Augustine.

MR. AUGUSTINE: He answered my question, Mr. Chairman.

CHAIRMAN COLVIN: Thank you. Is there public comment on the motion? Bonnie.

MS. BONNIE SPINAZZOLA: Gordon, I just wanted to mention that the letter from AOLA is actually written on my letterhead, but it's from the Area 3 LCMT which was in favor of going up on the gauge in Area 3.

I think other than what everybody knows about egg production and the benefits of raising the gauge, I think it's very important to note in the letter that the Commission sent to Pat Kurkul, your last paragraph on page 3, without having to go through it and reading it all back to you, the Commission states that NMFS has to do whatever is necessary to try and get everything on forthcoming regulations, collaboration, just try and do whatever is necessary to try and get some sort of simultaneous implementation, which are my words not and yours, but they mean pretty closely.

Without doing this now, I think we can pretty much forget it with the system the way it is. If we don't do something about putting that language in the DEIS now to be analyzed and commented on, we may be looking at gauge increases four years from now down the road in federal waters.

CHAIRMAN COLVIN: Thank you. Please.

MR. DAVID SPENCER: David Spencer, Area 3, and I would like to support this motion. Area 3 is very concerned that if we don't do this now, we may end up with a three-year rebuilding period by the time any of these measures get going and we have four gauge increases that were necessary for the Technical Team to approve our plan to meet egg production.

So, it's a timing issue. We want this irregardless of what the new stock assessment does. We feel at the worse we've made our resource better. And we hope you'll approve this. Thank you.

CHAIRMAN COLVIN: Thank you. Yes, please.

MR. JOHN SORLIEN: Mr. Chairman, John Sorlien from the Lobster Association. The letter which I have sent to the Board is on Lobster Association letterhead, but as Bonnie stated about the position of the Area 3 LCMT, this letter was promulgated at the request of Chairman Bob Smith, who could not be here today.

And he asked me to take his place as his proxy, and I will attempt to do that. The Area 2 LCMT, as you might remember, was one of the first area conservation groups to meet and come up with a stock rebuilding plan, which was technically evaluated to meet the egg production goals of Amendment 3.

Much to the amazement, I think, of everybody who attended those meetings, the Area 2 LCMT rapidly came to its final conclusion, which was that egg production was best achieved with gauge increases.

The vast majority of fishermen in Area 2 are supporting this proposal. There is no sense at this point that there's been a reversal in that. And I understand that this is a difficult issue, considering the fact that it is certainly probably preferable to see a coastwide implementation of a measure of this nature.

But, as I stated in my letter, while that might be preferable, at

this point, given the circumstances of area management, it's not necessarily probable. We feel that it is imperative at this point that this Board make this recommendation to the Fisheries Service for the reasons stated earlier.

We have a window of opportunity with the upcoming DEIS that would allow us to sort of "ride the conveyor belt," if you will, to get these measures out to public hearing with, hopefully, an implementation some time by this summer or some time soon after that.

If we miss this opportunity, we're going to be looking at possibly a next-best-case scenario of several years from now. And one of the major concerns of the Area 2 fishermen is that if we wait that much longer -- and maybe Mr. Mears can answer this question, but it seems to me we're under an eight-year rebuilding program.

We've already seen three years tick away. The Year 2005 is the conclusion of this project. One of the many fears is that if, in the final analysis, we end up having to implement these gauge increases, but we only have two years left in the plan, that we're going to be doing them all at once.

And that certainly was not the intent, the wishes, or the desires of the Area 2 LCMT. On the trap reduction schedule which, unfortunately, the Fisheries Service has stepped on, I understand that they don't feel too badly about that, but certainly there's consternation in Area 2 for that.

But the egg production measures contained in the gauge increase is something that was thoughtfully considered by the Area 2 LCMT. The schedule that they have proposed is one that they feel very strongly about.

And to toy with that, to change it, would be counter to their wishes. So, on behalf of Chairman Smith for the Area 2 LCMT and the members of the Lobster Association, we strongly urge you to support this recommendation.

CHAIRMAN COLVIN: Thank you. Any other comments from the public before I come back to the Board? Back to the Board. Gil Pope.

MR. POPE: Yes, Gordon, I would tend to be in favor of this. I'm kind of curious, though. Is this part of a plan, a rebuilding plan? Is this an action part of a requirement in the plan, or would this be looked on more as proactive conservation, in a way, where later on down the road this will be viewed as something that they did as ahead of schedule, ahead of the game?

Is this something that everyone should be doing? In other words, I see this creating a law enforcement nightmare in a way. But at the same time I see it as something that's needed and I tend to support it.

So I just wanted to point out I look at this kind of like almost in a proactive conservation kind of a way. Although, I get the feeling that from the way people are speaking, that it's actually

needed. Am I wrong in this?

CHAIRMAN COLVIN: Many of the LCMT original area management plans identified gauge increases as part of what was needed and was proposed in order to meet the requirements of the Fishery Management Plan for a stock rebuilding schedule and an egg production rebuilding schedule.

Those increases have been back-burnered, and the development of Addendum 2, which would have incorporated them, have been back-burnered pending the development of the next updated Lobster Stock Assessment, which we will be discussion probably tomorrow.

So, at least at the time, there was a perception that some gauge increases are needed, and many of the LCMTs put that on their list of things to do. I think, as I understand the effect of this motion, is that it would set in motion the machinery of the federal regulatory process to enable us to hopefully adopt federal regulations that are ultimately consistent with the particulars of Addendum 2 at such time as Addendum 2 is actually adopted and not a year or two later. That's what I'm hearing. Bill.

MR. ADLER: I'm going to support this motion even though Massachusetts -- I'm doing this on behalf of three of the four management areas that Massachusetts has. Remember, Massachusetts has Area 1, Area 2, Area 3 and the Outer Cape.

And Area 2, Area 3, and the Outer Cape LCMTs did include a gauge increase system in their plan when we asked them to go out and solve the problem of getting up to the egg production level.

They went out; they did it; they came back. It even passed muster by the Technical Committee that said, "You've done it, boys. You did it."

Then the ASMFC said, "We're only going to take half of this out to public hearing in Addendum 1", which we did. The other half, we're hanging there. So, I'm going to support this motion on behalf of the Area 2, Area 3 and Outer Cape Massachusetts fishermen that worked hard, agreed to this, pains and tears and everything else, pushing and screaming.

Area 1, as you know, is the hard spot because they have not. And in Massachusetts, it's a law which makes it very difficult to us to change something. And, also, it is unlikely that Massachusetts will want to go with different minimum sizes within the state.

So it's very difficult for us in Massachusetts to do this. But on behalf of them, I'm going to support this motion, because I think getting it out on the federal slow-roller to get it out and through the process of let's get some comments, I think we've got to start now.

MR. LAPOINTE: Two quick points.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: My comments are similar. I'm going to support it because if you believe in the area management concept, it's hard not to. Having learned some lessons about that in Maine and with this, the questions of law enforcement are ones we should not ignore now and in the future.

And it also brings to mind how the actions of one area affects the areas adjacent. That's something, as kind of some side boards, we should all discuss as we ask the LCMTs to take future action.

CHAIRMAN COLVIN: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Without caucusing, we knew New York is going to support this recommendation. More importantly, we've talked about the importance of doing this and we've heard some comments from the audience.

We heard it also in Massachusetts when they had said we should have put this as a part of the amendment. It didn't happen. I'm interested in hearing the Service's side, assuming this is recommended today, tomorrow, or next week, are we looking at one year, two years, three years, four years? How long before --

CHAIRMAN COLVIN: Yes, is the answer to that question.

MR. AUGUSTINE: Yes, okay. Six, seven, or eight years. Harry, I don't mean to be tough on this one --

CHAIRMAN COLVIN: I'm not kidding.

MR. AUGUSTINE: Oh, really. Okay.

CHAIRMAN COLVIN: I think you can't anticipate at this moment in time when the federal process will come to a close, particularly having introduced an item of this magnitude at this time.

And I don't necessarily want to put words in Harry's mouth, but I think it's pretty impossible to say at what moment in time, specifically, a federal rule that increases a gauge might be in place. I don't think you can do that today.

MR. AUGUSTINE: Okay, fair enough.

CHAIRMAN COLVIN: Do you want to take a shot at it anyway, Harry?

MR. MEARS: I believe that was a very good reply. I'd only like to add to that this reminds me of the commercial, "Let Mikey do it."

Now managing under the Atlantic Coastal Act, it's important to remember that what's being recommended to the Secretary should, as much as possible, be concurrent with what's actually on the table with the interstate plan.

I would hope that once -- if this recommendation were not adopted, I would hope that there would be concurrent attention being given what would need to take place at the state perspective to more seriously look at a gauge increase throughout the jurisdictional authorities where that would need to occur.

Certainly under this legislation, like no other, this is not a case where the federal government should be out ahead. We've already talked about how unfortunately we're going to be lagging in many cases what's decided under the interstate plan.

Once again, I'm supportive of this. But I do not think this removes the urgency to look at the issue as soon as possible under the interstate plan itself as a mechanism in both state and federal jurisdictions where it is being recommended.

CHAIRMAN COLVIN: Last shot? Bonnie.

MS. SPINAZZOLA: Just a question to Harry. How quickly would the National Marine Fisheries Service need a recommendation in writing from ASMFC to include this language in the upcoming DEIS?

MR. MEARS: I would encourage that any recommendations, once they're approved, be forwarded as soon as possible.

CHAIRMAN COLVIN: Are you ready for the question?

MR. AUGUSTINE: Yes, call the question.

CHAIRMAN COLVIN: Is there a need for caucus time? I guess not. All in favor, please raise your right hand; opposed, same sign; abstentions, one; null votes. The motion carries.

Is there any further business to come before us on this agenda item? Bruce.

MR. FREEMAN: I'd like to go back an agenda item.

CHAIRMAN COLVIN: Back an agenda item?

MR. FREEMAN: Yes, and I have a motion to make.

CHAIRMAN COLVIN: A motion?

MR. FREEMAN: This is on the sea bass pot.

CHAIRMAN COLVIN: Well, that's actually on this agenda item.

MR. FREEMAN: Oh, okay. Yes, I have one.

CHAIRMAN COLVIN: You don't have to go back. Okay, let's hear it.

MR. FREEMAN: Joe is putting this up. As he's doing that, let me give a quick background. I'm just looking at the letter that was sent to Jack Dunnigan from Pat Kurkul.

Mark.

MR. GIBSON: We're already on record in this January 10th letter asking for reconsideration of this matter. Does this motion then supersede that recommendation?

CHAIRMAN COLVIN: It would be my judgement that the motion would limit the area in question to Area 5 and would be issued over the signature of the Chairman of the Board reflecting the entire Board's viewpoint. John.

MR. NELSON: I'm not really familiar with black sea bass, and so I need some enlightenment. Are there actual trips? I'm looking at the 500 lobsters for a trip of five days or longer. Are they day trips or are they longer?

MR. FREEMAN: Most of the trips that I'm aware of, John, would be of several days' duration but usually less than five days. And, again, talking with these fishermen, 100 count would be certainly more than adequate so far as they're incidental catch is concerned. So the 100 number certainly covers these people.

MR. NELSON: And, again, Mr. Chairman, you've mentioned that it was your impression that based on what Bruce has said, that this is limiting to a certain area which is not captured in the motion.

MR. FREEMAN: I believe it says in "Management Area 5" only in the motion.

MR. NELSON: Oh, okay, that's fine.

CHAIRMAN COLVIN: Further discussion on the motion? Bill.

MR. ADLER: Basically, aren't you just trying to put into the federal thing what we already have?

MR. FREEMAN: Yes, that's correct. I mean, this historical fishery has been in operation for hundreds of years. And the fishermen are saying, "Let us continue doing what we've been doing. We're not going to take large numbers."

But, to two dozen fishermen, this is a matter of either staying in business or going out of business. And although it's a small number, to those individuals it's a very real issue.

MR. ADLER: All right. But I mean this was already addressed in the ASMFC and allowed, right? So all we're doing is saying, "Feds, please make it the same." Right?

MR. FREEMAN: Well, it's a little more complicated. But what we're asking for is essentially to restrict this to Area 5. Our understanding is that the loophole, Bill, could occur in areas outside.

For example, a fisherman may claim, if anybody could do this, in Massachusetts he's fishing a sea bass pot, use a small vent, and catch large numbers of lobster.

This was the one that Harry just handed out. So far as the black sea bass pot issue is concerned, two issues that were listed here, one is enforceability. There's some loophole that people could be taking advantage of.

And the other is originally the plan was done on a coastwide basis. Now we have geographical areas. The motion I'll make will be to the effect that we're asking for Lobster Management Area 5, which is in the plan and it's a line drawn from about Barnigan Inlet to the south, including Southern New Jersey, Delaware, Maryland, Virginia, North Carolina, that for purposes of the plan, black sea bass pots that do catch lobsters not be classified as lobster pots.

Now, the reason for this enforceability is fishermen now fish sea bass pots. They have historically fished sea bass pots. And they catch small amounts of lobster. As you heard from Delaware, Maryland, Virginia, they do claim de minimis because of the small catches.

Our catches in the sea bass fishery are from the southern part of the state. By this definition, we should be able to overcome the problem as described by Pete Jensen and myself.

So, I move that the Lobster Management Board recommend that the National Marine Fisheries Service change its existing rules to classify black sea bass traps as non-trap gear in Management Area 5 only.

This change would allow black sea bass traps to retain a bycatch of 100 lobsters per trip up to a maximum of 500 lobsters per trip for a five-day trip or more.

MR. JENSEN: Second.

CHAIRMAN COLVIN: Discussion on the motion? Harry.

MR. MEARS: Just a clarification, Bruce. Would I be correct in assuming that inherent in this request to classify them as non-trap gear, that would, accordingly, remove any trap limitation in terms of a tagging requirement or a trap limit in terms of numbers being associated with the traps fished in the sea bass fishery? I'm just asking is that, in fact, correct?

MR. FREEMAN: That would be so, Harry, unless the Sea Bass Plan which would limit those pots, which at the present time it does not.

I could also indicate, for your information, that the sea bass trap fishermen I've been in contact with would be willing to tag their pots with a black sea bass tag that they would pay for themselves if that would help alleviate the problem that you foresee so far as enforceability.

So the fishermen are willing to go to extremes to eliminate any problem, but the motion doesn't include that.

CHAIRMAN COLVIN: Further discussion on the motion?

That's the only issue. So, I mean, we're saying restrict it to historical area and it should take care of the problem.

CHAIRMAN COLVIN: Joe.

COLONEL FESSENDEN: Well, I'm not really familiar with what a sea bass pot looks like, but it seems to me that we should be given an opportunity to look at these pots and see if they could be fitted for a vent that would allow them to catch bass and allow them to retain their bycatch of lobsters.

So I'm not sure that law enforcement has dealt with this issue. I've got some concerns about this right here. And I've talked to some other law enforcement people that have some concerns on this issue.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: The only way I could answer that is that if you can picture a lobster trap, then you can picture a sea bass trap because they don't look any different. The only difference is essentially how they're fished and the escape vent.

COLONEL FESSENDEN: Well, one of the things we did for the rest of the plan, for people that fish for crabs, for example, with lobster traps as a bycatch, we went to a round vent.

And actually one of the fishermen in the audience suggested that you may want to consider a round vent for the sea bass pots, keeping them considered a lobster trap and require them to have trap tags.

MR. FREEMAN: Well, if I may, Mr. Chairman, indeed, there are requirements in the Sea Bass Plan for escape vents, either rectangular or round, that's in place now. If they use the round lobster escape or the rectangular, they're going to release more than 95 percent of their legal catch of sea bass.

So the dilemma is if they're fishing sea bass pots and use the escape vents and catch a lobster, they have to let it go. And historically, they caught small numbers of these.

At times these fishermen may set pots for lobster; and when they do, they would be required to have the escape vent that everyone is required to have.

And they have no problem with that. It's the incidental catch that they would have to now forego, and that's quite important to them.

CHAIRMAN COLVIN: Any further discussion on the motion? Seeing none, we'll take the question. Is there a need for caucus time?

MR. POPE: Just a second.

CHAIRMAN COLVIN: Okay. Are we ready? All in favor, please signify by raising your right hand, 9; opposed, same sign; abstentions, 1; null votes. The motion carries.

At this point, it will be my intention to adjourn for the evening. But before we do, let me just indicate that we will resume tomorrow morning at 8:00 o'clock, and we will begin with Item 7 on the Agenda.

My intention for Item 7 is to ask each state for a very brief status report on it's progress on an MOU on the trap tag program. I'm hoping that we'll just start with Maine and go down the coast, and we'll have that item wrapped up in about five minutes.

And then we'll move on from there. So, at this point we stand adjourned until 8:00 o'clock tomorrow morning.

(Whereupon the meeting was recessed at 5:30 o'clock p.m., February 7, 2000.)

TUESDAY MORNING SESSION

February 8, 2000

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Washington Ballroom of the Radisson Hotel, Alexandria, Virginia,, on Tuesday Morning, February 8, 2000, and was called to order at 8:00 o'clock a.m. by Chairman Gordon C. Colvin.

CHAIRMAN COLVIN: I would like to call the Lobster Board meeting to order, please. We have a great deal to accomplish this morning. And I would like to point out that contrary to what it says at the top of the draft agenda that was mailed to you, we have only until ten o'clock, not noon, in which to accomplish it.

STATE-FEDERAL AGREEMENTS

There is another Board meeting at ten o'clock. As we indicated yesterday, the first agenda item is an update on progress toward state/federal agreements. I would like to do this, just asking each state to very briefly outline the status of its discussions with NMFS on an MOU, beginning with Maine. George.

MR. LAPOINTE: Thank you, Mr. Chairman. We have been in discussions with NMFS, and there are a couple outstanding issues, but we are getting closer and we'll be done well in advance of the 1 June deadline.

CHAIRMAN COLVIN: Thank you. John.

MR. NELSON: Ditto. We actually should have sent a revised draft to the National Marine Fisheries, and Harry should

get it and get it signed on Friday.

CHAIRMAN COLVIN: Thank you. Jim.

MR. JIM FAIR: Yes, we have a draft agreed to on our side, anyway, and Harry has it now.

CHAIRMAN COLVIN: Mark.

MR. MARK GIBSON: We're still reviewing the original draft and will provide some comments back shortly to Harry.

CHAIRMAN COLVIN: Thank you. Ernie.

MR. BECKWITH: Yes, I've had two phone conversations with Harry and Bob. The last one was Thursday, I believe. And we had some issues but I think we saw some solutions. And Harry sent me down a revised copy, which I haven't had a chance to take a look at. And I'll do that when I get back.

CHAIRMAN COLVIN: For New York I know we have some difficulty trying to sort out Area 4 issues, which is fairly knotty. John Mason will be here tomorrow and, hopefully, will have an opportunity to get together with Harry. That's the plan at any rate to try to work out some of the issues. Bruce.

MR. FREEMAN: We are presently looking over this agreement with our attorneys and we have not concluded what to do yet.

CHAIRMAN COLVIN: Who else do we have here today? Charlie.

MR. LESSER: De minimis, no comment.

CHAIRMAN COLVIN: De minimis. But NMFS doesn't recognize de minimis we heard yesterday.

MR. LESSER: We don't care if they do or not. (Laughter)

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: The issue, I think, is important. Again, as we heard yesterday, those states that have declared de minimis will still be required to have tags through somebody, I suspect through the Service.

And I'm just curious, Harry, how you're going to handle those states of Delaware, Maryland, Virginia.

MR. MEARS: As it stands now, all federal permit holders will have to have a trap tag as of May 1. And by default, I suppose the de minimis states are incorporated through that scenario. What's not specifically addressed, obviously, through the trap tag requirement under the interstate plan, would be those in the de minimis state that hold only a state fishing permit.

I do not know the number of those individuals, so obviously they would not be encompassed by a federal requirement. And

the only other comment I have is we've gone through about three drafts of the agreement that acts as a generic template.

We've carried it as far as we can. What remains now is for state-specific issues to be incorporated so that both parties can accept the agreement. We, in fact, are very close to agreements with several states.

And as Jim indicated, Massachusetts has submitted one that they are satisfied with. We are currently formally reviewing it in house. This very much has to do with permit holder communications as well.

And as mentioned at previous meetings, this is going to be a very confusing period for permit holders, particularly federal permit holders in regard that they have to have two tags in the absence of an agreement, the way that the regulations read.

We consider this a high priority. We're alerting permit holders in our communications that we are underway with hopeful agreements with the states to prevent a duplication of a tagging requirement.

CHAIRMAN COLVIN: Thank you. Anything else on state/federal agreements? Okay, let's move to the stock assessment update. We're going to do this in two parts. Amy is going to brief us on the status of the report and then Lisa Kline will talk to us about the peer review process.

STOCK ASSESSMENT UPDATE

I have a couple of introductory remarks I want to make before Amy and Lisa talk. Have any of the Board members seen the draft stock assessment? I don't know, but I suspect Mark has. I think Ernie probably has.

Fairly impressive volume of work. My personal opinion is that given the blood, toil, tears and sweat that have gone into the development of the assessment to date, I feel that it's extraordinarily unlikely that an effort of this nature can be mustered again in the foreseeable future.

This kind of an assessment cannot be done at regular intervals. It just can't be. In fact, we're still struggling with getting past the "it can't be done at all" stage. I mean, let's face it.

This has taken a long time and an extraordinary effort by a lot of people, several of whom are in this room and deserve a lot of credit for the work that they've put in, as do others, including Dave Stevenson, who has spend countless hours writing.

And I want to express appreciation to him. And I know that Dieter has written on behalf of the Commission staff to express appreciation for that contribution from Dave and from the State of Maine.

What that means to me is that we need to do what we can do as a Board, as the Lobster Management Board, to make sure, within the extent of our ability, that what we get out of this assessment is what we need to manage lobsters.

And I suspect that most of us as Board members really don't have much of a specific feel about the likelihood of that happening. And that is a matter of some concern to me, so I'm not sure where we go.

I think that this briefing is important. I urge you to follow up on the information that you're going to hear this morning with your Technical Committee members, with those Stock Assessment Subcommittee members that you may have access to, and to make yourself familiar with the issues and the way this thing is going.

And we may need to have a little bit of discussion at the end of Lisa Kline's presentation about issues that relate to the likelihood of success.

One thing that I would like to make absolutely certain of relates to the conduct in the nature of the peer review process. Lisa is going to talk to us about how it works. I want to articulate a kind of a goal at the outset.

And that is this, more or less, that we will be able to conduct a peer review process that results in peer review conclusions that are accepted by everyone; that everyone who has a stake in this process, particularly all of the state biologists, the state and federal assessment people, everyone who has had an oar in the water here, believes that they have had an opportunity to bring their arguments forward, to have their arguments heard, to have their data incorporated as appropriate in the assessment; and that when the Stock Assessment Peer Review Panel's final comments and conclusions are on paper, that everyone feels that those conclusions are sufficiently authoritative, have been based on a sufficiently all-encompassing review of ideas that everyone is on board.

I don't think we can afford to have members of the partnership not on board at the end of the peer review process. And that is what we have had in the past; let's not kid ourselves.

And that's going to make this a fairly challenging peer review process. And we can talk more about that when we get Lisa up here to talk about it. But that's something I think we should think about as we discuss this this morning.

So, with that little bit of a preamble, I'm going to ask Amy to brief us on the status of the assessment report itself.

MS. SCHICK: As Gordon said before, we've had a tremendous amount of work put into this assessment, and especially this fall we've had quite a few stock assessment meetings. And over the last couple of months, the Chair of the Stock Assessment Subcommittee has been incorporating comments and getting the report in good shape.

We had a draft report submitted to the Commission on January 12. It was immediately turned around to all the Subcommittee members and Technical Committee members for their review.

They had about two weeks to review the document, and we had a conference call on January 27th. At that time we went through the details of the report, but the Technical Committee and Stock Assessment Subcommittee felt that they couldn't endorse the report for peer review or approve the report for peer review because there were still some changes that needed to be made and incorporation of comments that hadn't been included.

And so right now -- well, following that meeting, the conference call, we met in Long Island. Carl LoBue, David Stevenson, Kathy Caster and myself had a two-day meeting where we incorporated many of the comments from the conference call.

There are still many more that need to be incorporated into the report. Right now the Commission staff is working on incorporating all the comments, getting the report in good shape for the Technical Committee to review again.

The Technical Committee will need to sign off on the report for peer review, and that includes any minority reports and all the language that's included in the document.

What we're anticipating right now is over the next couple of weeks getting that report into shape, back out to the Technical Committee, instructing anyone on those Committees who wish to write minority reports to get them in to us as soon as possible.

The minority reports will have to be reviewed by the full Technical Committee and approved. Right now what we're shooting for is early March to have this document finalized and approved by the Technical Committee.

CHAIRMAN COLVIN: Any questions for Amy? I want to also congratulate Amy for kind of "taking the bull by the horns" of many steps of this process and devoting a great deal of her personal time and attention to it.

And I also want to thank Carl. When you have the Technical Committee Chairman in your office, you get a different perspective on lobster management than when you don't. And let me tell you that it's extraordinarily challenging.

We will be talking about that to some degree in the next agenda item. One of the things that we have endeavored to arrange in this process is an opportunity for minority points of view to be brought forward and incorporated in the assessment document that will be subjected to peer review.

I personally think that that was a very wise and important decision in the context of what I said earlier about needing to have everyone convinced that their ideas have been heard and have had an opportunity to be subject to the Peer Review Panel.

That said, I have to say one other thing. There are seven days left in which minority reports can be completed. Now, the folks on the Technical Committee have been aware of this for some time, but I want the Board members to know and recognize and understand that that's where we stand at this point.

And I do not wish to hear some day that there were points of view that people wanted to bring forward and didn't. I think that that would be most unfortunate.

And I want to ask every Board member, every Board member, to review the status of this peer review personally with their Technical Committee representatives, with any Stock Assessment Subcommittee members that are on their staff or with their agency, and ascertain whether they are of the belief that any of their ideas have not been heard, that the process has not been open to their ideas, and assess whether or not they feel that a minority report reflecting their opinions and ideas ought to be part of the record.

And if the answer to any of those questions suggests that they have ideas that are not part of this, may I ask you to chain them to their desks for their next seven days and get their minority ideas, if that's what they are, on paper, please.

We cannot afford not to get these ideas out. We cannot afford to have people telling us later that they were disenfranchised because this process has been open to those ideas. And we need to bring it to a close now.

Any other status report issues? Lisa.

MS. LISA KLINE: I'll just follow up a little bit on what Amy and Gordon have said. We've been working closely with Amy to make sure that the report is in a format that meets our peer review process.

Probably, the major part of this is to make sure that all of the viewpoints, all of the ideas and concerns of every member of the Stock Assessment and Technical Committee are somehow included in that report.

Amy has been working with the Committees. There are basically two ways to incorporate all that information. One is directly in the report itself. The second way, as Gordon mentioned, is through a minority opinion.

And that is an official part of the report. The peer review itself will be structured, at least the first part of the peer review will be structured based on the structure of that report.

We will have at the table the Peer Review Panel members. Because the Stock Assessment Committee is very large, we've asked the Committee to choose the key members that will be presenting the relevant portions of the stock assessment to sit at the table with the Peer Review Panel.

We will have the other stock assessment members in the room as well. We will also have the Chair and Vice-Chair of the Boards, the Technical Committee and the Advisory Committee that will all be invited to basically sit at the table with the Peer

Review Panel itself.

The first two days of the meeting are open. The public is welcome, and we'll try to anticipate how much public we'll have and make sure we have a large enough room to accommodate that.

Just to go through the way that the peer review itself will be structured, the first day is basically in two parts.

The first part is formal presentations by the stock assessment people. And we'll work with the Chair of the Stock Assessment Committee and the Technical Committee to determine who those presenters are.

What we'll ask them to do is basically walk through all relevant sections, the important sections, of the stock assessment report. And we'll have to work on timing. The report is relatively large.

Typically we set aside about half a day to go through the report. We may actually need a little more time with the lobster report so we'll work with the Committees on that.

We will ask that anybody who has formally submitted a minority opinion, that they be present and formally present their minority opinion at the peer review, so we'll have that as an official presentation.

Following that, we'll open it up to public comment. Typically, we set aside about a half a day, maybe a little bit longer, depending on how much public we have there.

We'll try to limit that to 5-10 minutes per person.

But hopefully, we'll get everybody that needs to say something the time to make their comments to the Peer Review Panel.

The second day we focus specifically on questions that the Peer Review Panel has, either members of the Stock Assessment or the Technical Committee or any members of the public that have made comments that the Peer Review Panel members have interest in.

And what we're trying to do is make sure that the Panel members have as much information so that they can deliberate and come up with good advice back to the Management Board. And that will typically take us through the second day.

On the third day, we set aside that for a working session between Commission staff and the Peer Review Panel members. The reason that we do that is it gives us the ability to turn around the report much quicker as opposed to sending the Panel members home and trying to write while they're all separated.

So, basically, we'll work with the Panel for one day. We'll work through the terms of reference. And we will be distributing that back through the Boards and the Stock Assessment and Technical Committees.

I don't know that anyone has seen those in a while, so we'll get some further input on that. The report itself will be in two parts. The first will be focused directly on those terms of reference.

We ask the Panel members to address each term of reference and to provide concrete advice back to the Board and the Committees on what they can do to improve the assessment and some basic research and management advice.

The second report is an advisory report. It will be a brief summary of the stock assessment report and will incorporate the advice of the Peer Review Panel. So that's basically the structure of the Peer Review itself.

Typically, we turn around reports in about two weeks, which is relatively quick. Again, we'll have to do some discussing with Amy and the Chairs of the various Committees, including the Board Chair, and work on the timing of getting that report done.

With the amount of information on the lobster stock assessment, it may take us a little more time. In terms of timing, Amy has given us a good guarantee that the report will be in our hands March 1.

If that's the case, as I said, we've been working closely with Amy. We originally had four Panel members that we set aside last summer. We've been holding those four people. They have an interest in being Panel members.

We've polled them for the next several months to see if we can find certain periods of time that we can get those four together. We have one member who is not available until July, so that person is probably off our list at this point in time.

We have the other three that are available the last week of April and the first week of May. So if we can get some guarantee today that the report will be in our hands in March, I think we can go ahead and schedule the Peer Review probably the first week of May.

And we can kind of discuss that timing a little bit. In terms of turning around the report, that would mean the Board could either have a special meeting early in June or possibly wait until the spring meeting.

I'm not sure what the spring meeting dates are, but, yes, sometime in June, so that would be something that the Board would probably want to discuss today. And I guess I'll answer any questions. Bruce.

MR. FREEMAN: Lisa, where have you determined the peer review to occur, the geographical location?

MS. KLINE: Originally, we had it set up for Providence, I think at the Biltmore, and we've postponed that. We are, I think, still locked into using that hotel. And what we tried to do was find a location that was somewhat central to the lobster fishery and also have easy access in and out through airports, and that seemed to be the best place.

CHAIRMAN COLVIN: Lisa, the terms of reference, I believe, were distributed to the Board members yesterday and are on the table. I don't think they're etched on stone at this point. And if Board members have thoughts, and again this is something I would urge you to discuss with your Technical Committee members, particularly those who may have viewpoints about alternative approaches, to return comments to Lisa.

Please copy me on any comments you send to Lisa on this subject. The other thing is that I guess that we still need to firm up the Panel itself. And my own view of this -- and this is more or less of a vision I think at this point than anything -- is that all other things being equal, a Peer Review Panel for this or probably for any other assessment, but clearly for this, would be comprised of individuals who are recognized by all the parties in the process as being so authoritative and so independent and so free of any baggage from us, that there is virtually no question that their advice would be accepted by virtue of its authority and independence by all the parties in the process.

And if there are such human beings on the face of the earth, please tell Lisa who they are. That's who we need.

MS. KLINE: Gordon, can I follow up on that?

CHAIRMAN COLVIN: Please.

MS. KLINE: As I said, right now I think we're pretty well guaranteed to keep three of the original Panel members. We did choose our Panel members as best we could based on their expertise as well as a disassociation from the agencies and the conduct of the current assessment.

We are looking to fill out that Panel, hopefully bring it up to five or six. If we can firm up the dates of the Peer Review, we will go back to our original list and we'll start making phone calls.

The timing, we tend to have to reach out in our peer reviews to university people. I think I've mentioned before that that may be a little difficult just because we're in their teaching season, but we'll see what we can do.

Originally, we compiled a list of names based on input from Board members, Stock Assessment Committee members, Technical Committee members. We have a list of about 26 people that we'll be going back to.

If the Board or any of your staffs have any names, definitely pass them on to me and get them to me as soon as possible, and we will definitely add them to the list, if they're not on.

CHAIRMAN COLVIN: One thought that I wanted to introduce, and this is something I haven't even discussed with Lisa, but it occurred to me last week, as I walked in and out of my conference room over a two-day period where four people were working very hard on a very small piece of a very large

document, that we're going to be asking these Peer Review Panels to do a hell of a lot of work for us, an awful lot more than probably ordinarily happens in a peer review process.

And I'm wondering, notwithstanding all the glum news last night at the Administrative Oversight Committee meeting, if we oughtn't to consider the possibility of compensation for the peer reviewers.

And I wanted to put that issue out there and just see if we could discuss it for a minute or two. We've never done that before, have we, Lisa?

MS. KLINE: We haven't done that for the Peer Review Panel members. We have done it for some of the workshops that we've conducted. We conducted a workshop last year and we provided stipends to some of the university people. So that is an option.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. I think this is appropriate, Gordon. And this, I think, dwells on the issue we talked about, that Committee for power plants that we're talking about.

It may be necessary, in some instances, to provide stipends for these people because of the type of work they do, whether they're independent contractors or whether they're academics or something else.

But in order to get qualified people, it may be necessary to provide some additional assistance other than just their travel expenses. The difficulty I have is how do you make that determination?

And if you give it to one of the Panel members, are you now obligated to give it to all of them? And then, it seems as peer review is becoming more common, we can anticipate more of this in the future.

It's probable that, again, in order to get what we consider are some of the best people, to provide some additional assistance in a way of a stipend, that maybe the way to do this is come up with a policy as to how those people would qualify; have that established before we provide that so people would know coming in that they may qualify or not qualify.

Therefore, we would not have to provide stipends to every Peer Review Panel for every species that we deal with.

CHAIRMAN COLVIN: Those are good points, Bruce, and I agree with you. And it may well be, for example, one way of looking at this is that peer reviewers who are, themselves, state or federal employees are probably not in need of that kind of assistance.

But a person who's an employee of a private university or research foundation or something like that may indeed need that.

I would say this -- and again, this is consistent with my whole message here this morning -- if the best possible peer review panelist isn't available to us because of compensation, then I think we need to compensate them, because we need what we need here, and we've got to come up with the best peer review we can get.

And I guess maybe that's something that we can trust Lisa to advise us on as she goes through the process of trying to identify and recruit reviewers. And then if she encounters difficulties, we can talk and I may be back in touch with you on that subject. George.

MR. LAPOINTE: I was just going to support the notions that have been raised. And, Jack, when we sat on the SAW/SARC Peer Review Committee, didn't we talk with the Feds about compensation for extraordinary members? So, I think there's some precedent there.

CHAIRMAN COLVIN: Ernie.

MR. BECKWITH: Gordon, yesterday I had asked for another item, the schedule for Addendum 2, to be put on the agenda for other business. Perhaps it might be appropriate to talk about that now since we're talking about the timing of some of the things that would affect that Addendum 2 process.

And basically, I'm not looking for an absolute schedule, but just considering where we are, where we're going to end up in Year 2000. What does it look for in Addendum 2? Obviously, we don't know --

CHAIRMAN COLVIN: Well, let's not get ahead of ourselves. We will talk about Addendum 2, and I promise we'll get there before ten o'clock, Ernie. But I want to just wrap up the assessment update and then get back to the agenda.

I have just a couple of minor concluding comments on the assessment. Number one, there are copies of the draft assessment out there. They're in the hands of your staff. They're going to get the rewrites from Amy shortly.

But I want to emphasize that this is not, what is out there now is not the ASMFC Lobster Stock Assessment Update. It is not. It is, in fact, nothing, what's out there now.

It has no status. And, accordingly, please recognize that. Until the Technical Committee accepts the document as accepted by the Technical Committee for purposes of peer review, that document has no status and is not a document that is appropriate for public review or discussion as it is in the incomplete draft.

The last comment is that at this point, as was indicated earlier, the draft is now in the custody of the staff, and the staff is preparing the final revisions for purposes of preparing it for Technical Committee review.

If anybody has any input at this point, it should be directly to Amy. It is no longer with Dave or Carl. The staff now has custody of the document until the Technical Committee is done

with it. Any other questions? Bruce.

MR. FREEMAN: Relative to the peer review, I guess I'll direct this towards Lisa, since we, in fact, share this resource with our Canadian friends to the north, but don't recognize them, how have we determined they would be involved in at least this process, this peer review process?

Do we have any Canadian counterparts or have the Canadian biologists been involved in this review at all?

MS. KLINE: Right now we have one member from DFO who has agreed to be on the Panel, and he is still available on the dates that we are looking at.

MR. FREEMAN: We have not, however, involved the Canadians in any formal way during the stock assessment?

MS. KLINE: No. We felt that because they weren't formally involved in the development of the stock assessment, that they would give us an unbiased review.

MR. FREEMAN: I could understand that, but I'm just also concerned because the Gulf of Maine is not just a one-sided basin. It does have another side to it, and it would seem to me to be quite important just to understand their relationship.

They may totally support it or they may have a very different opinion. It would be very important to know.

LOBSTER MANAGEMENT PROGRAM OPERATIONS

CHAIRMAN COLVIN: Okay. Item 9 is the review of Lobster Management Program operations. What I'd like to do this morning is just kind of quickly review this material, have a brief discussion of it, and then ask you to give some thought to changes in some of these things for discussion at our next meeting and for resolution at our next meeting.

Amy, just kind of run through what we've got in front of us here.

MS. SCHICK: In the packet of materials that was sent out -- and there are some extra ones on the table -- there are a list of all the membership to the Lobster Management Program Committees with the exception of the Plan Review Team, and I can cover that membership when we get to it, all the members of the Lobster Management Board and Technical Committee, Stock Assessment Committee, Advisory Panel, all the LCMT members by area along with their alternates, and the Plan Review Team.

As you are all familiar with the Lobster Management Board, Gordon just took over as Chair at the annual meeting and George Lapointe is the Vice-Chair. For the Lobster Technical Committee, Carl LoBue is the Chair of that Committee.

He has been in that position for about a year and a half now. Normally, that Chair position rolls over every two years. The Vice-Chair of that Committee is Bill Andrews. And in the past, the way the Lobster Technical Committee has operated is the Chair has rotated by state from north to south.

So it has progressed from Connecticut to New York now and next to New Jersey. That's just a procedure on policy that had been adopted by that Committee. So Carl is scheduled to roll off of that in the next couple of months and Bill Andrews is the Vice-Chair.

For the Stock Assessment Subcommittee, as you can see it's a very large group of people, equal to or larger than the Technical Committee. The Chair of the Stock Assessment Subcommittee is David Stevenson.

There is no Vice-Chair. And this is the group that has been putting together the Stock Assessment Report. As you can see, there are members from all the states from Maine through New York and some university members and an industry power company member, along with members from the Service.

The next group is the American Lobster Advisory Panel. Ralph Maling is the Chair of that Committee. He has been in that position, I'm not sure how many years, but it's been since the inception of Amendment 3, I think.

Right now we don't have a Vice-Chair for the Lobster Advisory Panel, and that's something that we'll have to take up in the near future.

The Lobster Conservation Management Teams, each state had elected or nominated LCMT members by Area. For Area 1, the state of Maine, Penn Estabrook had been the lead contact person for the state of Maine and John Nelson for the New Hampshire.

The Chair of the Area 1 LCMT is John Carter. He's from Maine. And as you can see, there are members from Maine, Massachusetts, and New Hampshire.

The Area 2 LCMT, David Borden has served as the state contact person with technical advice coming from Tom Angell and Scott -- I'm not sure how to pronounce his last name.

And then the Chair of that Committee is Bob Smith, and the members are from Massachusetts, Connecticut, and Rhode Island.

The Area 3 LCMT, the contact person had been Phil Coates. With his retirement, that position is up for new nomination. The Chair of the Area 3 LCMT is David Spencer, and the LCMT members come from Maine, Massachusetts, New Hampshire, New York, New Jersey and Rhode Island.

The Area 4 LCMT, the contact people are Bruce Freeman and Gordon Colvin. The technical advice was coming from Carl LoBue and Karen Graulich. Karen has now taken another job

with New York, so Carl is the lead technical person. The Chair is Warren Apel and Mark Marose.

If you recall, the Area 5 LCMT had a difficult time recruiting members. There's one member to the Area 5 LCMT and that's Charlie Bergmann from New Jersey. Bruce Freeman has served as the contact person for that LCMT Area.

The Area 6 LCMT, Gordon Colvin has served as the state contact. Karen Graulich had been the technical advisor for that group and the Co-chairs were George Dahl and Gary Wetmore. And that had members from New York and Connecticut.

The Outer Cape Cod Lobster Conservation Management Team, the contact person was Phil Coates. And the Commission was never informed of a Chair of that group, so I'm not sure if one had been elected or nominated, but those LCMT members are only from the state of Massachusetts.

The way that the LCMTs have been conducted is that the states, according to Amendment 3, take the lead on all the meetings for the LCMTs. They do the meeting announcements, the meeting summaries and make sure that the Commission is copied on any of that correspondence. So in the past that's the standard procedure for the LCMTs.

In terms of the Plan Review Team, which is the last Committee -- it's not on your list -- the Plan Review Team is Chaired by the FMP Coordinator for lobster and in this case it's me.

And then Bruce Astrella from Massachusetts and Bill Andrews are the PRT members. In the recent past, over the last year in the development of Addendum 1, there wasn't much support from other PRT members and Commission staff took care of most of the plan writing for Addendum 1.

And so if any states have any recommendations on additional people or to solicit additional effort on the Plan Review Team, that may be appropriate.

CHAIRMAN COLVIN: Thank you, Amy. There have been a couple of concerns raised to me with respect to some of the aspects of the structure of our management program, and I wanted to mention those.

There may be some others. Let me also say at the outset that you may be aware of some omissions or errors or changes on some of these lists. I would ask you to give that information to Amy today, just mark up your list and hand it to her while we're here, and we can handle that most efficiently that way.

Let me just outline a couple of the problems that I've heard. One problem that I've heard relates to the LCMTs and the Advisory Panel. There are members on the Advisory Panel from many of the LCMTs, but that happened not necessarily deliberately but because many of the people who are active in the industry happened to end up on both.

And that is not surprising, but it was also not deliberate.

Some folks have suggested that there ought to be some role for the LCMTs in some ongoing, identified -- maybe use the word "formal" but that may be too formal -- way in the management process on a coastwide basis, clearly understood what roles the LCMTs have within their respective areas with respect to the development of area management recommendations.

But in terms of the coastwide issues, the kinds of things that we discuss at these meetings primarily, some folks felt that the LCMTs ought to have some role in that process, either somehow linked to the Advisory Panel or as members of the Advisory Panel or as a separate chairmen's committee, if you will.

And that is one issue that has been brought forward. Another issue relates, as Amy indicated, to the structure of the Stock Assessment Subcommittee. I've never seen a Stock Assessment Subcommittee this large.

And it has, frankly, proved to be just a little bit unwieldy. Once we get past the current assessment, it may be appropriate to boil this down to a group of a more manageable and working size.

And there's a lot more that could be said and I won't say it. Lastly, there are some issues in my mind at least, and I've talked to some other people, about the Technical Committee itself.

I have concerns about the Technical Committee's practice of rotating its chairmanship based on geography. This has nothing to do with the merits of any individual who has been or might be chairman in the future.

But I do feel that selecting a chairman on the basis of geography virtually guarantees that sooner or later a person will become chairman, who probably isn't either very interested in the job or, more likely, whose other work assignments make it impossible for that person to spend the time they need to.

And as I said before, being the Chairman of the American Lobster Technical Committee is a very challenging and time-consuming job. Believe me, it is. And Carl puts in a great deal of time, as I'm sure his predecessors, did on Lobster Technical Committee matters that take him away from his other job.

I mean, I have to thank Harry. If Harry hadn't been willing to help us out a little bit with some of our grant reporting deadlines, I don't know what we'd have done with some of the things that have to get done, the many things that have to get done.

So, we need to make sure, I think, that whoever is going to take on this job of chairing the Technical Committee is willing to do it, and is in the position to be able to do it with respect to their other assignments at home, and not that they are in a position to do it merely because it's their turn.

And as your Board Chairman, I want to tell you that I don't want to work with a Technical Committee Chairman; I do not want to work with a Technical Committee Chairman who is not going to be permitted by his agency or her agency to put in the

time. I feel very strongly about that. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. To that point, rather than belaboring it anymore, what would you recommend we do as a Board? Would a motion be in order to ensure that in the future that the person who becomes chair and vice-chair are done basically on merits and availability and so on or do we leave it --

CHAIRMAN COLVIN: Pat, I don't want to go that far today. Let me tell you what I would recommend. I wanted to introduce these concerns to the Board. I want to see if there are other concerns that Board members have about any of these membership or operational issues and get them on the table.

Once we have done so, my suggestion is this, that without objection from the Board, I would work with Amy and staff to put together some proposals on how we might restructure some things and bring them back to you for action at your next meeting.

MR. AUGUSTINE: Good, thank you.

CHAIRMAN COLVIN: That'll give us an opportunity to hear from people ahead of time as to whether any of the proposals that we might want to offer might be of concern to someone rather than just precipitously adopt them.

At any rate, there is one more issue that I have heard about, and this has come up from time to time. Many people in the industry continue to look at the composition and the geographic distribution of the membership of the Advisory Panel and ask questions about how did it come to be this way?

Those are hard questions to answer. I know they have answers. Those answers are rooted in our history. There was a lot of effort put into it. But today, several years after the fact, they are increasingly difficult questions to answer.

So those are the issues that I've heard. And let me ask, are there other issues that other Board members have heard about that may require or warrant addressing? George.

MR. LAPOINTE: Your comments about the Technical Committee and the time needed are well founded. And I think we should look similarly at our respective Advisory Panel people and LCMT members to make sure, in fact, that we put people on there who have the time; because as this program becomes increasingly complex and fast, we want to make sure we have people who put the time in.

CHAIRMAN COLVIN: Good point. Any other comments? Does anyone take exception with any of the issues that I raised that others have brought to me? Bruce.

MR. FREEMAN: Gordon, one point that's not clear in my mind relative to the LCMT working and the relationship between those groups and the Advisory Panel.

It seems that the LCMT advisors were doing a considerable amount of work, and the Advisory Panel seemed to be, then, a sounding board for those groups. Is that the way it still is operated or is my impression incorrect?

CHAIRMAN COLVIN: I'm sorry, Bruce, I didn't quite catch what you were saying.

MR. FREEMAN: My question is the relationship between the Advisory Panel and Lobster Conservation Management Teams, the relationship between those two groups?

CHAIRMAN COLVIN: I'm not sure that there is a relationship between them in the management program in any formal way. They have very different jobs. I think what's been suggested by some people is that maybe there ought to be a relationship or, alternatively, that there ought to be a way for, say, the Chairs of the LCMTs to also be seated here at the table and advising us on coastwide management issues rather than just on their area issues.

I mean, that's not probably a universally held view but some people have raised it. John.

MR. NELSON: I think that that discussion probably addresses much of what I was going to mention, also. I think how we blend the LCMTs and the advisors together is important.

There is some overlap, of course, because of willingness by industry members to participate and a desire to do so, and I think we want to maintain that and expand it as much as possible.

But I see a need to -- if the LCMTs are going to deal with the regional issues and the advisors are going to deal with, I guess, overview, then I think we need to just make sure that somehow that's not rigid but, obviously, better defined so they can interact better together.

I don't quite see that happening right now, and I think we need to address that. And that's no reflection, of course, on present leadership at all. I mean, they're all doing as best they can and working with difficult situations in many instances, tough things to tackle.

And we all appreciate it. I do hear periodically from our advisors that they're not sure about what's going on, and sometimes it's just that nothing is going out. We've been in kind of a staidest state for some time, because we haven't been able to have meetings or there hasn't been an opportunity to get information out because we've been so involved in trying to develop documents.

So, people are interested. They really want to know what's going on, and I think we've got to use that enthusiasm and willingness.

CHAIRMAN COLVIN: Thank you, John. Any other comments? Ernie.

MR. BECKWITH: Gordon, this doesn't have to do with structure, but just some feedback I've gotten from some LCMT people and also people on the Advisory Committee, some level of frustration.

They don't understand how the process always works or how their input is utilized or, in many cases, not utilized in the process.

And when we got started with the Advisory Panels several years ago, we had -- I won't call them training sessions, but we had sessions where a -- in fact, I did one for striped bass where the Board Chairman and a Commission staffer would have the Committee there and would explain the Commission's process to them; how their role works in relation to the process.

And maybe we should consider providing some kind of training for the Advisory Panels again, because I know there's an awful lot of frustration out there. I've also heard this in reference to the Lobster Conservation Management Teams.

In particular, what they're saying is that they have developed a plan and the states or the Commission don't even listen to them. And they get extremely frustrated and say, "Why am I even serving on this?"

I think it's important that they understand what their role is and how their input is utilized in developing the management programs.

CHAIRMAN COLVIN: Thank you, I appreciate that comment. Jim.

MR. JIM KING: Yes, Jim King from Mattituck, Long Island. I'm kind of uncomfortable sometimes as a Panel member and an LCMT member. I need clarification on the role of the LCMTs.

Is it to make recommendations or is it to set policy? That's my question.

CHAIRMAN COLVIN: That's a good question. I can give you my answer; but rather than do that, let us try to address all these questions in the follow up we're going to do to this meeting and lay this out in somewhat greater detail so that they're, hopefully, unambiguous and clear.

What I propose, then, as I said earlier, is that based on these various issues that have come forward, that I will work with the staff to try to lay out a written description of what the issues are and our proposals as to how they might be resolved; that we'll try to get to you sufficiently in advance of the next Board meeting so that you'll have an opportunity to comment on it and think about it so that we can, hopefully, take whatever actions we need at the meeting and put it behind us and move on. Yes?

MR. SPENCER: David Spencer, Area 3, and I have a suggestion. Looking at the list that was put out, I think it's

important that every Area LCMT have both a contact person and a technical person.

And I understand for Area 3, that that'll be taken care of as far as the contact. But I do think it's important that every area have a technical person to contact as well. And given that we're strictly federal waters, we don't have any specific association with any particular state. So, I think it's even more important in our case. Thank you.

STATUS OF COMPLIANCE ISSUES

CHAIRMAN COLVIN: Thank you. Let us move to Agenda Item 10, status of compliance issues. Amy.

MS. SCHICK: In November there was a potential compliance issue that was brought before the Lobster Management Board, and that dealt with the Rhode Island Trap Tag program and their ability to implement a trap tag program in 2000.

I don't know if Mark Gibson has an update on the status of implementing the trap tag program in Rhode Island?

MR. MARK GIBSON: Yes, we have, at the Department level, engaged the legislature and have come up with a strategy for seeking legislative authority to engage in a lobster trap tag program.

So there has been some progress on that. I don't know the details, and perhaps David, I don't know if he's here, would want to speak to that. But we have engaged the director and legislative leaders, made it clear to them the consequences of non-compliance with this issue.

And that is underway. So, we're hoping that we will have, within the next few months, legislative authority to engage in the trap tag program.

CHAIRMAN COLVIN: Are there any questions for Mark on this? Thank you. Are there any other compliance issues that any Board member wants to bring up at this time?

STATUS OF TRAP TAG AGREEMENT

Okay, item 11, trap tag agreement with Stoffel. I believe that the agreement text was distributed yesterday, and I know that Amy had asked us all for comments, and I know she got some from a few of us.

And this is now in place? I see it's got a signature on it, one important one anyway, John H. Dunnigan. And I know that a number of us, certainly I know New York and Connecticut, within very recent days, have met with Stoffel and appear to be moving in a constructive direction.

Let me just say from the outset that this was -- I think this was actually my motion at the last meeting to ask the Executive Director to enter into a business arrangement to put us in a position to be able to work with a company on the seal arrangement.

And I want to thank the staff and thank Jack for their efforts in bringing this about in an expedited, I think, and very constructive manner. I appreciate that. Are there comments, questions, concerns or issues? John.

MR. NELSON: Just questions, Mr. Chairman. I'll leave the issues and concerns aside. Since you've already had the benefit of dealing with the company, I'm just wondering how much flexibility there is in the interaction with them?

For example, under number 4, it talks about the seals being imprinted with various information on that. And if a state needed to have something a little bit more than what is listed here, I just wanted to be assured that there was that flexibility. Is it your sense that that could happen?

CHAIRMAN COLVIN: Well, I was in a horseshoe crab meeting when my staff was meeting with Stoffel, so I'll have to excuse myself from answering. But I'm wondering if Amy or any of the other states who have met with Stoffel could answer it?

MS. SCHICK: I can make just a few general comments. This umbrella agreement that the Commission entered into with Stoffel Seals is really just that; it's a general umbrella agreement.

Stoffel Seals will be contacting all the states, in many cases they already have, about getting the details of the individual state programs arranged.

What this umbrella agreement -- the purpose of this agreement is a general guide. It puts a price, a fixed price, on these trap tags. It's actually a range of a fixed price on the tags.

And the range depends on how much administration the agencies are going to take on versus how much administration the Stoffel Seals will take on.

And, so, Stoffel Seals will contact the agencies and any individual arrangements that a state would like to do that are different or more stringent than what's written in this agreement is okay.

If there's additional information that should be printed on the tags, if the state and Stoffel agree to a shorter turnaround time in getting the tags out to the agencies, if the states require a shorter interval and when they would like reports on what's been shipped out and to which fisherman, all of that is possible within the state and the Stoffel individual, unique programs.

MR. NELSON: Okay. One other question, Mr. Chairman.

On number eight, and I think we had conveyed our uncertainty to ASMFC as far as whether or not the state wanted to be the recipient of seals versus these 5,000 replacement seals or would they be held by the company.

And I'm just wondering if that flexibility is still in this? It looks like they would be providing them to the state. Now provide to the state, is that physically or does that mean they'll hold them for the state, and the state can then have the ability to ask the company to send replacement tags to certain individuals that need them?

MS. SCHICK: The 5,000 tags were taken from the arrangement that Massachusetts has. What's written up here is that Stoffel would provide each state with 5,000 replacement tags at no charge.

And the state, at their discretion, can hand those out as replacement tags or however the state would like to deal with replacement tags. The problem with having Stoffel hold the 5,000 tags and distribute them at the direction of the state would be that if you had a request for greater than 5,000 replacement tags, then who would have to pay for the tags after those 5,000 are gone?

And those arrangements can be worked out with Stoffel, whether or not Stoffel would be willing to hold them and ship them out as directed by the state or if their preference would be to just leave those with the state.

MR. NELSON: Okay. And just finally, Mr. Chairman, I also would echo what you said. I think that this agreement looks like it addresses many of the concerns we've raised over the last couple of months.

And I think Jack and the staff have done a great job in trying to incorporate flexibility into this agreement so that we can make this program work as effectively as possible. Thank you.

CHAIRMAN COLVIN: Thank you. Are there any other questions on the Stoffel agreement? Okay, we covered Agenda Item 12 yesterday so we're on at this point to other business.

OTHER BUSINESS

I have a number of items noted here, the first of which -- and it may, in fact, be an item that encompasses some of the others -- is to discuss the status of Addendum 2 and the anticipated schedule for its development in light of the anticipated schedule for the stock assessment and peer review.

So I guess, Amy, what we're asking initially is for the staff to kind of look ahead and give us some indication of what you see as the most likely schedule for the development of the addendum.

MS. SCHICK: In terms of predicting estimated timelines, it's

very difficult at this point because a lot of Addendum 2 will depend on the outcome of the stock assessment and the peer review, when that takes place and what sort of reaction we get from the peer review on the stock assessment.

The steps that we need to go through in getting through Addendum 2, once the stock assessment comes out, the LCMTs in each area should meet again to review the results of the assessment.

The Technical Committee will have to determine where each management area is in terms of egg production and how much further they need to go to get above the 10 percent level, which is the current overfishing definition.

Once the LCMTs meet and come up with recommendations for exceeding the F 10 percent over a certain time period, then that information and those recommendations will be brought back in front of the Management Board for review and consideration.

The Management Board will direct staff and the PRT to develop a draft Addendum 2 that would incorporate any of the LCMT recommendations and any other issues that the Board would like incorporated into an addendum.

Once the Board reviews that draft and approves it, the staff will take it out for public hearing. Again, depending on how many states request a public hearing, the timeframe for that is hard to predict.

The last time we had 13 public hearings and it took just about a month straight of public hearings. After the public hearings, that information will be brought back in front of the Board.

The Board will review public comment, make decisions on what to incorporate in the final copy of Addendum 2. That will be directed back to the PRT and staff to incorporate those comments.

The Management Board would review and approve the final version of Addendum 2. For Addendum 1, the LCMTs began meeting in the summer of 1998, summer and fall, and the Board approved a public hearing draft in February, I believe.

It was taken out to public hearing in April and May, and Addendum 1 was approved in August. So that was about a year's time from when we started the process until we completed it.

I would anticipate a similar timeframe. Again, it's going to depend on how quickly the Board would like to move on these issues and the outcome and timing of the stock assessment, the LCMT meetings, the Technical Committee meetings, and the public hearings.

CHAIRMAN COLVIN: And as we discussed earlier, it would appear that the most likely schedule for the delivery to the Board and discussion by the Board of the stock assessment peer review is at our June meeting.

So it would be unlikely that we would be kicking off the reconvening and the updating of the LCMTs and the Area Management Plans prior to June.

MS. SCHICK: Correct. I'd like to make a comment on that. As many of you will recall, when we went through the process of Addendum 1, there was some concern and some comments made by LCMT members and Advisory Panel members that June and July and August, the summer and fall, is the height of the fishing season.

And it's difficult for them to take time off for LCMT meetings and to devote the time to the LCMTs at the time of year when they're catching most of the lobsters. And the Board should be aware of that.

If we're looking at sometime in early June, getting the results of the peer review back, that would put us right in the center of the fishing season.

And everyone should be aware of that because that possibly could have impacts on how quickly we can get the LCMTs together and Addendum 2 started.

CHAIRMAN COLVIN: I have George and then Pat.

MR. LAPOINTE: One comment to facilitate this process -- and I should have mentioned it under the stock assessment -- we have been talking in house about trying to get a lay-person summary of the assessment done when it's done so that, in fact, people as Penn Estabrook says, "For the people who think a bootstrap is a piece of leather over the top of a boot."

We'll send you a copy as well. I may bring some other ideas to the next Board meeting along those lines, because I think it would help when we have the assessment for the Board to understand it and the LCMTs and the AP as well.

CHAIRMAN COLVIN: Thank you. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Does the existing management regime have any flexibility left in it to address any short-term issues that may come up before the full development of the next addendum?

Now that's a general question, but I just looked out here in the audience, and I didn't see anybody jumping up and down about the fact that it may be a year and a half or two before we get an addendum done.

So, are there any major issues that are pending right now or that could be handled with our existing management regime? I don't mean to put you on the spot, Gordon, but it's got to be asked.

CHAIRMAN COLVIN: That's always at the discretion of the Board, to identify issues or actions that might need to be taken on a more expeditious basis, either as a self-standing

addendum or as a emergency action which becomes an amendment.

But those issues would be issues that need to get raised to this Board, and that this Board would decide to so act upon.

Now, the primary focus of Addendum 2, as we've discussed it so far here, relates to essentially the identification and implementation of such further actions by area as are necessary to meet the requirements of Amendment 3 for an egg production rebuilding.

There are other issues that have been identified as potential issues for Addendum 2. I want to make sure, before we leave here today, that at least I, if not everyone, is fairly clear on what they all may be.

And I think we identified at least one yesterday in the AP report, and that was the issue of suggesting that mobile gear be treated the same as fixed gears in terms of needing to designate all the areas they wish to fish in and being governed by the most restrictive.

So that is an additional issue that is on the table for consideration in Addendum 2. And I think that some of the other business issues may also be considered for that purpose.

But before we go to those, does anyone else want to comment generally about the schedule or the process for Addendum 2? Ernie.

MR. BECKWITH: Yes, I'd just like to talk about the schedule for a moment. I believe we had a tentative schedule to implement Addendum 2 in January 1, 2001, and that really doesn't look practical now.

Would we be looking at doing it mid-year or would we be looking at 2002, January?

CHAIRMAN COLVIN: How do Board members feel about that question? That's a very good question. Bill.

MR. ADLER: In reality, given the schedule that Amy just outlined, we were talking about roughly June of 2001 would be that year that it takes to get everything through the process and approved.

So if you're in June of 2001 when it finally gets approved and then you're asking the states to do their thing, I can picture that you're going to be January 2002 as a realistic start-up date, I would think, before you get into the compliance things and all that, I would think, Ernie. Wouldn't that sound right?

MR. BECKWITH: It would certainly give us time to do it, yes.

MR. ADLER: Yes, but I mean, because you can't make changes like November of 2001 to have some of these things kick in when everybody is in full gear and almost beginning to

wind down, almost. So, reality.

MR. BECKWITH: Yes, one of the reasons I put the question on the table is we generally try to do our plans on a calendar year basis, but this plan is a little different.

We're kicking off a trap limit, trap tag system mid-year. And that was the issue, would we want to consider doing things mid-year in lobster or go back to the calendar year?

MR. ADLER: Well, I think that if you're not going to make the final approval of the thing until June, I was thinking probably in terms mostly of trying to get everybody on line.

And it can't happen overnight because of regulatory and all that type of stuff. So reality would be probably what it's going to end up being, I would think.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: For those states who will have to work with their legislatures to implement some of these changes -- and Maine is one of those -- January 2002 is a far more realistic deadline as well.

CHAIRMAN COLVIN: Okay, let's move on to some of the specific issues that -- I'm sorry, go ahead, John.

MR. NELSON: No, that's all right. That's what I wanted to address.

CHAIRMAN COLVIN: Okay, I promised Ernie I would get right back to him as soon as we got to it on the agenda to discuss the issue that he wanted to raise relative to transferability issues. You've got it.

MR. BECKWITH: Okay. Well, what I'll probably do, Gordon, is tie this into another "other business" item that we talked about yesterday, and that's an update on what's going on in Long Island Sound with the lobster die-off.

CHAIRMAN COLVIN: Yes.

MR. BECKWITH: And I'll tie that into this other issue about transferability. The Governors of New York and Connecticut contacted the Secretary of Commerce on December 9th and asked him to consider declaring a commercial disaster of the lobster fishery in Long Island Sound because of this rather widespread die-off that we had in 1999.

And part of the Sound experienced that die-off in the fall of '98, also. The Secretary did make that declaration. I believe it was January 26; I could be wrong on that.

And what that does, that's the first step in the process. This is under Section 312.A in the Magnuson-Stevens Act. And the next step in the process is that Congress has to consider whether they will allocate any aid to the states of Connecticut and New York for the disaster assistance.

So that's currently ongoing. And Harry is going to be the one, I believe his office, charged with looking at all of the data that the states of Connecticut and New York have put together to justify and provide a basis for determining just what the magnitude and the impact of this lobster die-off was.

And we have completed our report, and that was transferred to Harry's office and the Secretary of Commerce on Monday. And I know Gordon's office has finished the report last week, also.

So we're anxiously waiting to hear what's going to happen. I imagine it will take a number of months before we'll hear. But, anyway, with that said, let me just talk about the magnitude of the lobster die-off in Long Island Sound.

And, quite frankly, we really don't know what the current status is of the lobster population or the current or the future status of the lobster fishery in Long Island Sound.

Without a doubt, there was a significant die-off of lobsters in the Sound.

And it appears that a parasite could be a major factor. We don't know whether it's the primary or a secondary cause of the mortalities. But, every single lobster that was collected and examined from Western Long Island Sound, that's been where the most severe mortalities have occurred, have had this parasite.

And I've looked at the slides and they're just absolutely riddled with it. We haven't had a lot of sampling from the central or eastern part of Long Island Sound, just very few lobsters.

But to my knowledge, we haven't found the parasite in that part of the Sound. As I stated, we believe that the die-off started in 1998, in the fall, in the Western Sound. And, again, it occurred throughout the Sound in 1999.

And some of the ports, particularly the western ports, this past fall really didn't have any fishery at all.

A few ports, I'll just throw out to give you an idea, the ports of Greenwich, their fall landings for this year, as compared to last year, were off 99 percent.

They landed in the Port of Greenwich a total of 26 pounds this fall. The fall generally accounts for 26 or 27 percent of our annual landings, and Greenwich usually lands about 200,000 pounds. So it's been absolutely devastating.

The eastern-central part of the Sound had a pretty good summer. In some cases the landings were equal or even exceeded what they had in '98. But they, too, experienced an absolute devastation to their fishery this fall. So we don't know what the future holds.

We have done some research trawls this December. There are lobsters out there. In some cases there are quite a few lobsters out there. We don't know whether this dramatic downturn in the landings this fall, what portion of that was due to

the lobster mortality or what portion was due to a very, very late molt, which we didn't see getting going until late December.

So, just to sum it up, we really don't know what's going to happen. There's got to be a lot of research and monitoring done to really determine where we are all going to be in the lobster fishery in Long Island Sound in the future.

But with that said, let me just say that the die-off and the downturn in landings has had a dramatic and devastating effect on lobstermen, their families and their crews.

We were fortunate in that a contractor to the National Marine Fisheries Service was conducting a socioeconomic study down in our area, and he was interviewing fishermen for this other contract.

And, of course, he learned about the die-off and he contacted us, and he had volunteered to do a quick assessment of the socioeconomic impact of the die-off.

So, he developed a survey form and he interviewed 30 Western Long Island Sound Connecticut fishermen. So we got some insight into what this really means to their income and to their families.

And, as I said, it's absolutely devastating. Some of these lobstermen have had no income this fall at all. And we hope there'll be some assistance that will be able to help these people out.

But, one thing that they have asked us for, they have asked us if we would consider the issue of transferability of the trap allocations. And I want you to be clear that this is not the same issue of transferability of trap tags that we have discussed previously.

That issue was to allow a fisherman the ability to transfer his tags amongst his traps. This is not what our fishermen are asking for. They're asking for the ability to transfer their trap allocations.

And as you know, Area 6, the trap allocations are based on history, so each fishermen will have an individual trap allocation. And what they're asking for is the ability to transfer.

What that means is they want the ability to sell or to lease their trap allocation. For instance, if I had a trap allocation of 1,000 traps and if transferability was allowed, and currently it is not allowed under the Commission plan, I would be able to sell or lease that trap allocation.

And the reason they've asked for this is because of the devastating effect on their economic situation. And it's a way that they can; one, get out of the fishery and recoup some of their investments and perhaps cover some of their extraordinary costs that they have.

And in a way, our fishermen are victims of their own good

fortune. The last few years have been extremely good years for the lobster fishery, and a lot of the fishermen have purchased new boats and houses and gear.

And they have a large financial commitment, and now there is no income whatsoever. And they see this as a way of getting out of the fishery and cover some of their financial obligations; or, for the ones that do still want to stay in the fishery, it's a way of taking their investment and generating some additional revenue that will hopefully tide them over during these hard times.

Now, there are some major issues with transferability. And in the best of cases, transferability should be and could be conservationally neutral. And the reason I say that is if people start selling and buying traps, you know those traps are going to be fished.

And there is some portion of the traps that will be allocated in Area 6 that could be considered latent traps. So, if you start putting a value on those, you know for a fact they're going to be fished.

A couple of the things that we have talked about to our fishermen in regards to transferability and our concern about conservation and not increasing effort is that this could be a one-time only just to tide them over and get them through this economic crisis, and/or we could mandate that if they transfer, that they would have to retire a portion of what they want to transfer, at least.

Say, for instance I wanted to sell 1,000 of my traps, the deal would be that you could sell a portion of that, half, 30 percent, and the rest you would have to retire, meaning you would lose that allocation permanently.

As I said, this is a concept that currently is not allowed under the plan. Our fishermen and the administration in Connecticut had asked me to come before the Board and to present this issue before the Board.

They had even asked if the Board could consider doing this under the emergency provisions of the Commission's charter. And I talked to Jack and Gordon about that a bit last night, and I'm not sure that would be appropriate because those provisions are generally utilized for a conservation emergency.

And one of the reasons I was asking about the schedule for Addendum 2 is, obviously, if the Board chose to go forth with considering transferability, we'd have to do that through the addendum process, and I was very concerned about what the schedule for Addendum 2 is.

And now I understand that it's going to be out in the future for, let me see, almost two years from now, and I'm a little concerned that that wouldn't provide transferability.

If it was done under Addendum 2, it would not be done in a timely manner to provide the kind of immediate assistance that

the fishermen need.

With that said, that's our problem. That's the issue. I would be happy to hear any kind of a reaction or comments from any Board members.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: It's never easy to comment when you do have a group and an area that's impacted heavily, but the idea of making a move like the transferability of trap allocations is a big one.

I think for the Commission broadly, outside of the context of the Lobster Plan, and I think it's more amendment material than addendum. To be completely honest, I think it's a step of that magnitude and I think that's the approach we ought to take in this regard.

I am glad that Long Island Sound did get their disaster designation because that can provide some relief. I think that is more appropriate to this situation rather than jumping into the issue of transferability in a quick manner.

CHAIRMAN COLVIN: Pat.

MR. WHITE: I had several question, if I might. I guess my first question, Ernie, as you started through this, you said that this part of this disaster relief came under the Magnuson Act, which I guess I don't understand the process because I thought this was a state fishery issue.

And how does that interact with Magnuson? I guess I'll do these one at a time, if you could. I just don't understand the mechanism.

MR. BECKWITH: Well, I'll tell you what I know, and I don't know it all, and perhaps Harry could help us out, and Gordon, too, because we're in the same boat.

Obviously, what happened was we had a very difficult situation here, and we looked around at what possible assistance is available. And we did talk to the National Marine Fisheries Service, and there is assistance under Magnuson, Section 312.A.

I understand it's a state waters issue and this is a federal law for governing management in federal waters. I understand that. We were advised -- and Harry and I had a conversation.

We went over several different alternatives for assistance under various different Acts, and we were advised by Harry's office that this was probably the most feasible way to pursue it.

And there is a provision under the Interjurisdictional Fisheries Act, also, there's a disaster clause there. And I believe that Governor Pataki's letter from New York also mentioned that. So, we were looking for assistance from any source that we could, and this looked like probable sources.

CHAIRMAN COLVIN: I think if you read Section 312.A, it speaks for itself, and the circumstances under which it may be applied are not limited to the EEZ. I think I would just put it that way. Harry, you want to add to that?

MR. MEARS: Yes, very briefly. Section 312, I believe, was amended into the Magnuson Act along with the other provisions of the Sustainable Fisheries Act, which also amended the Magnuson Act in various ways.

It is not restricted to a species managed by a Council. There are no management caveats. The only other clarification I'd like to make is that there's two primary roles for the Secretary of Commerce under Section 312.

One would be responding to a request from a governor of an affected state or a fishing community to assess whether or not there has been a natural resource disaster and an associated commercial fishery failure.

The other role is to work with the affected states and the community at such time an appropriation would be made available to respond to the disaster declaration. And basically there's three things that can be done with the money that would be appropriated.

One would be to further characterize the socioeconomic, biological impacts associated with the disaster conditions. One would be to respond or mitigate, perhaps, might be one term to use, the socioeconomic impacts upon the fishing community.

And third would be to conduct needed research to further look at what the longer-term impacts might be which caused the fishery resource disaster. Essentially, there's considerably more flexibility in the way funds can be used under this legislative provision than would be allowable under other disaster authorities, for example, under the Interjurisdictional Fisheries Act.

But at the current time, the last clarification is that there is no further formal Secretarial coordinating role until such time appropriations would become available. And that depends on the success, obviously, of the Congressional delegations in that regard.

What we are trying to do is to continue work with the states of, in this case Connecticut and New York, to close the loop on the status of the data which resulted in the declaration of the resource disaster.

So, it's not really up to us to put an economic dollar sign upon the impact. But, nevertheless, we have entered into a partnership with the states to the extent that we can, to try to facilitate the socioeconomic spin-offs which have resulted from the current conditions.

CHAIRMAN COLVIN: Just let me add one or two small points; one, just to bring you right up-to-date with the most

recent developments. There is not an appropriation in the FY 2000 budget under Section 312 that could be drawn on for implementation of any action pursuant to the Secretary's decision.

The Congressional delegations that represent the districts that border Long Island Sound from both New York and Connecticut are working together to try to develop proposals for a supplemental appropriation mid-year.

They met yesterday in that regard, and I'm sure they were going to continue to meet until they are able to get something together that the leadership will support.

In addition to this, there is also being planned at the present time a technical workshop, which probably will be held the first week in April, at a location not yet selected in either New York or Connecticut.

Our two states Sea Grant Agencies are kind of taking the lead role in doing the coordinating, the planning and convening of this workshop in consultation with our staff and staff from the state universities in both states and with the NMFS Milford Lab.

The technical workshop will focus on a variety of issues related to the die-off, including examination of the information that we have to date on the parasitic problem, an examination of other prospective environmental causes or contributions to the conditions that might have supported this, as well as population factors and other things that might affect it.

So that's something you might want to be aware of. We will try to pull together experts from a variety of fields from this country and other countries to help us do that. That will help us to develop the research agenda that, hopefully, we will use some portion of the 312 appropriation.

As Harry indicated, some of that money should be used for research into the causes and the management of these things.

So, that's kind of where it is. And that's right up to yesterday when meetings on both of those subjects were going on. Pat.

MR. WHITE: Well, I think it's great to see that we have that much flexibility under Magnuson with the National Marine Fisheries Service. That's encouraging. The second question, Ernie or Gordon, that I have is sort of two-fold.

You said you did a trawl survey in December, and do you get any indication from this how much of this is going to be o-going or is this a one-time event? Does this relate at all to what happened to you in '91, bacterial, biological?

MR. BECKWITH: Well, we're not really sure. Long Island Sound has had a history of lobster die-offs, some years more serious than others. Generally, every year we see some lobster mortality at relatively low levels.

As you know, we're pretty close to the southern extent of the range of this animal, the inshore range of the animal. And so,

they could be stressed by natural environmental conditions, water temperature, oxygen, and things like that.

We had some incidence of gachemia in the past. To my knowledge the lobsters -- and Carl could pitch in if I get this wrong, but I don't think we found any gachemia in anything that we had sampled this year.

We're pretty sure the parasite is killing the lobsters. What we don't know is if the lobsters were stressed from some other cause which made them vulnerable to this particular parasite.

We think it started last year. It was absolutely devastating this fall. It generally occurs in the fall. And to my knowledge the lobsters are still dying. We're getting reports the lobsters are still dying.

We thought once the water really got cold it would taper off, but they're still dying. We had a sea sampling trip last week. They're still dying. To get back to your comment, your question about our trawl survey, we did ten stations on December 16th and 17th, five off of the central part of Connecticut and five off Norwalk/ Bridgeport which is the western part.

And what we did was we've got the Sound blocked off into squares, and we've been sampling those squares since 1984 so we've got really good data. We went right back to our specific sampling stations.

And the five stations we did off of the central part of the state, we compared with the student-T test; the tows abundance with the means of the same blocks. And there was no significant difference from the central areas.

When we went down to the west, there was a major difference. There were far fewer lobsters there. So we really don't understand what's going on. Some people say, "Well, the reason you've got more lobsters in the central part of the state was they moved out of the west, because there was something going on there and they're all dying. They were trying to bail out of there."

But this springtime, when our annual trawl survey, which we do 120 stations in the spring, April, May and June, and another 80 stations in the fall, when we finish that we'll have a much better idea of what the relative abundance is of lobsters Soundwide.

And, obviously, if we don't see a summer run, which is about two-thirds of our harvest, we'll know we have a real problem.

CHAIRMAN COLVIN: Just one amplification on that, Pat. The lobster fishery is very intense throughout most of Long Island Sound. The extreme western end of the Sound is pretty narrow, and in that area the fishery is amazingly intense.

And partly for that reason, as well as others, the Connecticut Trawl Survey has not historically worked way up into that narrow western end of the Sound. So, unfortunately, there isn't a

time series of data to compare abundance in December of 1999 with other years in that part of the Sound.

However, talking to the fishermen from western Connecticut, Westchester County, Nassau County, New York, and the few that fish out of City Island, they caught nothing in there. They were catching absolutely nothing.

Many of them stopped fishing altogether, pulled gear. Some of them have retired from fishing, probably permanently. So there's no reason to believe that there were any lobsters of any size left in that particular area of the Sound.

And that's the area that was hit, as far as we can tell, both in '98 and '99. We could talk about this for a long time. There's an awful lot of interesting and thought-provoking issues that relate to this.

You know, for example, the fact that we have a long, well-established problem of summer hypoxia in Long Island Sound, that it is most intense as you go to the west, that the areas first affected by the die-off are in the most hypoxic areas, but that the die-off seems to be most noticeable after the hypoxia breaks down at the end of the summer.

These are the kinds of issues that are important to put on the table for the scientific experts to examine and advise us where we ought to go in developing and examining hypotheses about how they might relate to the lobster problem.

Water temperatures have increased in Long Island Sound consecutively for the last four years or so. In addition to the lobsters, we know we had documented reports of a number of species of crabs and some indication of sea urchins also being implicated, which gives further credence to the hypothesis that the parasite is the primary problem.

There's just an awful lot there that's grist for the scientific mill, and we look forward to getting cracking on it.

MR. WHITE: Well, I understand that. And, obviously, you have to be aware that this is something very near and dear to all our hearts. We went through this a little bit and, unfortunately, really didn't resolve what our problem was.

And for this, you have our absolute support and sympathy, both of you, because it's just a terrifying thing to happen to some of us that are so totally dependent upon it.

MR. BECKWITH: And let me just add one other thing to the pot, and that's that while we haven't experienced large-scale die-offs in eastern end of the Sound to our knowledge, we are very concerned about what's going on with shell disease.

And we're seeing it increasing in the eastern end of the Sound, and probably it affects 15 to 20 percent of the lobsters. My understanding from some comments David Borden made to me, and Mark could comment on it, but they're seeing much higher levels of shell disease in Block Island Sound. And I've heard up in to 30 to 40 percent range. So, there's some very strange things going on.

CHAIRMAN COLVIN: And this particular shell disease episode is a particularly aggressive variety that appears to, unlike what we've often seen in the past, this one will penetrate the shell and damage the new shell so that it succeeds from molt to molt, which has not ordinarily been what we've seen historically. Lance.

DR. LANCE STEWART: Sure, and just to add two more things, I went out twice observing the catch in the field, and it certainly has devastated all the associated crab species, cancer oratis and lobenia.

One of the more relevant things, I think, in terms of a real habitat failure, an ecological crash that the fishermen have told me, is that they've seen the water clarity increase tremendously.

Usually, at the western end of the Sound, because of the nutrient enhancement has turbidities that prevent you from seeing any more than a meter in the water, they've been seeing 30 feet visibility at times.

So, there has been a major oceanographic change or some sort of a chemical imbalance that has caused this planktonic crash. So, you know, the most immediate suspicions are in effluent toxicants or, as Ernie is trying to direct into, sediment chemistry mechanisms.

But I think it's even much more severe than that. These observations have also been made in the eastern part of Long Island Sound where the water clarity is not normally as high as it was and the transpificity is about two times.

So there's some major changes. And one last point, if we're looking at recruitment into the area, if we have a contagious situation, it probably will not -- there is suspicion that it may not recover if the pathogen is really there.

Some of the analogous situations that Rhode Island has experienced with the North Cape oil spill in economic projections of production foregone estimates when you start losing all those year classes are astronomical.

If you look at that event, actually the number of individual lobsters as compared to what this Western Long Island Sound event is going to be a real test for our statisticians and also the assessment and what projected impacts egg production recruitment is really going to mean in the long run.

CHAIRMAN COLVIN: Folks, we have about 15 minutes left, and I have two other issues besides the transferability in Long Island Sound. So let's try to focus ourselves down a little bit and come to the transferability question. Brian.

MR. BRIAN CULHANE: Well, I wanted to get back to the transferability myself. This is actually the first I'm hearing of this. I haven't heard this from any of our lobsterman. And I guess question for Gordon is going to be, have you gotten the same request?

I'm concerned about, you know, redirecting effort in Long Island Sound. As Gordon said, you know, all of Long Island Sound is pretty intense. And, you know, I'm not really sure that this is the time when we should be increasing effort in other parts of Long Island Sound that we might need to rebuild Western Long Island Sound.

And then, of course, I'm also concerned about the precedent of transferability. Transferability of licenses came up during our license moratorium, and in the end the fishermen rejected it.

Many legislators reacted strongly against it. We considered ITQs in our surf clam plan a couple of years ago. Again, many of our fishermen rejected it, and legislators reacted very strongly against it.

So, I'm not really sure that this is something that we can just jump into as an emergency measure. And, of course, if it happens in Connecticut, I'm sure we're going to hear the same thing in New York.

CHAIRMAN COLVIN: Well, I guess we have not to date, Brian, to address the first question. And I wouldn't necessarily be surprised if we did, but up until now, no. Bruce.

MR. FREEMAN: Ernie, the issue of transferability, was that meant to be restricted only to Long Island Sound, within Area 6 or --

MR. BECKWITH: Yes.

MR. FREEMAN: -- transfer outside that area?

MR. BECKWITH: Yes, it was to be just for Area 6, and it's a one-time thing, just to get them over this hard time. That's one alternative, and that's where this is coming from.

Obviously, if we're going to talk about transferability, we have to consider do we want it to be a one-time thing or does transferability have merit and should we make it a permanent part of the Area 6 Plan or should it extend to the other areas that have a history-based allocation?

MR. FREEMAN: I would make one comment. And I know this is a very important issue to you, but just from an outside perspective, if it were to be a one-time situation, I think it should be restricted to a lease.

And the reason I say that is if, in fact, you allow a sale to be made under this one-time window, it seems to me it would be permanent. And if you found that, in fact, you're putting effort into an area that later on you'd regret doing, you would be stuck with it.

I mean, that transfer could have taken place and it's irreversible. But a lease, if that were the way it to be done, if it were deemed in Long Island Sound that to be reasonable, then you find at some later date you want to adjust it, you could; or,

the effort could go back to historical east-west if that's an issue.

But it seems the sale, even though it would be allowed under this window, would be permanent. And it would be, if you didn't like it, you couldn't reverse it.

CHAIRMAN COLVIN: Bill Adler.

MR. ADLER: Ernie, are your licenses frozen now?

MR. BECKWITH: Yes.

MR. ADLER: And you don't have within the state a transferability; i.e., sell a license with the business type of a thing?

MR. BECKWITH: Not really. It's limited now. You can transfer amongst family members and that's it. The issue of transferability of trap allocations and the problem with licenses being frozen came up.

And that's a major issue because some of the fishermen are saying that in order for them to have the flexibility to allow them to be able to sell their investment, they need a different market.

What they're saying was that it would be very difficult to sell their traps amongst the fishermen that currently are in the fishery, because they're all in the same boat and why should they buy more traps when they don't have any money and who knows what the future is.

So they also tacked on to this request that the state consider allowing licenses to be sold and transferred and let new people come into the fishery.

MR. ADLER: If you wanted to, rather than go into all the details here, if you wanted to check with Massachusetts' system of transferring of the license, to see how that's done to try to protect all the things, it seems to have worked pretty well.

And if you check with the Division of Marine Fisheries to see how the system functions, your idea of when the business is sold; i.e., the license is transferred along with the business-related assets type of wording, type thing, that a reduction in the trap number at that time, that's a good idea.

I mean, I've heard that from fishermen, too. So that the guy who's fishing now doesn't get hurt, but the guy that's getting it never had that many before so he's happy to get it even though you've -- you know, that whole thing.

But, the transferability, rather than the fear that Dick Allen is going to reappear here on the set anytime now with his ITT, because a lot of fishermen are worried that there'll be a buildup by the big guy and that turns a lot of people off.

But, if you check with the Division to see how they did it, that might be something. I don't think there's anything in the ASMFC format, amendments, addendums, that precludes a state

from doing that within itself.

MR. BECKWITH: You mean transferring licenses or traps?

MR. ADLER: Yes, licenses.

MR. BECKWITH: Oh, licenses, no.

MR. ADLER: So, I mean, you wouldn't have to wait for addendums/amendments. Look into it. It might be a way through it.

CHAIRMAN COLVIN: We're at a point where I'd like to suggest a course of action, because we do need to move on and we have very little time left.

It's been suggested that even though this has been proposed at this point as an Area 6 or even a part of Area 6 initiative, that it may have precedential ramifications for other areas that would be of concern to other Board members.

And further, that it may be of such significance that it might require a plan amendment. With that suggestion on the table, I think it unlikely that the Board is going to agree today to a specific course of action with respect to this initiative.

I would suggest that we ask for a staff assessment of how this issue might relate to the actual provisions of Amendment 3 and some assessment of whether an emergency amendment or addendum would be required in order to implement a proposal of this nature so that that assessment can be before us at our next Board meeting and we can continue this discussion.

It would also give Board members, I think, an opportunity to give additional thought to the subject of whether transferability of trap allocations within one conservation management area is of sufficient concern to them with respect to other areas.

And I think that's an issue that people need a little bit more time to think about and discuss at home. Without objection, I'd like to handle the issue that way and come back to it at our next meeting.

MR. BECKWITH: That's fine, Gordon, thank you.

CHAIRMAN COLVIN: Thank you. Jim, real quick please.

MR. KING: Jim King, Mattituck. I would just like to recommend that the LCMT for Area 6 meet as soon as possible, so that we can start getting some public input into this to see what everybody wants to do.

I think that would be important. And I had a quick question for Harry. Part of Section 312 I think addresses effort reduction or fishing capacity reductions. Is that going to be part of this package for Area 6?

MR. MEARS: I believe, Jim, you're referring to whatever ultimate strategy the congressional delegations come up with. I

have no way of knowing. That would be up to them.

CHAIRMAN COLVIN: I have two other issues on the other business list, one of which I believe was put forward as a possible Addendum 2 issue. So let me ask about that now.

And I think Pat White brought this up in terms of a north-south division within Area 3. Could you address that issue, Pat.

MR. WHITE: I'm very aware of trying to maintain the management regimes within areas, but I think this is something that needs a little bit bigger attention because it does involve both Area 1 and 3 and the common assessment area, if you will.

And so I don't know, Gordon, where it has to go from here, because I don't think it's something that an Area 1 group should be making, and yet I think it's something that an Area 1 and 3 combination somehow should be into that decision process. I don't know how it works from there, I'm sorry.

CHAIRMAN COLVIN: John.

MR. NELSON: Mr. Chairman, I would suggest if this is going to be an issue, that it obviously is something that the LCMTs from both areas should discuss. But having said that, let me just say that in the discussion on the boundary, if you would, between Areas 1 and 3, that type of issue came up as far as a discussion that maybe there should be a line that's well to the south.

And, essentially, you don't have an Area 3 anymore; it's all Area 1. That did not gain much support from the Area 3 folks; and since we were under the understanding that if there was not agreement between both groups, that there was no agreement and, therefore, we had status quo.

So, if the Board wants to have that revisited, that's up to the Board. I just wanted to make sure everyone understood that in our overall discussions on the boundary, that that concept came up and there was not agreement there, and so that's why we're at status quo.

CHAIRMAN COLVIN: I'm hearing this for the first time. And just evaluating the words I'm hearing said here this morning, this sounds to me like an issue that would require a plan amendment to resolve.

Those boundaries are specified therein. It's certainly not an Addendum 2 Issue. And so it would seem that if there is at some point a proposal that is brought forward by a member formally for the purpose of a plan amendment, the Board could take it up at that time.

It sounds like we're not there yet at all. Fair enough? Okay. The last item I have on my list involves the Area 4 Alternative Conservation Equivalency Proposal. Bruce.

MR. FREEMAN: Yes, thank you. I believe each of the Board members was given a copy of the summary minutes of the

LCMT 4 meeting that occurred in November of last year. This was a meeting held at the request of New Jersey.

And the representatives of both New Jersey and New York met. Essentially, the issue here dealt with results of our public hearing process and the comments we received in New Jersey relative to Addendum 1.

And those comments received at the public hearing primarily asked for revision in what was being proposed. And this was taken to our Marine Council. And we have, as a result of this, worked through our state committee, Lobster Committee to come up with proposed regulations that are now in abeyance until we can get this situation corrected.

At the last Board meeting, I introduced a scenario where New Jersey would cap its traps at what it believed to be a maximum number. If you recall, it was about 156,000 traps.

The idea for this is to make certain that what we are proposing in New Jersey is capped at some maximum number. The concept varies from what the LCMT 4 has proposed and been adopted by this Board in a couple of ways.

And let me just review what the major changes were. What we had proposed in New Jersey was a system where trap tags would be allocated based on a history of use of traps.

And that was based on the criteria from 1991 to '98 that in order to get an allocation of tags, the fishermen would have to have a current federal permit and show a landing of a minimum of 2,000 pounds over that period, 1991-98.

There would be traps allocated two ways. One would be if they had essentially trip tickets or federal records indicating the number of pots they fished. For other fishermen that could not produce this information, they would simply just have to have the 2,000 pounds and the current federal permit, and they would be allocated 1,000 pots.

The other system, or what we call "Type B", essentially would be that a person would be required to have a federal lobster permit.

The participation time, however, was changed from 1991-98, from 1980 to '90. And they would essentially have to have a minimum of 2,000 pounds of lobsters landed and sold in New Jersey.

We've had a number of lobster fishermen who participated historically in the fishery, and this would provide an allocation of pots to these people. The third type of permit would be a federal permit.

They would have to hold a federal permit and show some historical participation in the mobile gear fishery and have a minimum of 500 pounds of lobster sold. And they would be given the opportunity to fish a maximum of 500 pots.

When we had raised this issue to the Board some time ago -- in fact, this was several years ago, this issue -- this Board indicated that if, in fact, the state wanted to issue pots based on history in the fishery by gear other than pots, it could be done under a conservation equivalency.

And so we've gone through the process of setting such a system in place with capping the number of pots. The LCMT 4 has agreed unanimously that this regime would be suitable for Area 4.

However, Commission staff has indicated this would take an addendum rather than a conservation equivalency, and so we need guidance as to how do we proceed with this because we're hearing what we consider two different scenarios here.

One is conservation equivalency and another is an addendum process in order to carry out what New Jersey believes is a system that it has already agreed to with its industry.

CHAIRMAN COLVIN: I'm going to ask Amy to address the question.

MS. SCHICK: Because New Jersey's proposal includes provisions that are not included under Addendum 1, the allocation going back to history of 1980 to 1990 and also an allocation to the mobile gear fishery, those allocations are not included under historical trap allocations for Area 4 or 5.

The allocations based on historical participation is specific to the trap fishery. Therefore, the state of New Jersey would have to submit a proposal on conservation equivalency.

And in that proposal, the state would have to demonstrate that the trap limits being allocated to their entire fishery, all New Jersey fishermen, would be conservation equivalent to historical participation within Addendum 1.

It would not require an addendum. It would just be a proposal of conservation equivalency. Once a proposal like that is submitted to the Commission, the Plan Review Team will take that issue.

They'll solicit comments from the Technical Committee and review the request and present a recommendation to the Management Board. The Management Board would then have to either approve or suggest modifications to that proposal for implementation.

MR. FREEMAN: Mr. Chairman, this is a Catch-22 because we do not know historically how many pots were fished. There are no records, either federal records or state records, indicating the total number of pots.

The reason New Jersey presented the number we did at the last meeting was to establish some upper limit which we thought reasonable.

But if we're required now to determine the number of pots

and then come in with this proposal being equal to or under that, it's just impossible to do, so this will never happen. We can't accomplish what's being asked by the Board through the plan.

CHAIRMAN COLVIN: What options, then, exist, Amy if the conservation equivalency cannot be demonstrated to the satisfaction of the Board? In that case, we do go to an addendum, I assume.

MS. SCHICK: Either an addendum that would incorporate these provisions which would allow the state to issue a trap allocation to the mobile gear or extend the historical participation back to the 1980 timeframe.

MR. FREEMAN: Well, it seems to me the other option would be to accept the upper limit that we have established, 156,000 pots, and essentially agree that that is the historical level.

And then so long as the trap tags that are issued are equal to or less than that amount, then I think this issue could be resolved. And we feel confident that indeed that would be the case.

CHAIRMAN COLVIN: I guess, Bruce, my advice to you at this moment in time would be that there's probably no downside to New Jersey taking a shot at putting together a conservation equivalency-based argument that calls on the Board to accept the view that you just stated and lays it out with as much justification as you can reasonably present and put it on the table.

And either the Board will accept it or it won't. But if it doesn't, I don't think you've lost anything because then you're back to the option that we just identified.

MR. FREEMAN: Right. Well, we'll certainly do that. I mean, we're trying to find a solution to this. The difficulty here is that we're holding our regulations in abeyance until this issue is corrected.

And so this whole issue of issuing trap tags and the agreement with the Feds are contingent upon resolving this issue. So it puts us in a very difficult position with the timeframe in which we're looking at.

CHAIRMAN COLVIN: Harry.

MR. MEARS: Mr. Chairman, for the record as well, I would like to emphasize, which I don't think is immediately apparent to everyone, the dilemma this makes for the National Marine Fisheries Service in light with the request to implement historic-based participation in, in this case, Area 4.

In our analysis we are obligated to discuss and evaluate how the state jurisdictions are managing state waters under this Area Management Regime. And at the same time we are obligated to be compatible with the plan and yet be consistent with the National Standards.

And, obviously, one of these National Standards is an equity

issue where our approach cannot be unduly biased based upon the resident of the state of the federal permit holder.

So, once again, we're dealing with a moving target. We have a recommendation in this system. Yet there is an uncertainty where once we start our own process in motion, the entire management regime can be reversed at the next Lobster Board meeting.

So, I don't know an easy out to this. It's probably the nature of area management. Yet, I want to emphasize the difficulty this places, the difficulty this causes the National Marine Fisheries Service in responding to recommendations from the Commission given this type of scenario.

CHAIRMAN COLVIN: Any further comment on this issue at this point? Seeing none, that concludes the agenda, as I have it before me. And we are --

MR. WHITE: Not to belabor it, but I just have one quick question, if I could. Under the conservation equivalency thing that we were talking about yesterday, I asked New Hampshire if they were appealing through some sort of mechanism to allow their federally permitted lobstermen to fish 1,200.

And if I understood John correctly, he said, "no", and maybe I phrased the question incorrectly because I'm still unclear about that. Will a federally permitted person in your fishery be able to fish 1,200 traps?

MR. NELSON: I think the question yesterday was you asked if a person who was federally-permitted would be allowed to fish 1,200 traps in the EEZ. My answer to that was, "No; it was 800."

MR. WHITE: Well, if I rephrase my question then, just for a point of clarification, under what you're asking, will a federally permitted person be able to fish 1,200 traps?

MR. NELSON: As the program has been outlined for the last year and a half, a person who would be commercially licensed in the state of New Hampshire and had a federal permit would only be allowed to fish whatever the federal license was in the federal zone.

The remaining traps would be allowed to be fished in the state waters. Those that had a limited license and were federally permitted would only be allowed to fish, in this case, 600 traps in the federal zone. And, therefore, they would not be allowed to fish 800.

So, that's where the conservation equivalency comes into play. A far greater majority have a limited commercial license and they would not be able to fish what other states are able to fish in the federal zone. They could only fish 600 instead of the 800 in the federal zone, period.

CHAIRMAN COLVIN: Okay, I'm going to regard that question now as asked and answered. And if it requires further discussion, it can take place sidebar or be followed up on at our

next meeting.

Again, without objection, given that we're over, we stand adjourned.

(Whereupon the meeting was adjourned at 10:15 o'clock a.m., February 8, 2000.)
